

The State of Gas Market Integration in the Energy Community

**Special report for the CESEC
High Level Group Meeting**

Sofia, 29 June 2018

Energy Community Secretariat

Introduction



In March 2017, the Energy Community Secretariat (hereinafter 'the Secretariat') adopted its strategy for establishing functioning gas markets in the Energy Community and fostering pan-European gas market integration. The *Energy Community Gas Action 2020*¹ outlines legal, market and infrastructure measures needed to help overcome shortcomings of the present gas infrastructure connectivity and market structures and attain more liquidity, competition, diversification and security of supply in the Energy Community region as defined by Title III of the Energy Community Treaty. It provides a concerted effort towards infrastructure and market development as well as security of supply, recognizing the link between them. While gas market integration relies on interconnecting infrastructure, it also requires functioning market structures as a precondition for efficient and cost recovering usage.

The *Energy Community Gas Action 2020* includes reform measures to be undertaken by the Energy Community Contracting Parties (hereinafter

'Contracting Parties') on the interface between Contracting Parties and EU Member States in order to reach the obligations of the CESEC 2.0 Action Plan.

In September 2017, the Secretariat published the first report for the CESEC High Level Group. The report provided an overview of the current status of implementation of the 3rd Internal Energy Market Package (hereinafter '3rd Package'), as incorporated in the Energy Community *acquis communautaire* ('acquis') by Decision 2011/02/MC-EnC of the Energy Community Ministerial Council, as well as of the actual market developments in the Contracting Parties. The analysis covered the Contracting Parties with operational gas markets that are interconnected with other countries in the Energy Community region², namely: Albania³, Bosnia and Herzegovina, former Yugoslav Republic of Macedonia, Moldova, Serbia and Ukraine. In addition to national developments, the report also dealt with regional market integration, namely implementation of EU gas network codes and guidelines in the Con-

1 https://www.energy-community.org/dam/jcr:7ea2720c-7b65-4d12-9c61-56f59444b147/WS_Gas_032017_background.pdf

2 Not being integrated with other countries of the Energy Community region, Georgia is not included in this report.

3 Due to TAP project development, Albania is considered in this report as a Contracting Party with an operational gas market.



tracting Parties, interconnection agreements between the transmission system operators of the Contracting Parties and neighbouring EU Member States as well as implementation of capacity allocation platforms as foreseen by the network code on capacity allocation⁴ in the region. On the infrastructure side, the report informed about the development of the gas interconnector between Bulgaria and Serbia, a Project

of Energy Community Interest, which is also on the list of CESEC Priority Projects.

This report provides an updated overview of national and regional gas market developments, highlighting the changes between September 2017 and June 2018.

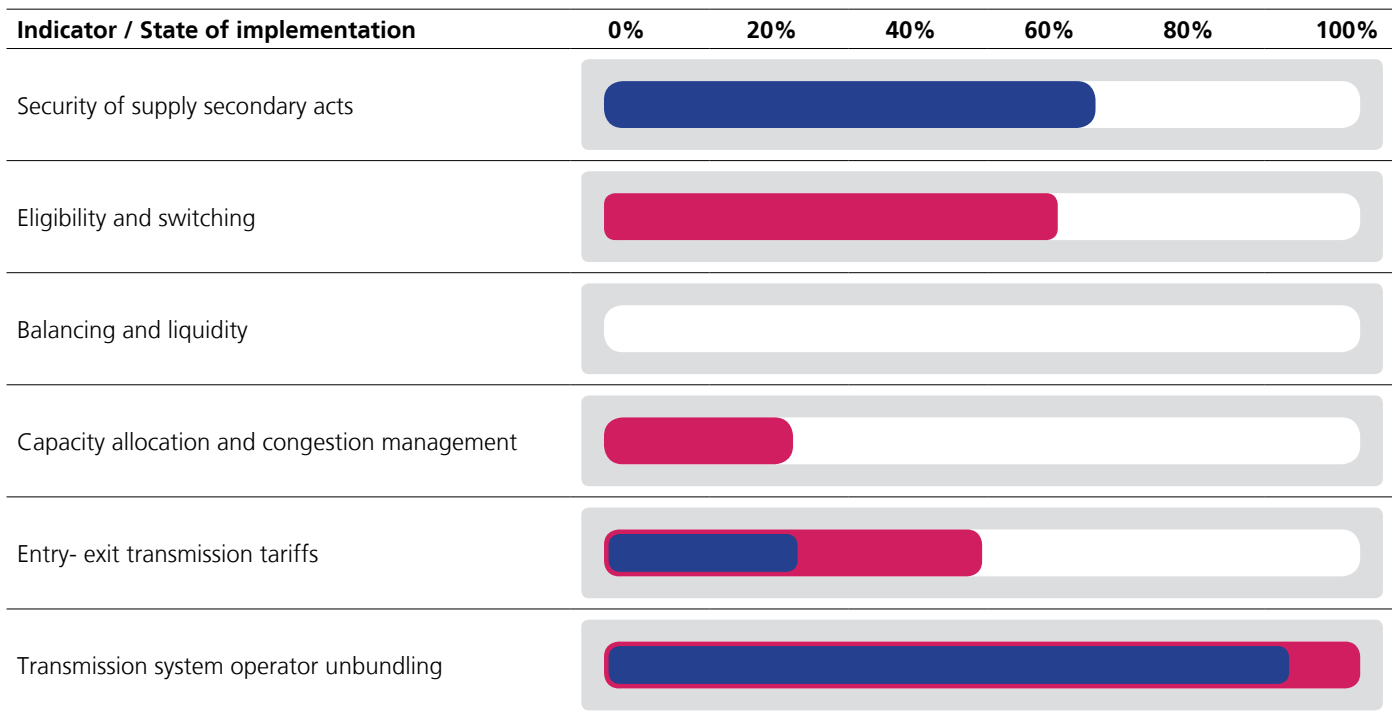
Current status of Third Package implementation and market development

The present report assesses the level of gas market development in the Energy Community Contracting Parties both from the perspective of *de iure* compliance with Energy Community law as well as actual implementation. On the legal side, the analysis is made against the set of requirements stemming from the Third Package, namely: unbundling of gas transmission system operators (TSOs), third party access, entry-exit transmission tariffs, capacity allocation and balancing as a facilitator of market liquidity. Beyond that, the as-

essment also reflects on the level of market liquidity and the implementation of adequate security of supply rules.

The indicators accompanying the compliance overview consider both the level of transposition and implementation in practice. For Albania, due to absence of gas infrastructure, only the performance related to TSO certification, adoption of security of supply acts and the level of transposition of other secondary acts can be assessed.

⁴ Commission Regulation (EU) 2017/459 of 16 March 2017 on establishing a network code on capacity allocation mechanisms in gas transmission systems and repealing Regulation (EU) 984/2013, OJ L72/1, 17.03.2017.



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Third Package transposition

Albania transposed the Third Package into national legislation by the 2015 Law on Natural Gas Sector, which is widely compliant with the *acquis*.

TSO unbundling

Albania has two certified TSOs: *TAPAG*, certified as an independent transmission operator by ERE in 2016 (under the exemption decision's criteria) and *Algaz*, a state owned company, certified in November 2017 under the ownership unbundling model. In both cases, the Secretariat issued its Opinion, which ERE duly took into account. *Algaz* is a combined operator, performing transmission and distribution of natural gas.

Algaz became an Observer of ENTSOG in 2018.

Transmission tariffs

In November 2017 ERE adopted a transmission tariff methodology for the first time.

Practical implementation of the transmission tariff methodology is subject to gas market development.

Capacity allocation and congestion management

ERE adopted *Rules on provision of third party access to the transmission system and transparency in the natural gas sector*, covering also congestion management procedures Annex I of Regulation (EC) 715/2009. However, the preparation

of the relevant transmission codes is still in progress.

Implementation of such rules is subject to gas market development.

Balancing and liquidity

A governmental decision *On Approval of the Natural Gas Market Model*, including balancing related provisions of Regulation (EC) 715/2009, is pending for more than two years.

Security of supply

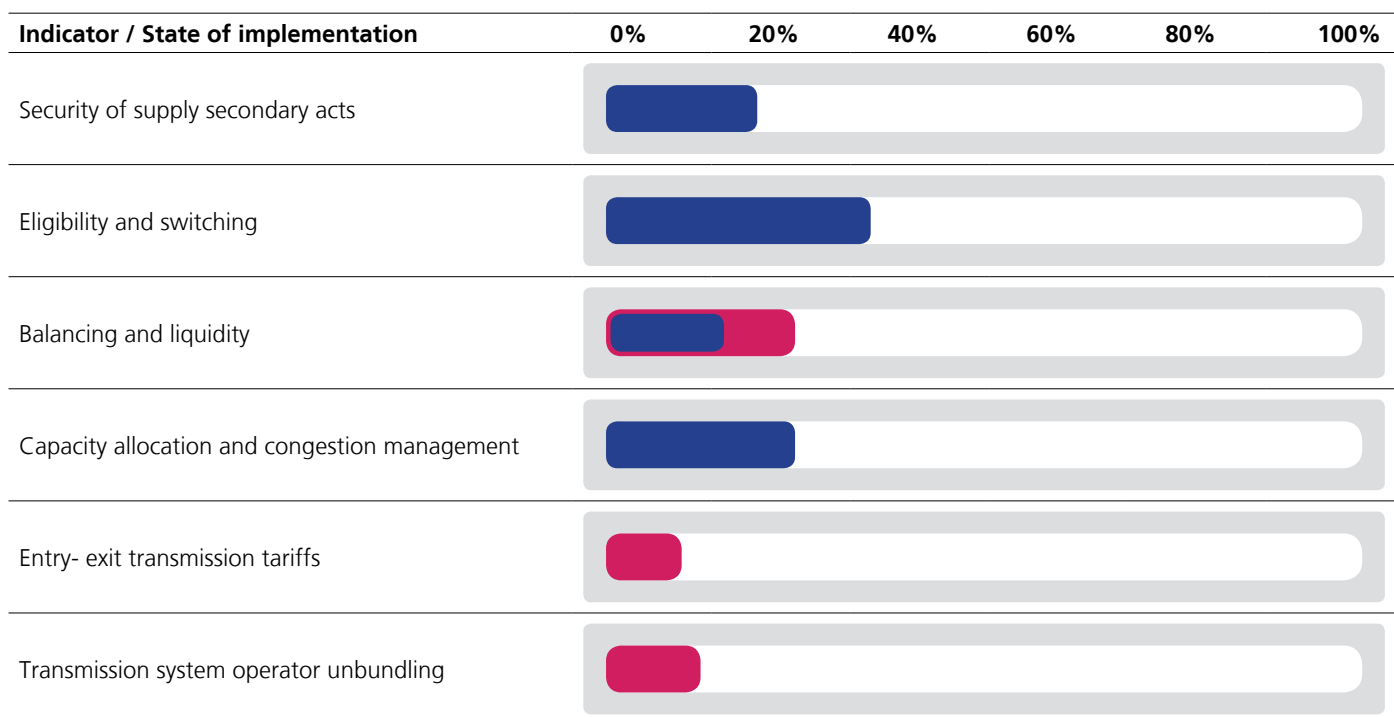
Primary legislation transposes the general provisions of Directive 2004/67/EC concerning measures to safeguard security of natural gas supply as well as 3rd Package related security of gas supply provisions. The Government has adopted the *Natural Gas Emergency Plan*, developed with the Secretariat's assistance. However, Albania did not submit nor publish the required annual *Security of Supply Statement* for natural gas.

Eligibility and switching

ERE adopted *Rules on switching of the natural gas supplier* in January 2018 and kicked off a procedure for adoption of the *Supply rules*, to which the Secretariat sent its comments and proposed an upgrade. The Cabinet of Ministers adopted in February 2018 a decision on *Designation of the Natural Gas Supplier of Last Resort*.

Operational rules for the natural gas supplier of last resort were drafted by ERE and adopted in April 2018.

Bosnia and Herzegovina



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Third Package transposition

Despite continuous pressure by the Energy Community institutions, Bosnia and Herzegovina is far away from adopting a state law regulating the gas market. This objective is also thwarted by the activities at entity level. Whereas Federation of Bosnia and Herzegovina is not willing to move ahead in adopting entity legislation without a consensus agreed at the state level, Republika Srpska adopted a completely autonomous gas law based on the Third Package in gas and essentially closing the door to a state-wide law. The country has been in breach of Energy Community law for 12 years now, and was subject to sanctions by the Ministerial Council.

TSO unbundling

In Bosnia and Herzegovina, three companies perform transmission activities. None of them is unbundled. *BH Gas* acts as importer for the entire Federation of Bosnia and Herzegovina; *Sarajevogas Istocno Sarajevo* performs both transmission and supply of natural gas in Republika Srpska, whereas *Gas Promet*, though responsible for transmission system operation only, is neither unbundled nor certified.

Transmission tariffs

Gas transmission tariffs in Federation of Bosnia and Herzegovina were never adopted, published or applied. There is also no regulatory authority with the necessary competences in place.

In Republika Srpska, the law requires that the transmission tariff methodology is adopted by the entity regulator, which also sets the tariffs. At present, it is implemented only for a spur of the transmission pipeline Karakaj – Zvornik whereas for the main pipeline, Sepak – Karakaj, the procedure to adopt the tariffs is ongoing.

Capacity allocation and congestion management

Legislation of Federation of Bosnia and Herzegovina envisages negotiated access based on decisions of the ministry in charge of energy. Republika Srpska transposed the relevant Third Package provisions on capacity allocation and congestion management. At present, the transmission network code of *Gas Promet* provides for allocation of both long- and short-term capacity on a firm and interruptible basis, whereas congestion management procedures do not envisage the re-offer of unused capacity to the primary market on a day-ahead and interruptible basis in case of contractual congestion nor the possibility for capacity trade on a secondary market.

In practice, no third party access is granted to market participants, other than to the incumbent suppliers, on any of the transmission networks.



Balancing and liquidity

Republika Srpska transposed the relevant balancing requirements from the Third Package in the gas sector. *Gas Pro-met* currently balances its transmission network by using linepack, with a tolerance level of 2-5%. Network users are requested to provide balancing gas in case the TSO is not able to provide it. No imbalance charge is calculated and implemented. Federation of Bosnia and Herzegovina did not even adopt balancing rules.

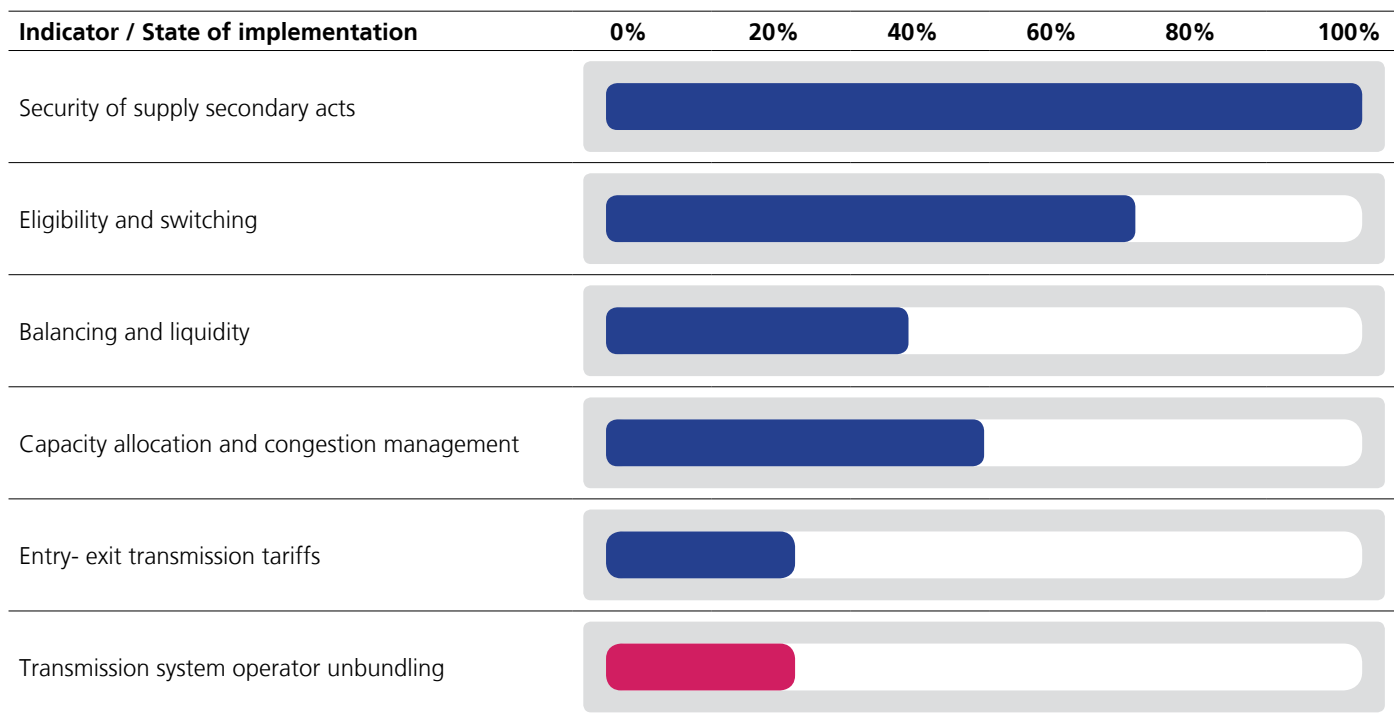
The gas market of Bosnia and Herzegovina is illiquid. The domestic incumbents *BH Gas* and *Energoinvest* are parties to an import contract with *Gazprom*, which is renewed annually, and a transit contract via Hungary in force until 2018. Transit via Serbia is subject to a contract between *BH Gas* and *Srbijagas* that is in force until September 2018. Neither an organized exchange nor any other trading platform (e.g. virtual trading point or balancing platform) is in place.

Security of supply

Bosnia and Herzegovina is not compliant with Directive 2004/67/EC. Republika Srpska has transposed the gas security of supply *acquis*.

Eligibility and switching

All natural gas consumers in Federation of Bosnia and Herzegovina are supplied by their incumbent at regulated prices. In Republika Srpska, there were three suppliers in the retail market in 2017, the biggest supplying more than 90% of the total quantities sold. All households are supplied by their incumbent supplier at regulated prices. Prices for non-household customers are not regulated. Still, no customer changed supplier in the last two years.



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Third Package transposition

Former Yugoslav Republic of Macedonia transposed the relevant Third Package gas *acquis* by adopting the *Energy Law* in May 2018.

TSO unbundling

GAMA, the country's gas transmission system operator, is part of a vertically integrated company and is not yet unbundled or certified.

The unbundling and certification procedure prescribed by the law is in line with the Third Package, albeit with prolonged deadlines for the application procedure. The new law provides the legal basis for the regulatory authority to adopt certification rules.

Transmission tariffs

The *Energy Law* requires that a transmission tariff methodology establishing individual setting of tariffs for entry and exit points from the system is to be developed and adopted. The regulatory authority has prepared a draft entry-exit tariff methodology.

Capacity allocation and congestion management

Capacity allocation rules and congestion management pro-

cedures are transposed by the new Energy Law. The *Transmission Network Code* of GAMA ('the Network Code') and the *Market Rules* issued by the regulatory authority are to be aligned with the law, thus finally obliging the TSO to offer both firm and interruptible capacity. The Network Code envisages that capacity is sold on an annual and monthly basis⁵. At present, network users cannot re-sell or sublet their unused contracted capacity on the secondary market.

Balancing and liquidity

Balancing requirements of the Energy Law are compliant with the Third Package. At present, the existing balancing-related provisions of the Network Code and Market Rules are not fully harmonized, e.g. the tolerance levels are different. New secondary legal acts will have to rectify non-compliance issues, such as the lack of an obligation to publish the imbalance charges.

The gas market of former Yugoslav Republic of Macedonia is illiquid. Gas is mainly consumed by industrial customers, whilst households have an almost negligible share of total consumption due to the very limited spread of distribution networks. Two traders import gas under contracts with *Gazprom* and two big consumers import gas individually for their own needs, including at the Bulgaria-former Yugoslav Republic of Macedonia border.

⁵ i.e. long- and short-term capacity



Security of supply

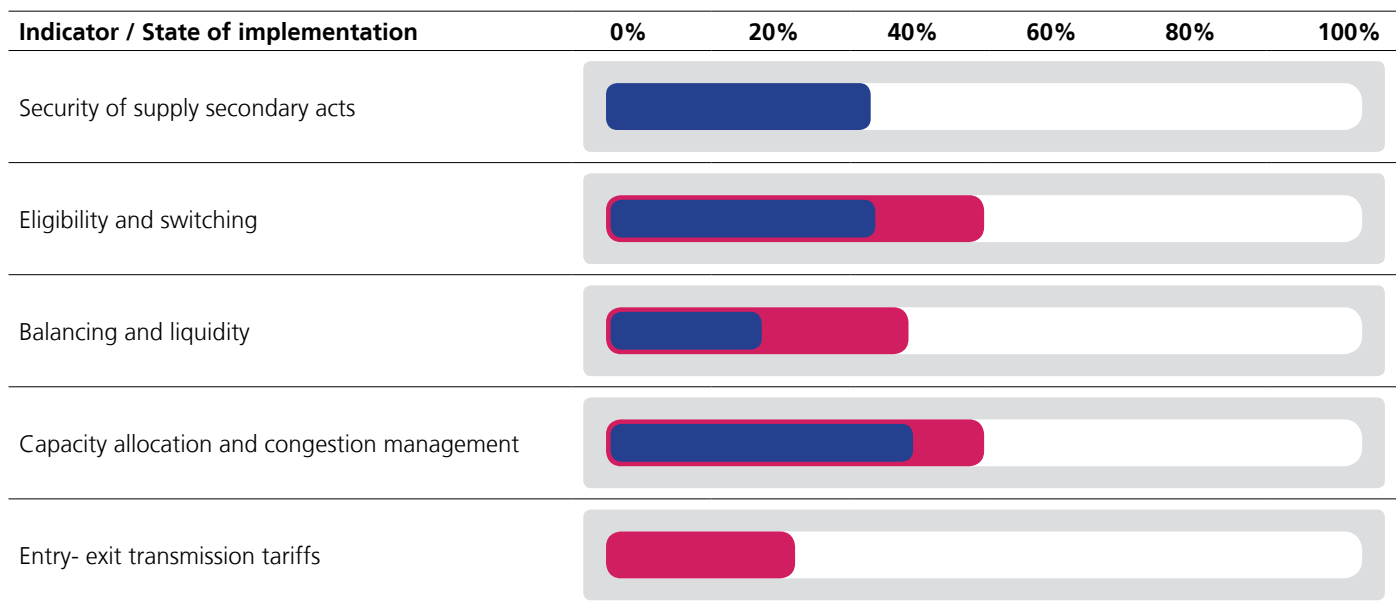
Former Yugoslav Republic of Macedonia transposed the security of supply *acquis* and submitted the *Security of Supply Statement* for 2017.

Eligibility and switching

All customers are eligible to choose their suppliers and the end-user prices of gas are not regulated. In practical terms, around 1% of non-households has a supplier different than the incumbent, one of them switched in 2017. Around 75%

of gas consumed in former Yugoslav Republic of Macedonia in 2017 was imported directly for own needs by the district heating producer *BEG Proizvodstvo* and combined cycle power plant *TE-TO AD Skopje*. In addition to this, two traders imported gas for the wholesale market: *Makpetrol* and *Kogel stil*. On the retail market, there were six active retail suppliers in 2017.

There were 217 household and 107 non-household customers connected to the distribution networks in 2017.



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Third Package transposition

With the adoption of the *Law on Natural Gas* in May 2016, Moldova transposed the gas-related provisions of the Third Package.

TSO unbundling

Moldovatransgaz, a daughter company of *Moldovagaz*, is a legally separate company, but its functional independence is questionable, despite organisational and decision-making provisions formally being in place. Furthermore *Moldovatransgaz* lacks proper accounting unbundling, as their audited reports have never been published. Legal and functional unbundling applies before one of the unbundling models envisaged by the Third Package will be implemented, *i.e.* no later than by 1 January 2020.

Vestmoldtransgaz, an emerging TSO, was sold to Romanian *Transgaz* and is not certified yet.

Tiraspoltransgaz is another daughter company of *Moldovagaz*, operating a transmission system on the left bank of Dniester River.

Transmission tariffs

The law requires that a transmission tariff methodology for the individual setting of tariffs for entry and exit points is

established. Since the currently applicable transmission tariff methodology does not allow for the individual setting of tariffs for entry and exit points, the regulatory authority, in cooperation with the Secretariat, currently prepares an entry/exit transmission tariff methodology last year. The methodology is to be finalized by end 2018.

Capacity allocation and congestion management


The *Law on Natural Gas* transposes principles of third party access to transmission networks in compliance with the Third Package. The current legislation requires the allocation of monthly and annual capacity for time-horizons of up to five years and interruptible capacity to be offered in case of contractual congestion. The rules on secondary market trade of capacities are also in place.

In order to transpose the relevant *gas acquis*, ANRE and the Secretariat prepared fully compliant transmission and distribution network codes for Moldova. However, those codes have not been adopted yet.

Balancing and liquidity

The *Regulation on Access to the Natural Gas Transmission Network and Congestion Management* established some basic principles of balancing. The draft gas market rules, pre-

⁶ TSO unbundling for Moldova is assessed against the Second Energy Package, because the deadline for 3rd Package compliant TSO unbundling and certification for Moldova was set for 1 January 2020. The different Third Package deadline for TSO unbundling is also the reason for not presenting the relevant indicator on the graph, *i.e.* it would not allow for comparison with other Energy Community Contracting Parties.



pared in cooperation with ANRE and the Secretariat, transpose balancing rules properly and go beyond the applicable *acquis*. However, the draft is still awaiting adoption.

The gas market of Moldova is illiquid. In 2017, almost all gas (more than 99%) came from import, under two long-term contracts, renewed annually⁷. Liquidity may be improved by the diversification of gas supplies to Moldova, more precisely by making operational the interconnector with Romania through the Iasi-Ungheni pipeline and, in particular, via its projected extension to Chisinau. *Vestmoldtransgaz* was sold to *Transgaz* recently, with the obligation of the latter to invest in the Ungheni Chisinau pipeline.

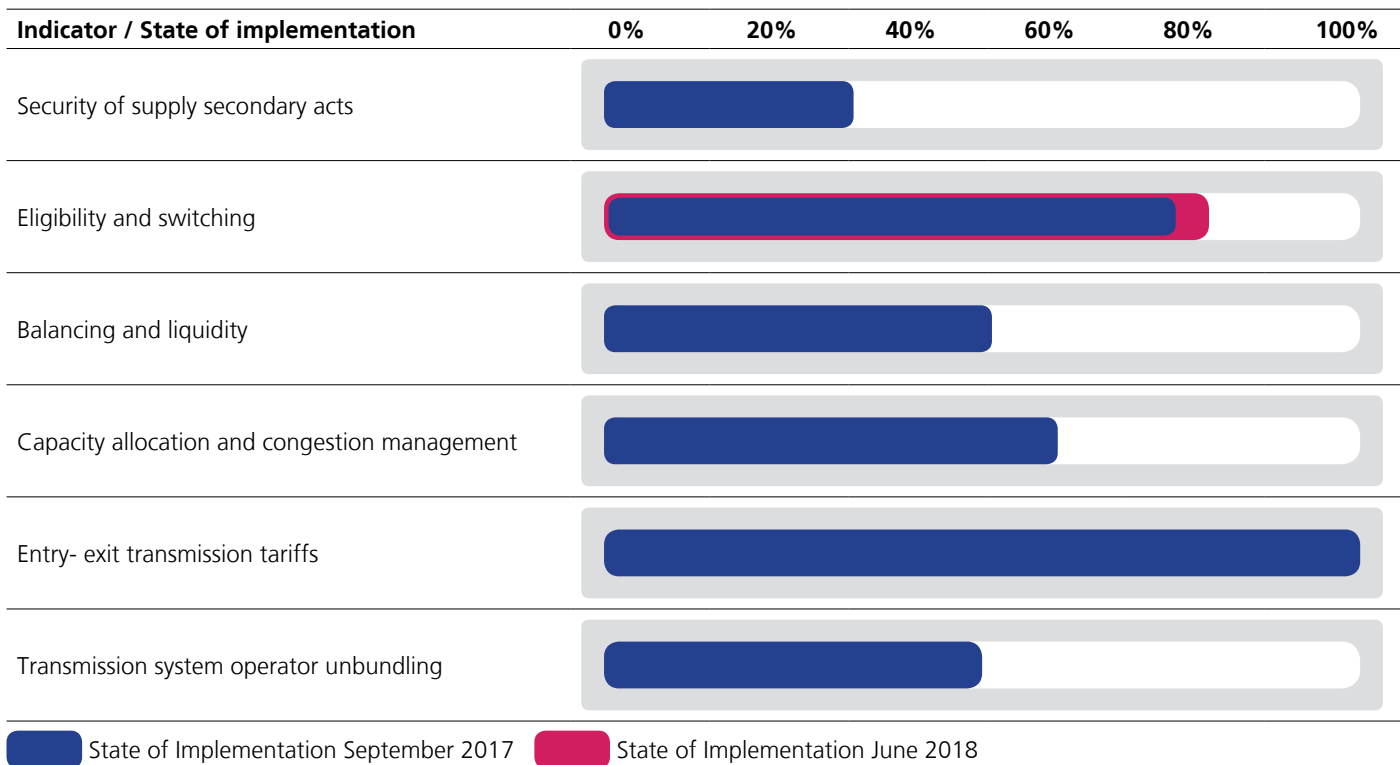
Security of supply

Although the *Law on Natural Gas* transposes the security of gas supply *acquis*, Moldova is yet to adopt the relevant secondary acts, such as an emergency plan with an accompanying action plan on how to secure reliable and efficient gas supplies.

Eligibility and switching

All customers are eligible to freely choose and switch their gas supplier. In practice, however, only incumbent suppliers are active in the market. Rules and procedures for supplier switching are adopted, and the supply rules are being drafted. End-user price regulation is applied to all customer categories.

⁷ Contracts of *Moldovagaz SA* with *Gazprom*, for 98.4% of total gas quantities, and of *Energocom SA* with *OMV Petrom*, for the remaining gas consumed.



Third Package transposition

Serbia's gas sector is governed by the Energy Law, which transposes the Third Package.

TSO unbundling

Srbijagas continues to be engaged in both supply and transmission. The failure of the Government's 2016 action plan on unbundling of *Srbijagas* is evident. New deadlines were set to put in place an ITO model for *Transportgas Srbija*, which acts as a shell company, not even functionally unbundled from its parent *Srbijagas*. *Srbijagas* did not keep its promise to apply for certification by the end of 2017.

Yugorosgaz Transport, which is a daughter company of *Yugorosgaz JSC Belgrade* indirectly controlled by *Gazprom*, was conditionally certified by the regulatory authority under Article 11 of Directive 2009/73/EC in June 2017, for a limited time of one year which is about to expire. The ISO model it opted for was assessed as unlawful in the sense of the Third Package in the Secretariat's Opinion. As *Yugorosgaz Transport* did not fulfil even the conditions set by the regulator in the disputed certification decision, it remains to be seen whether its certification will be revoked. The deadline for this is 20 June 2018.

Transmission tariffs


An entry-exit transmission tariff methodology allowing for the setting of individual tariffs for all entries to and exits from the system is implemented for both entry-exit zones in Serbia.

Capacity allocation and congestion management

The transmission network codes, adopted by both *Srbijagas* and *Yugorosgaz Transport*, are generally harmonized with the requirements of Regulation (EC) 715/2009 related to capacity allocation mechanisms and congestion management procedures. TSOs offer annual, monthly and daily capacity, both firm and interruptible. Yearly capacities are offered for up to three years ahead. In case the total requested capacity exceeds the available capacity, allocation is done on a *pro rata* basis. The transfer of capacity rights (subletting) is allowed for annual capacities only.

In practice, neither *Srbijagas* nor *Yugorosgaz Transport* has ever performed capacity allocation according to the codes. *Srbijagas* excluded the allocation of yearly firm capacities at the interconnection point Horgos with Hungary from the capacity allocation invitation, without an adequate explanation. As this is the only entry interconnection point to Serbia, this directly impedes the development of the market. The codes are thus not implemented, which contributes to the foreclosure of the gas market in Serbia and breaches the *acquis*. The Secretariat currently prepares infringement procedures.

In February 2018, the Secretariat was informed by the regulatory authority of Serbia that the request for exemption from third party access rules had been submitted by *Gastrans LLC*. Following the provisions of the Energy Law, the regula-



tory authority adopted a *Decision on Method and Deadlines for Market Test on the Interest in the Use of Future Infrastructure Facility of the Company "GASTRANS" LLC* and the company launched the procedure for expression of interest for capacity reservation of the new gas pipeline which should go through Serbia and connect Bulgarian and Hungarian transmission systems. Ten non-binding bids have been submitted during this process and *Gastrans LLC* is expected to send an analysis to the regulator by end June 2018.

Balancing and liquidity

The balancing rules defined in the network code of *Srbijagas* are compliant with Regulation (EC) 715/2009. Imbalances are determined on a daily basis, with imbalance charges calculated based on the monthly neutral gas price approved by the regulatory authority. Serbia is one balancing zone, which in theory means that the users of the system of *Yugorosgaz Transport* fall under the balancing provisions of the *Srbijagas* network code. In practical terms, the balancing rules are not applied.

The Serbian gas market is highly concentrated. Gas is imported from the Russian Federation via a long-term agreement with the incumbent *Srbijagas*, which accounted for 85% of total demand in 2017. The remainder was produced by the only domestic producer, *Naftna Industrija Srbije* (NIS). *Srbijagas* sells imported gas to retail suppliers. The network code establishes a virtual trading point where gas may be traded.

However, wholesale traders are still selling gas on the exit points to distribution networks to retail suppliers. Without third party access provided to all relevant points of the transmission system, further market development in Serbia cannot be expected.

Security of supply

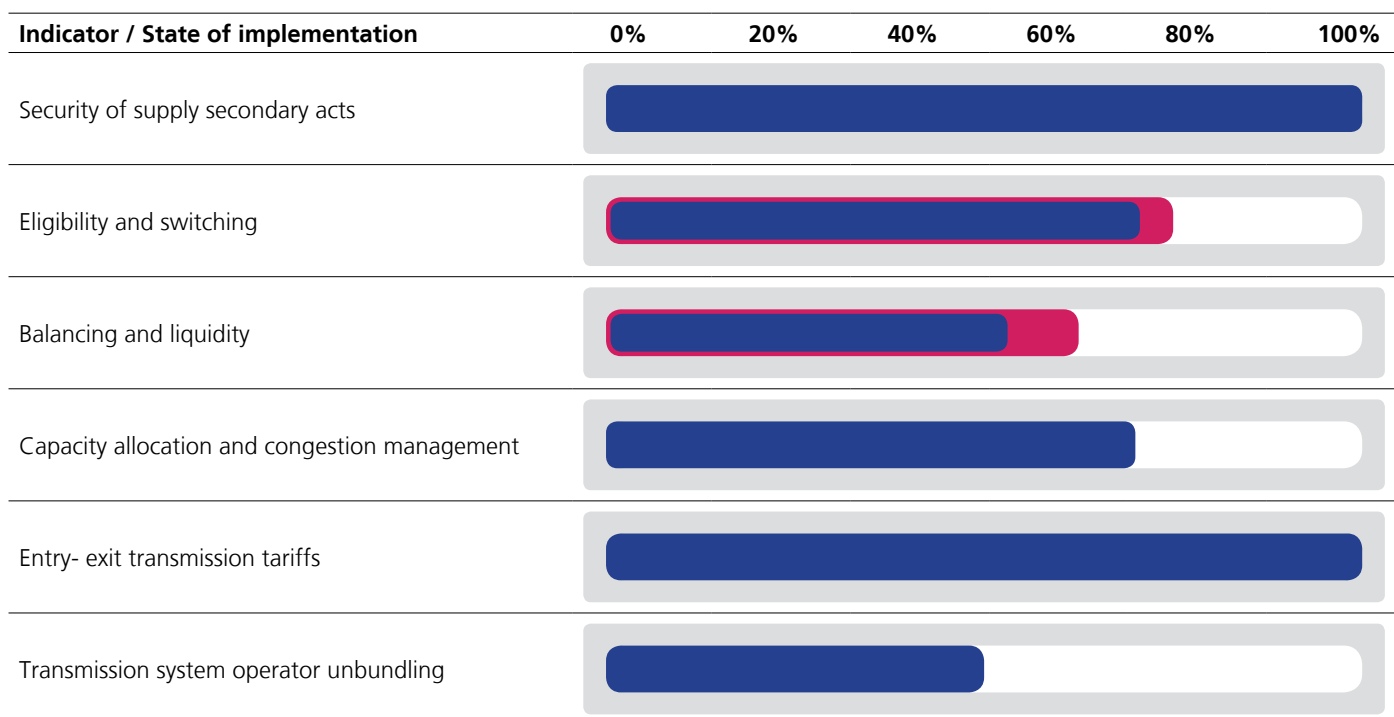
Serbia complies with the provisions on security of supply required by Directives 2009/73/EC and 2004/67/EC. However, it did not develop any secondary act as required by law which would implement the primary legislation in practice.

Eligibility and switching

The eligibility right to freely choose a supplier is guaranteed to all customers. Supplier switching rules are adopted by the regulatory authority.

The market share of the largest company in the retail market, calculated as a percentage of total gas sales in the country, reached 80% in 2017. For several years already, non-household customers are changing their supplier: while in 2016 the percentage of non-household customers having changed their supplier was 0.17% or 3.7 % of total sales, in 2017 the corresponding percentages were 0.64% and 0.90%. In total, 1,679 non-household customers were supplied at non-regulated prices in 2017, which is 756 customers more than in 2016. All households are still supplied by their incumbents at regulated prices.

Ukraine



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Third Package transposition

The *Natural Gas Market Law* transposed the majority of Third Package provisions.

TSO unbundling

The *Natural Gas Market Law* requires implementation of TSO unbundling and certification. To date, *Ukrtransgaz*, a transmission and storage system operator, is still only legally unbundled from *Naftogaz*. The Government's *Plan on Unbundling of Naftogaz* from 2016 resulted in only one tangible result – the creation of a shell company, *Main Gas Pipeline of Ukraine (MGU)*, owned by the state and managed by the Ministry of Energy and Coal Industry. The implementation of the unbundling plan is subject to a significant delay, and no efforts have been made to enact the legal changes required (Law on Unbundling). The current discussion on unbundling even looks at the possibility to re-integrate *MGU* into the vertically-integrated *Naftogaz*, a breach of the unbundling rules. The procedure for selecting foreign partner TSO initiated last year has not been completed.

Transmission tariffs

An entry-exit transmission tariff methodology is being implemented. Tariffs are available for the interconnection points with transmission systems of the neighbouring EU Member States and Moldova, for system users directly connected to the transmission network and distribution networks. The tariffs, as defined by the methodology, are still not imple-

mented at the entry points from Russia. Utilisation of entry/exit points from production fields is currently charged at a zero rate.


Capacity allocation and congestion management

The transmission network code of *Ukrtransgaz* provides for both long- and short-term capacity allocations. In 2017, all capacities at interconnection points and for the national market were booked on a monthly basis. According to the transmission network code, the auctioning of capacity is only foreseen at interconnection points when the overall amount of requested capacity exceeds the available capacity on a particular interconnection point. No yearly capacity was allocated. Transparency of the capacity allocation process is ensured by publishing the relevant rules, allocation calendar and daily available capacities.

In case of contractual congestion, *Ukrtransgaz* offers unused capacity on the primary market on a day-ahead and interruptible basis. On the other side, gas distribution system operators, gas producers, direct consumers and gas storage facility operators do not have the right to re-sell their booked but unused capacities.

Balancing and liquidity

The partial implementation of balancing rules, as stipulated in the transmission network code of *Ukrtransgaz*, did not



contribute to increasing liquidity in the wholesale market. For physically balancing the network, *Ukrtransgaz* uses its own storage and linepack resources. Commercial balancing of network users is done only monthly, including a 15% tolerance level. This practically means that network users do not have a need to participate in any trading platform in order to obtain gas for balancing reasons. In addition to this, financial guarantees required for the purpose of balancing are disproportional. The amendments to the Transmission Code, adopted in January 2018, foresee the implementation of daily balancing planned to start from August 2018. The Network Code on balancing is under implementation, as an IT system, which would enable daily balancing, is still not in operation, despite the finalisation of the project launched last year. Initially, the TSO intends to use balancing services to procure balancing gas.

Daily balancing obligations are imposed on interconnection network users only. However, they are not applied in practice.

Finally, the *Storage Code* allows for reserving an undefined part of the storages for network balancing purposes. This is not a market-based solution and will create an obstacle to balancing market development.

According to *Ukrtransgaz*, 67 importers booked entry capacity to Ukraine in 2017. In general, *Naftogaz* and the other importers purchased gas at the border with neighbouring EU Member States and sold it further on in the Ukrainian market.

The wholesale gas market of Ukraine has its regulated and non-regulated parts, with around 250 traders active in 2017. There is no license requirement for participation in the wholesale market. Trading is mainly done directly, by using short-term bilateral contracts. In January 2016, the Ukrainian virtual trading point (VTP) came into operation. According to *Ukrtransgaz*, around 37 bcm were transferred on the VTP in 2017. Access to the VTP is regulated by the transmission network code: access to the Ukrainian gas transmission network at the same time grants access to the VTP.

Further to the VTP, there are two commodity exchanges in Ukraine where trade of natural gas is possible, namely *CE UEEX* and *UGX*. However, trade is done only bilaterally, without proper clearing functions. The liquidity of these exchanges is very low, but sold quantities have slightly increased during the past year.

A non-compliant Government resolution on public service obligations currently prevents further liquidity of the wholesale market by locking-in the gas produced by *Naftogaz*' subsidiaries. The Secretariat proposed a gas release programme.

Security of supply

The primary legislation is compliant with the Energy Community security of supply *acquis* and transposes certain core elements of Regulation (EU) 994/2010. The Government and the Ministry of Energy and Coal Industry adopted the relevant secondary security of supply acts and submitted the annual Security of Supply Statement.

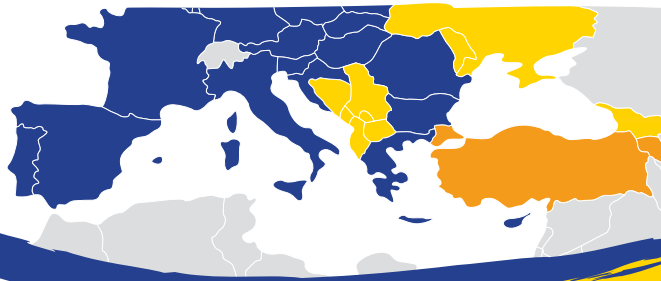
Eligibility and switching

All customers have the right to freely choose and switch their supplier.

There were more than 230 active retail suppliers in 2017, with the biggest supplier reaching a market share of 32%. The switching rate for non-households, measured by the number of metering points, was 4% in 2017, whereas all households were still supplied by their incumbents at regulated prices. Furthermore, district heating companies and religious organizations are also supplied at regulated prices under the public service obligation resolution.

The *Law on Natural Gas Market* foresees full market opening and a gradual phase out of gas price regulation. For the purpose of general economic interest and protection of vulnerable customers in specific cases and for a defined period of time, the law allows the imposition of special obligations. However, the currently public service obligation resolution is not compliant with the principles of non-discrimination, transparency and proportionality of the gas *acquis*. This measure effectively prevents the participation of new wholesale suppliers (other than *Naftogaz*) and independent retail suppliers (other than incumbent suppliers in the districts, the so-called *oblgazes*), which is breaching the Gas Directive. The Secretariat initiated infringement procedures and made proposals for a compliant regime.

As part of the public service obligation resolution, the Government raised gas prices in two phases in order to come closer to market level. However, market prices are yet to be achieved. Price regulation includes gas customers who are not vulnerable. The price is currently subject to discussions with the IMF.

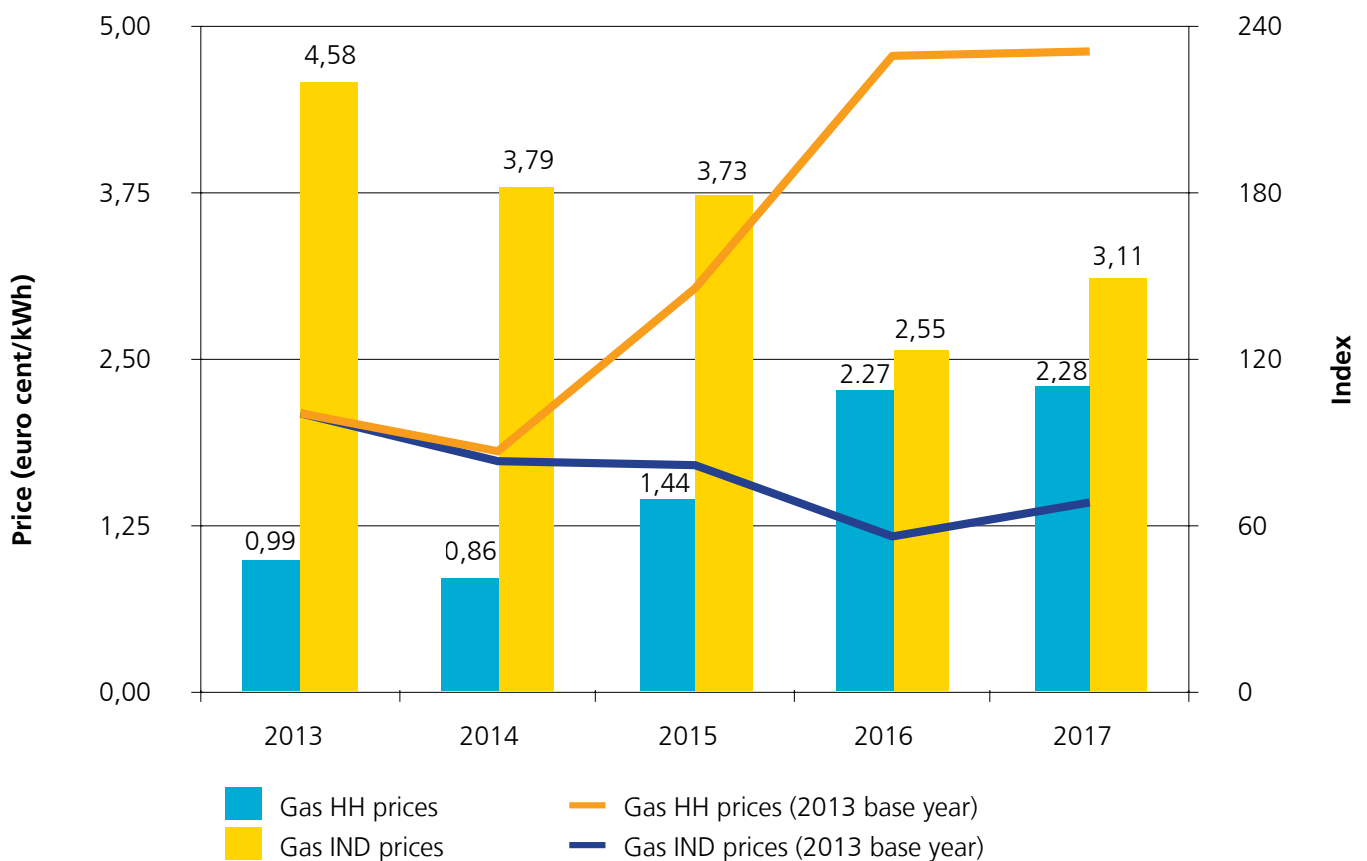


Evolution of retail gas prices 2013-2017⁸

The increase in the average household gas price in the Contracting Parties in the period between 2013 and 2017 was substantial – almost 140%. However, this increase was driven solely by Ukraine⁹, while gas household prices in almost all other Contracting Parties decreased. On the other side, the weighted average industrial price in the first semester

of 2017 decreased by 32% compared to 2013, however, it increased in comparison to 2016 by 22%, again due to Ukrainian price developments. While in 2016 the weighted average industry price reached the level of prices in the EU, the first half of 2017 registered higher prices again.

Figure 1 Retail gas price trends for household and industry consumers in the Energy Community Contracting Parties for 2013 - 2017 (euro cent/kWh and index change, 2013=100)



Source: Eurostat (9 June 2018), 2017 Annual reports of CP NRAs and ECS calculations

Note: Gas prices include all taxes and levies. The figure is based on bi-annual data provided by Eurostat for consumption bands D2: 20-200 GJ (household gas consumption), I5: 1,000,000-4,000,000 GJ (industrial gas consumption) for Bosnia and Herzegovina, Serbia and Ukraine and I4: 100,000-1,000,000 (industrial gas consumption) for FYR of Macedonia and Moldova (there is no data for industry in the category I5 for these two CPs).

In Ukraine, household gas prices increased from 2014 to 2016 due to a schedule which implements the stepwise increase of household gas prices as agreed with the IMF. However, only a very slight increase was recorded for 2017 (from 2.23 to 2.24 euro cent/kWh).

The differences in both household and industrial gas prices at the national level across the Contracting Parties may be observed in Figures 2 and 3 below. The discrepancies in the household segment mainly originate from the different levels of cross-subsidization applied between industry and

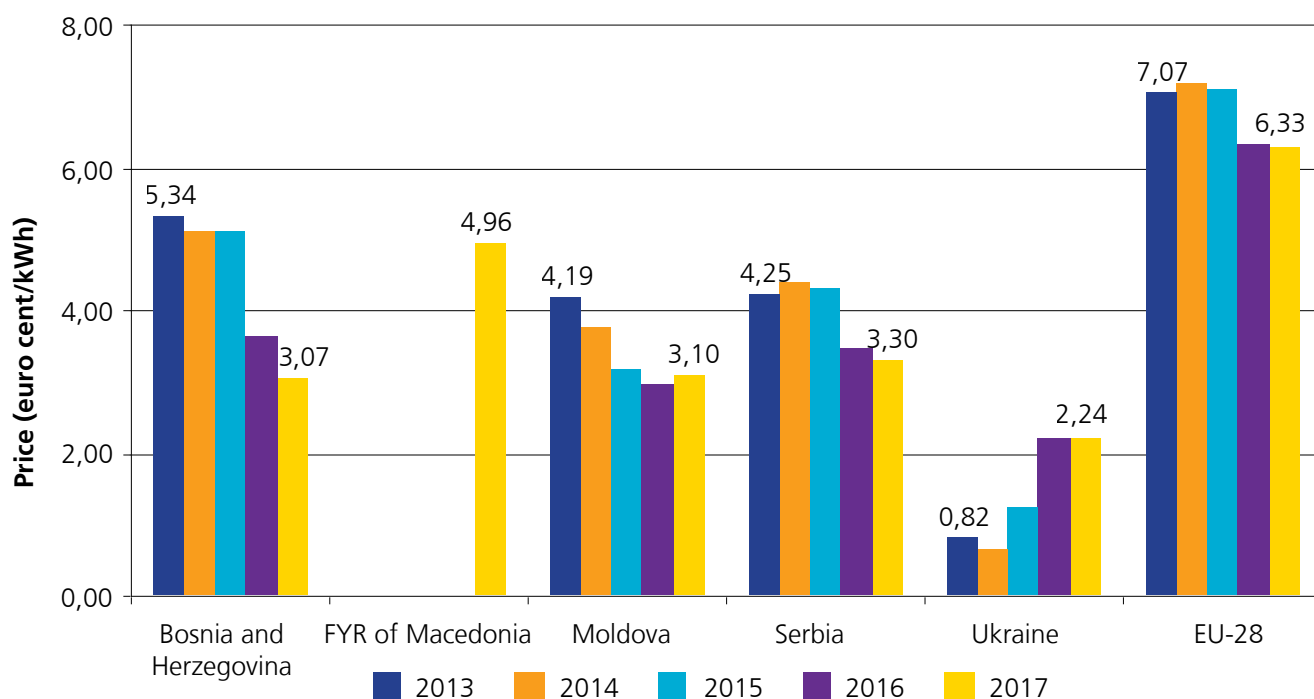
⁸ The information in this chapter covers all Energy Community Contracting Parties with operational gas markets for which Eurostat prices are available: Bosnia and Herzegovina, former Yugoslav Republic of Macedonia, Moldova, Serbia and Ukraine.

⁹ The pondering effect of gas volume consumed in Ukraine is enormous: while Ukraine consumed around 130,872 GWh of gas in 2017, all other analysed Energy Community Contracting Parties consumed in total 6,491 GWh.

households in the process of regulating end-user gas prices (in 2017, household gas prices were regulated in all analysed Contracting Parties except former Yugoslav Republic of Macedonia, while industrial prices were regulated in Bosnia and Herzegovina, Moldova, and, partially, Serbia^{10 11}). How-

ever, the intensity of cross-subsidization has been decreasing over the observed period, especially in Ukraine, where the household gas price in 2017 (2.24 euro cent/kWh) was almost three times higher than in 2013 (0.86 euro cent/kWh).

Figure 2 Retail gas price trends for households in the Energy Community Contracting Parties for 2013 - 2017, in comparison to EU-28 average (euro cent/kWh)



Source: Eurostat (9 June 2018), 2017 Annual reports of the Contracting Party national regulatory authorities and Energy Community Secretariat's calculations

Note: Gas prices include all taxes and levies. The figure is based on bi-annual data provided by Eurostat for consumption bands D2: 20-200 GJ (household gas consumption). 2017 price for Bosnia and Herzegovina refers only to the first semester 2017. The retail prices for households in FYR of Macedonia are available only as of 2017.

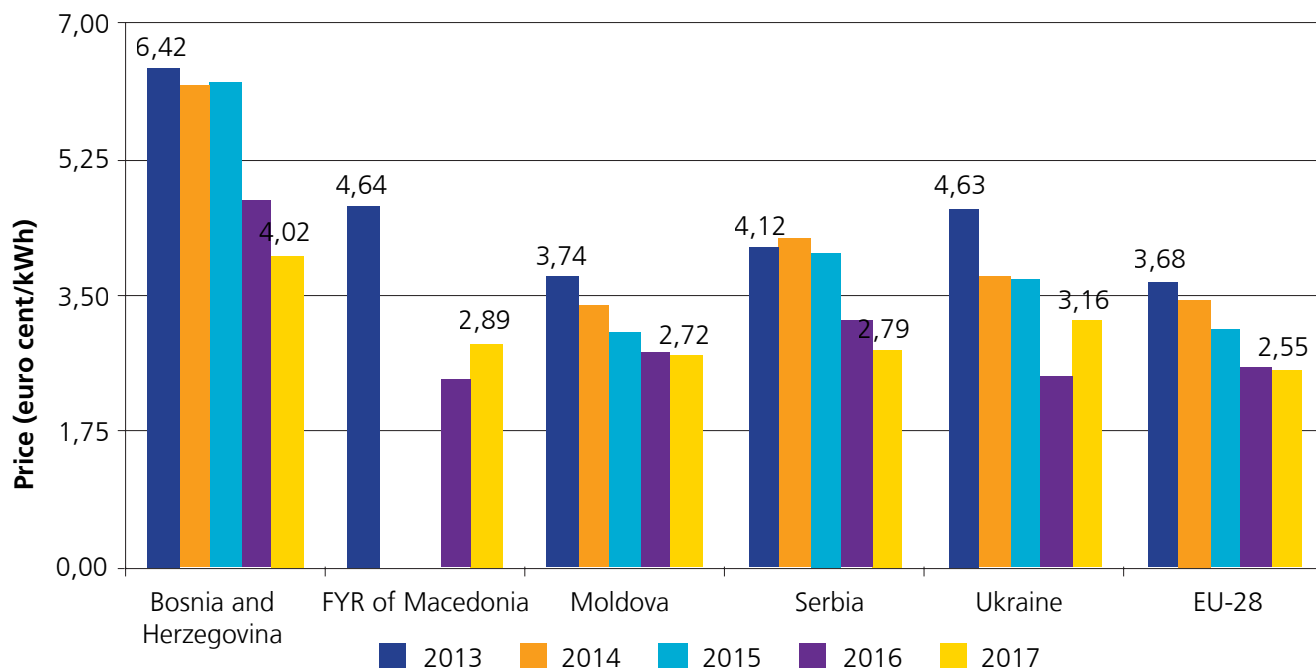
10 Only for small non-household customers, consuming less than 3,600 GJ per year.

11 In Ukraine, beside households, only the price for district heating companies is regulated.

Pricing



Figure 3 Retail gas price trends for industrial consumers in the Energy Community Contracting Parties for 2013 - 2017, in comparison to EU-28 average (euro cent/kWh)



Source: Eurostat (9 June 2018), 2017 Annual reports of the Contracting Party national regulatory authorities and Energy Community Secretariat's calculations

Note: Gas prices include all taxes and levies. The figure is based on bi-annual data provided by Eurostat for consumption bands I5: 1,000,000-4,000,000 GJ (industrial gas consumption) for Bosnia and Herzegovina, Serbia, Ukraine and EU and I4: 100,000-1,000,000 (industrial gas consumption) for FYR of Macedonia and Moldova (there is no data for industry in the category I5 for these two Contracting Parties). Data for 2014 and 2015 for FYR of Macedonia are not available due to confidentiality.



Regional market integration

Network codes and guidelines

Continuous alignment of the Energy Community *acquis communautaire* with legislative developments at the EU level is a pre-condition for market integration and cross-border trade beyond the mere borders of the Contracting Parties. This is especially important for the gas sector, where an envisaged liquidity boost must predominantly rely on integration with neighbouring EU markets, having in mind the size and development of the Contracting Parties' gas markets.

The adoption of Third Package related gas network codes is part of the *Energy Community Gas Action 2020*. To become part of Energy Community law, network codes have to be adopted by the Permanent High Level Group of the Energy Community. As Regulations, they are not directly applicable in the Contracting Parties but require transposition into national legislation.

A first set of network codes, namely Commission Regulation 703/2015/EU ('interoperability network code') and Commission Decision (EU) 2015/715/EU ('congestion management guideline'), has been adopted by the Permanent High Level Group in January 2018 with a deadline for transposition and implementation of 1 October 2018. Adapted versions of two additional network codes, namely Regulation (EU) 984/2013 ('capacity allocation network code') and Regulation (EU) 460/2017 ('transmission tariff network code') have been finalised and are envisaged for adoption in the second half of 2018.

It is to be noted that the application of the gas network codes on the interconnection points between Contracting Parties and EU Member States relies at present on voluntary commitments of the relevant regulatory authorities. This can only be a transitional solution. While almost all concerned regulators signed a declaration confirming their commitment to apply the codes accordingly, this does not suffice to guarantee legal certainty. A legally sound solution, the introduction of a reciprocity clause in the Energy Community Treaty, is urgently needed to move ahead with the next set of network codes in the Energy Community.

Interconnection agreements

The transmission networks of the Contracting Parties are better connected with the transmission networks of neighbouring EU Member States than between each other. Out of the total 22 interconnection points, only four are between Contracting Parties, namely three interconnection points between Ukraine and Moldova and one interconnection point between Serbia and Bosnia and Herzegovina. The other 18 interconnection points are between EU Member States and Contracting Parties.

While Serbia, Bosnia and Herzegovina and former Yugoslav Republic of Macedonia are situated at the end of supply routes, Moldova and Ukraine are on the main transit routes bringing Russian gas to Europe and Turkey. These particularities are reflected in the type and status of interconnection agreements in place.

Ukrtransgaz signed interconnection agreements, or started negotiations, with all adjacent transmission system operators, with a view to have all agreements in line with the EU network code on interoperability and data exchange¹². *Ukrtransgaz* signed interconnection agreements with *Gaz-System* in 2014 and with *Eurostream* in 2015 for the newly established interconnection points Hermanowice and Budince, while negotiations with Poland are still ongoing regarding the old interconnection point Drozdovice, for which an interconnection agreement is in place since 2006. *Ukrtransgaz* and *FGSZ* signed an interconnection agreement for both interconnection points at the Hungary-Ukraine border in 2015, but the agreement is still not fully operational. The interconnection agreements on the main transit route to Central Europe, between Ukraine and Slovakia, have not been signed due to unsolved issues related to the present capacity booking partners and shipper codes. The Stockholm arbitration with *Gazprom* did not bring clarity in this respect. A similar problem exists on the Trans-Balkan route. The interconnection agreement for the Orlovka – Isaccea point has been drafted and put to public consultation with respect to the envisaged business rules in December 2017.

Ukrtransgaz and *Transgaz* finalised a public consultation regarding the business rules under the draft interconnection agreement for the fourth interconnection point between Ukraine and Romania, Tekovo – Mediesu Aurit. A public consultation was also launched for the interconnection agreement between Ukraine and Moldova. In the course of this consultation, *Gazprom* challenged the right and need to introduce EU rules at Contracting Parties' interconnection points under long-term transit contracts. For interconnection points between EU Member States and Contracting Parties, namely between Moldova and Romania and Bulgaria and former Yugoslav Republic of Macedonia, the responsible transmission system operators have technical agreements in place. However, the agreements are far from being compliant with the requirements of the network code on interoperability and data exchange. *Srbijagas* and *FGSZ* held negotiations on adjustments to their technical agreement, a part of the transit and supply contracts. Subsequently, they signed an operational agreement in July 2017. For the interconnection point between Serbia and Bosnia and Herzegovina, negotiations on an interconnection agreement have not started.

¹² Commission Regulation (EU) 2015/703 of 30 April 2015 establishing a network code on interoperability and data exchange rules, OJ L113/13, 01.05.2015.



Figure 4 Interconnection points between transmissions networks of Energy Community Contracting Parties and European Union Member States



source: ENTSOG map, compiled by the Energy Community Secretariat

Harmonization of licenses

The establishment of a pan-European gas market is a precondition for the creation of liquid wholesale markets, and *vice versa*. Unnecessary administrative and regulatory requirements create undue barriers to such development. Excessive license requirements are a hampering factor for liquid trade, in particular when complemented by seat requirements or double taxation. Even the diversity of different national licensing requirements and procedures can result in high costs for trade.

As a response, the Energy Community Secretariat developed a concept for the harmonisation of wholesale licensing regimes in the Contracting Parties and neighbouring EU Member States. The concept has been included under the umbrella for the CESEC initiative. The proposal foresees mutual recognition of trade licenses and the abolishment of local seat requirements, while maintaining the necessary regulatory supervision and avoiding the establishment of new obligations in countries where a license is currently not required. Contracting Party specific provisions address harmonisation of value added tax rules.

The geographic scope of the Secretariat's proposal is targeting the Contracting Parties and neighbouring EU Member States and is accordingly suggested for adoption by the Energy Community Ministerial Council in 2018 under Title III of the Energy Community Treaty.

Implementation of the gas interconnector Serbia (Nis – Dimitrovgrad) – Bulgaria (Sofia – Dubnica)- progress update

The gas interconnector, which aims to create a connection between the existing gas transmission systems of Serbia and Bulgaria with a capacity of 39.44 GWh/d, has been promoted by the European Commission and the Energy Community

Secretariat for more than eight years due to its benefits in terms of market integration and security supply.

A number of high-level political agreements have been signed (in 2012, 2015 and 2017) expressing commitment for the project's realization. Most recently, the two countries' energy ministers signed a Joint Commitment on the Construction of the Gas Interconnector Project Bulgaria-Serbia on 22 May 2018 in Sofia.

Within this document, the parties declared their irrevocable commitment to accomplish the project and put it in operation by May 2022 at the latest. Furthermore, the parties

Figure 5 Gas interconnector Serbia (Nis – Dimitrovgrad) – Bulgaria (Sofia – Dubnica)



source: ENTSOG map, compiled by the Energy Community Secretariat

Regional Overview



agreed to follow a jointly agreed project implementation schedule. The parties also agreed to set up a task force, consisting of the project promoters and the ministries, to oversee the implementation of the project.

The Bulgarian Ministry of Energy declared its intention to nominate *Bulgartransgaz* as project promoter and operator on Bulgarian territory, subject to agreement of the European Commission.

On the Serbian side, the Instrument for Pre-accession Assistance (IPA) contract, including the grant allocated for the Serbian section of the project, is planned to be signed in the course of 2018, following the Serbian Parliament's ratification of the IPA contract.

In the meantime, Bulgaria reallocated the European Structural and Investment Fund grant, originally intended for the Bulgaria- Serbia interconnector to the project to construct the Bulgaria-Greece interconnector, and now plans to acquire a grant under the Connecting Europe Facility for its section of the interconnector.

Interconnector investment studies on both sides of the border were funded by EU grants (IPA multi-beneficiary budget for the Serbian connection and the JESSICA programme for the Bulgarian connection). The feasibility study, spatial planning, design and permitting either have been completed or are in progress.





Appendix I

Mutual recognition of licenses for supply to wholesale customers (draft Decision of the Ministerial Council of the Energy Community)

Having regard to the Treaty establishing the Energy Community ('the Treaty'), and in particular Articles 26, 27, 34, 82 and 83 thereof,

Underlining the common goal of providing a stable and harmonised legal and regulatory framework open to cross-border trade and new market entrants;

Recognising that undue administrative and financial burdens on market participants impede the target of establishing liquid and competitive markets in electricity and gas and should be minimized;

Acknowledging that the existing licensing regimes in the countries subject to Article 26 and 27 of the Energy Community Treaty ('Title III countries') require further harmonization in order to attain the common objectives;

Having regard to the 2017 Western Balkan 6 Summit and the conclusion of the 2017 CESEC High Level Group to investigate developing specific regional rules to overcome barriers in the CESEC gas and electricity markets and supporting further work on harmonisation of licensing regimes;

Taking into account the proposal developed under the Gas Regional Initiative South South East of the Agency for the Cooperation of Energy Regulators as well as the Energy Community Regulatory Board;

Having regard to the proposal from the Energy Community Secretariat;

HAS ADOPTED THE FOLLOWING DECISION

Article 1

Objective

This Decision establishes principles for mutual recognition of administrative licenses for electricity and natural gas wholesale supply in the Contracting Parties of the Energy Community and Member States of the European Union referred to in Article 26 and 27 of the Treaty.

Article 2

Definitions

1. For the purpose of this Decision the definitions of Article 2 of Directive 2009/72/EC and Article 2 of Directive 2009/73/EC of the terms "national regulatory authority", "supply", "customer", "wholesale customer" and "non-household customer" shall apply;
2. 'administrative license' means a license issued by the national regulatory authority [or any other national authority] as a precondition for performing the activity of supply to wholesale customers in electricity and/or gas;
3. 'Contracting Party' means a Contracting Party to the Treaty;
4. 'Treaty' means the Treaty establishing the Energy Community;
5. 'Home State' means the Contracting Party or Member State referred to in Article 26 and 27 of the Treaty in whose territory an undertaking is engaged in the activity of supply to wholesale customers in electricity and/or gas is established and entitled to perform related activities according to national rules;
6. 'Host State' means the Contracting Party or Member State referred to in Article 26 and 27 of the Treaty other than the Home State where the service of an undertaking engaged in the activity of supply to wholesale customers in electricity and/or gas is provided;
7. For the Contracting Parties, any reference to Directives 2009/72/EC and 2009/73/EC shall mean the version adopted and adapted by Decision 2011/02/MC-EnC of the Ministerial Council.

Article 3

Mutual recognition requirements

1. Undertakings aiming to become engaged in the activity of supply to wholesale customers in electricity and/or gas in a Host State shall not be required to obtain an administrative license to the extent such was issued by the national

regulatory authority of a Home State and provided such license complies with the minimum criteria set in paragraph 2 of this Article (mutual recognition).

2. In order to be subject to mutual recognition according to paragraph 1, an
3. administrative license issued by the Home State must include the following minimum requirements:
 - a. Contact details of the wholesale supplier;
 - b. A valid and authentic certificate of register such as an excerpt from the commercial and/or professional register, Energy Identification Code or similar;
 - c. Evidence for financial capacity, absence of insolvency procedures and professional capability;
4. Where a Home State's legislation or administrative practice does not require an administrative license, a Host Country shall not require undertakings aiming to become engaged in the activity of supply to wholesale customers in electricity and/or gas to obtain an administrative license. Notwithstanding, the Host Country's national regulatory authority may require undertakings engaged in the activity of supply to wholesale customers in electricity and/or natural gas to enlist in a register solely based on easily obtainable documentation such as commercial and/or professional register, Energy Identification Code or similar. Any fees for registration may not exceed the actual costs incurred.
5. National regulatory authorities may require legalized translation of the documents referred to in paragraphs 2 and 3 in the official language of the Host Country.
6. The recognition of an administrative licence shall be established by the national regulatory authority of the Host State in the form of a declaratory decision based on the Home State's confirmation of the requirements listed in paragraph 2 or 3 and not subject to any additional requirements.

Article 4

Local establishment

Once an administrative license is recognized in accordance with Article 3(5), an undertaking engaged in the activity of supply to wholesale customers in electricity and/or natural gas established in another Contracting Party or Member State referred to in Article 26 and 27 of the Treaty shall not be required to establish a local seat, branch, subsidiary or any other establishment.

Article 5

Obligations of wholesale suppliers

Undertakings engaged in the activity of supply to wholesale customers in electricity and/or gas shall fully comply with the legislation and regulatory rules of the jurisdiction where the supply of electricity and/or gas takes place. This includes the applicable market and balancing rules as well as rules on taxation and payment of all and any contributions to financing of the national regulatory authority.

Article 6

Principles of taxation in the Contracting Parties

In the Contracting Parties the supply of electricity and gas to wholesale customers shall be treated as the sale and purchase of goods and taxable at the seat of the customer, i.e. the place where the customer has established his business or residence for tax purposes.

Article 7

Enforcement powers and cooperation of national regulatory authorities in the Contracting Parties

1. National regulatory authorities of Contracting Parties and Member States referred to in Article 26 and 27 of the Treaty shall use their enforcement powers, including penalty rights and investigations as required by Directive 2009/72/EC and Directive 2009/73/EC, vis-a-vis all undertakings active on the electricity and/or natural gas markets, regardless of whether they operate under an administrative license or not.
2. National regulatory authorities of Contracting Parties and Member States referred to in Article 26 and 27 of the Treaty shall cooperate, inform and support each other in the procedure leading up to (including investigations), and the execution of any final decision taken against wholesale suppliers of electricity and/or natural gas. For the purpose of applying this Decision, national regulatory authorities shall have the power to provide one another with and use in evidence any matter of fact or of law, including confidential information. Information exchanged shall only be used in evidence for the purpose of applying this Decision and in respect of the subject-matter for which it was collected by the transmitting authority.



3. For the purposes of Articles 3, national regulatory authorities of Contracting Parties and Member States referred to in Article 26 and 27 of the Treaty shall publish on their websites and transmit to each other, and to the Energy Community Secretariat, any decision adopted concerning wholesale suppliers of electricity and/or natural gas established on their territory within one week, including a summary in English.
4. National regulatory authorities of Contracting Parties and Member States referred to in Article 26 and 27 of the Treaty shall regularly discuss and align their actions within the framework of the Energy Community Regulatory Board [or ACER]. They may ask the Regulatory Board [or ACER] for an opinion at any stage of a procedure.
5. Contracting Parties and Member States referred to in Article 26 and 27 of the Treaty shall support the adoption of a framework for the mutual recognition of judgments, decisions and financial penalties imposed by judicial or administrative authorities based on the legal framework applicable in the European Union.

Article 8

Final Provisions

1. Save Articles 6, this Decision is addressed to the Contracting Parties and the European Union as far as the territories referred to in Article 26 and 27 of the Treaty are concerned.

2. Article 6 of this Decision is applicable to the Contracting Parties only.
3. The jurisdictions affected by this Decision shall take the necessary measures to align their national legislative and regulatory framework with this Decision within [9] month following the adoption of this Decision.
4. Contracting Parties shall notify the Energy Community Secretariat of completed transposition within two weeks following the adoption of such measures. Member States referred to in Article 26 and 27 of the Treaty shall notify the European Commission of completed transposition within two weeks following the adoption of such measures. The Energy Community Secretariat and the European Commission shall without delay inform each other about notifications received.

Article 9

Entry into force

This Decision enters into force upon adoption and shall be published on the website of the Energy Community.

Done in [...] on [...]

Explanatory note

1. Introduction

1.1. Scope

The present document proposes measures for harmonisation of licensing regimes applicable to supply of wholesale customers in network energy, i.e. electricity and gas, in the countries subject to Article 26 and 27 of the Energy Community Treaty (hereinafter 'Title III countries', see figure 1). Most of these countries also participate in the Central and South Eastern Europe Connectivity (CESEC) initiative.¹



Figure 1: Title III countries

Facilitating trade in network energy is of key importance for achieving the objectives of both the Energy Community Treaty and the CESEC initiative. Liquidity and competition on energy markets would greatly benefit from removing obstacles still preventing new market entrants from engaging which would also further advance the integration of the regional markets. In this context, the licensing regimes play a key role.

The measures proposed in this document aim at minimising administrative burden for existing market participants and new market entrants on wholesale supply level while maintaining the necessary regulatory supervision. The measures proposed here are also conscious to avoid the establishment of new obligations in countries where a license is not required.

Based on these analyses, concrete proposals are made by the Energy Community Secretariat (hereinafter 'Secretariat') for measures possibly to be adopted by the bodies in charge in

the Energy Community.² With a view to actively create a level playing field between the two categories of countries covered by Title III and CESEC, this proposal also covers aspects specific for the Energy Community Contracting Parties only, such as taxation as well as recognition and enforcement of judgements.

1.2. Reasoning and background

The Third Energy Package (TEP)³, as applicable in all Title III countries, calls for the creation of pan-European gas and electricity markets and access for customers to their supplier of choice. This implies the availability of liquid wholesale markets as well as effective and non-impeded access of suppliers to end-customer markets. On both levels, excessive administrative and regulatory requirements jeopardize reaching these objectives. This is also in line with the fundamental freedoms in the Treaty on the Functioning of the European Union and the Energy Community Treaty, on which the internal (energy) market is built.

Article 34 of the Energy Community Treaty (hereinafter 'Treaty') provides:

"The Energy Community may take Measures concerning compatibility of market designs for the operation of Network Energy markets, as well as mutual recognition of licenses and Measures fostering free establishment of Network Energy companies."

Article 41 of the Treaty reads:

*"1. Customs duties and quantitative restrictions on the import and export of Network Energy **and all measures having equivalent effect**, shall be prohibited between the Parties. This prohibition shall also apply to customs duties of a fiscal nature.*

2. Paragraph 1 shall not preclude quantitative restrictions or measures having equivalent effect, justified on grounds of public policy or public security; the protection of health and life of humans, animals or plants, or the protection of industrial and commercial property. Such restrictions or measures shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between the Parties."

¹ See: <https://ec.europa.eu/energy/en/topics/infrastructure/central-and-south-eastern-europe-energy-connectivity> and <https://www.energy-community.org/regionalinitiatives/CESEC.html>.

² Under Title III of the Treaty the Secretariat or any Party to the Treaty can propose Measure. Measures can take the form of a Decision and should be addressed to the Ministerial Council (cf Articles 76 and 82 of the Treaty).

³ Adopted and adapted for the Energy Community Contracting Parties by Decision 2011/02/MC-EnC of the Ministerial Council.



Article 3(4) of Directive 2009/72/EC and Article 3(5) of Directive 2009/73/EC stipulate:

“Contracting Parties [Member States] shall ensure that all customers are entitled to have their electricity provided by a supplier, subject to the supplier’s agreement, regardless of the Contracting Parties [Member States] in which the supplier is registered, as long as the supplier follows the applicable trading and balancing rules. In this regard, Contracting Parties [Member States] shall take all measures necessary to ensure that administrative procedures do not discriminate against supply undertakings already registered in another Contracting Parties [Member States].”

Against that background, several ongoing **regional initiatives** covering the Title III countries partially or in full started to approach the reform of existing licensing regimes among their priorities:

- The Gas 2020 Action for the Energy Community lists mutual recognition of licenses for supply to wholesale customers as a priority target to enable gas market integration in the Title III countries.⁴
- In the context of establishing a regional electricity market, the 2017 Summit in Trieste of the Western Balkan 6 initiative (Berlin Process) invited the *“the CESEC Electricity and the Energy Community Secretariat to explore opportunities for cooperation with the neighbouring EU Member States building on the WB6 Memorandum of Understanding on Regional Electricity Market Development and the Treaty establishing the Energy Community (Title III).”*⁵
- The Central and South-Eastern European Energy Connectivity Initiative (CESEC) pilots easing regulations on licensing by initiating a mutually recognizable license/registration.⁶ The 2017 High Level meeting of CESEC concluded *“to set up a CESEC working group to investigate the application of Title III of the Energy Community Treaty to develop specific regional rules to overcome barriers in the CESEC gas and electricity markets”*.⁷

- The Gas Regional Initiative South South East (GRI SSE) of the Agency for the Cooperation of Energy Regulators (ACER) includes a project on harmonisation of wholesale licenses in gas.⁸

Even if the scope of these initiatives may not be fully identical, they provide evidence for the need to ease and harmonise licensing requirements at regional level. The present document provides concrete input and proposals to the discussion under all these initiatives.

1.3. Terminology

In terms of delivery of electricity and gas to customers, difference is usually made between:

- Wholesale supply (often referred to as trade); and
- Retail supply, including different schemes of imposed public service obligations.⁹

The present proposal understands the terms “supply”, “final customer” and “wholesale customer” as defined in the TEP (cf [Article 2](#) of the proposal).¹⁰ Consequently, **wholesale supply means** purchase and sale of electricity/gas to wholesale customers and excludes supply to final customers who purchase electricity/gas exclusively for their own use and do not participate in the organized market.¹¹

1.4. Stakeholder consultation

The present document has been presented to the CESEC plenary and working group on 4 December 2017, following which it has been consulted with the group’s members between 8 December 2017 and 12 January 2018; it was afterwards discussed in a conference call with regulators of Austria, Bulgaria, Croatia, FYR of Macedonia, Greece, Hungary and Romania and in an adjusted form presented to Member States’ energy attachés as well to the CESEC plenary and working group on 13 February 2018.¹²

During consultation written feedback was provided by the Ministry for Sustainability and Tourism of Austria, the Min-

4 Energy Community Gas 2020 Action, chapter 3.1, project 6.

5 http://www.esteri.it/mae/it/sala_stampa/archivionotizie/approfondimenti/trieste-western-balkan-summit-declaration.html. On the Western Balkan 6 process cf. <https://www.energy-community.org/regionalinitiatives/WB6.html>; Also referred to as so-called “Berlin process” that kicked off with a conference of Western Balkan States in August 2014 followed by annual summits in Vienna (2015), Paris (2016) and Trieste (2017).

6 See: CESEC Action Plan 2.1 (https://ec.europa.eu/energy/sites/ener/files/documents/26.09.2017_cesec_gas_action_plan_clean_final.pdf), Hungary.

7 Conclusion no 23.

8 See: ACER, Gas Regional Initiative Status Review Report 2016, chapter 3.2.5. Discussions on abolishment of licensing regimes focussed on gas wholesale licenses as reflected by the proposals developed under the GRI SSE in 2017. They suggest certain measures for easing gas wholesale license regimes with the final goal to abolish them (cf. Gas Regional Initiative South South East of the Agency for the Cooperation of Energy Regulators, gas wholesale trading license proposal, 2017 (hereinafter ‘GRI SEE 2017’).

9 Such as: supplier of vulnerable customers, supplier of last resort, default supplier.

10 Article 2(19) of Directive 2009/72/EC and Article 2(7) of Directive 2009/73/EC (“supply”); Article 2(9) of Directive 2009/72/EC and Article 2(27) of Directive 2009/73/EC (“final customer”); Article 2(8) of Directive 2009/72/EC and Article 2(29) Directive 2009/73/EC (“wholesale customers”).

11 Opposite, retail supply is understood as purchase of electricity/natural gas and sale to those final customers that are not involved in transactions in the wholesale market but purchase electricity/natural gas exclusively for their own use.

12 Email of the European Commission, DG Energy of 8 December 2017.



istry of Environment and Energy of Croatia, the **Ministry** of Environment and **Energy** of Greece, the Ministry of Energy of Poland, the Ministry of Economy of Slovakia, the European Federation of Energy Traders (EFET) as well as the regulatory authorities of Croatia, Greece and Moldova.

Considering the remarks and concerns received during consultation, **this latest version of the proposal presents a reduced scope for harmonisation of licensing regimes, namely limited to mutual recognition of licenses for supply to wholesale customers** (trade).

2. Mutual recognition, reciprocity and local seat requirements

Different from most EU Member States, the majority of the Title III Contracting Parties require a **local establishment** as pre-condition for performing supply activities in the very Contracting Party. Annex III provides a detailed country-by-country overview. EFET has constantly criticised the requirement to establish a local presence as an obstacle and entry barrier.¹³

From a legal perspective the requirement for a foreign company willing to undertake energy supply activities in another Party of the Energy Community Treaty¹⁴ to establish a local seat creates an obstacle to the free movement of natural gas and electricity within the meaning of Article 41 of the Treaty (and the corresponding fundamental freedoms in the Treaty on the Functioning of the European Union, TFEU). It deters companies from entering new markets, prevents the circulation of energy commodities and impedes the creation of a single energy market. As the Court of Justice of the European Union found in the context of the provision of services, *“a provision of national law under which an undertaking established in another Member State must create a permanent establishment in the Member State in which it seeks to supply ... services breaches the prohibition ... of any restriction on the freedom to provide services A requirement of establishment is the very negation of the freedom to provide services and has the result of depriving Article 56 TFEU of all effectiveness.”*¹⁵ Hence such requirement, being unnecessary and not proportionate to the achievement of any of the objectives allowing for derogations from the prohibition of measures having equivalent effect, is not justified. In the Secretariat's view, the requirement to establish a seat as a pre-condition to undertake energy supply activities contradicts the Parties' obligations under the Treaty, especially to the extent there are less onerous means available to attain

the same objectives.

Similarly, Article 3(4) of Directive 2009/72/EC and Article 3(5) of Directive 2009/73/EC require Title III countries to ensure that all customers are entitled to choose a supplier regardless of the jurisdiction in which the supplier is registered, as long as the supplier follows the applicable trading and balancing rules. In this regard, countries shall take all measures necessary to ensure that administrative procedures do not discriminate against supply undertakings already registered in another Title III country.

In essence, this means that a wholesale supplier registered in any Title III country must be entitled to supply any wholesale customer in another Title III country as long as this undertaking complies with trading and balancing rules and, for gas, security of supply requirements. Equal applicability of this requirement between Title III countries is an obligation stemming from Article 41 of the Treaty.

These provisions establish a principle of **mutual recognition** of licenses. According to this principle market participants registered and active as wholesale suppliers in one of the gas and electricity markets within any of the Energy Community Parties can become market participants with the same function in any other gas and electricity markets of the Energy Community Parties, provided that the jurisdiction where the relevant market participant is registered and undertaking its activity allows access of market participants registered in their jurisdiction for the same or similar function in the market. Slovakia recognises licenses issued in another EU Member State, but this is not the case for licenses issued in the Contracting Parties.

The principle of mutual recognition goes beyond the **principle of reciprocity** as explicitly mentioned in the national legislation of Albania and Kosovo*. These countries do not apply national licensing requirements in case of suppliers registered in a Party to the Energy Community that in turn do not require licenses.

The principles of mutual recognition and reciprocity must allow market participant that is registered and/or licensed as wholesale supplier in a gas/electricity market of a Party to the Treaty to perform the same activities in a gas/electricity market of another Party, provided that the jurisdiction where the relevant wholesale supplier is registered/licensed allows likewise *vice versa*.

¹³ E.g. EFET, Memo on the legality of the licensing and local presence requirements for energy trading in Central and Eastern Europe (2009); most recently also: market inefficiencies in the Contracting Parties / Member States, June 2017.

¹⁴ Parties to the Treaty are all Energy Community Contracting Parties as well as the European Union (Member States). For the purpose and geographic scope of this document the term 'Parties' is limited to the Title III countries.

¹⁵ Case C-475/12 UPC DTH, judgment of 30 April 2014 at paragraphs 103 and 104.



2.1. Recognition and enforcement of regulatory decisions and judgments

Cross-border wholesale and retail supply based on the principles of registration and mutual recognition may also depend on effective enforcement of regulatory or judicial decisions against suppliers not licensed in the host country. Unlike in the European Union, the Energy Community also does not include specific provisions on the recognition of judgments. In the EU, the Brussels I Regulation¹⁶ lays down the rules governing jurisdiction, recognition and enforcement of judgments in civil and commercial matters (including on energy transactions). According to Article 33(1) of the Brussels I Regulation, a judgment given in an EU Member State shall be recognised in another Member States without any special procedure being required. In particular, under no circumstances may a foreign judgment be reviewed as to its substance¹⁷. However, the Regulation lists grounds for non-enforcement¹⁸ and shall not apply to revenue, customs or administrative matters.¹⁹ The Lugano Convention of 2007²⁰ essentially extends the regime established under the Brussels I Regulation to Iceland, Norway and Switzerland.

Moreover, the European Union's Council Framework Decision on the mutual recognition of financial penalties²¹ introduces without any further formality mutual recognition and execution of judicial and administrative final decisions in criminal matters requiring a financial penalty to be paid. The competent authorities in the executing State may refuse to recognise and execute the decision in a number of cases²², in particular where the infringing acts concerned do not constitute an offence under the law of the executing State. Where there are harmonised legal situations or identical provisions, the default rule is mutual recognition.²³

There is no specific framework available in the EU or the Energy Community relating to the enforcement of decisions issued by national energy regulators.

16 Council Regulation (EC) 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 12, 16.1.2001, p. 1–23).

17 Article 36 of the Brussels I Regulation.

18 Article 34 of the Brussels I Regulation.

19 Article 1 of the Brussels I Regulation.

20 Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 339, 21.12.2007, p. 3–41).

21 Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties (OJ L 76, 22.3.2005, pp. 16–30), as amended by Council Framework Decision 2009/299/JHA of 26 February 2009 amending Framework Decisions 2002/584/JHA, 2005/214/JHA, 2006/783/JHA, 2008/909/JHA and 2008/947/JHA, thereby enhancing the procedural rights of persons and fostering the application of the principle of mutual recognition to decisions rendered in the absence of the person concerned at the trial (OJ L 81, 27.3.2009, p. 24–36).

22 Cf Article 7 of Council Framework Decision 2005/214/JHA.

23 Article 6 (Recognition and execution of decisions) of Council Framework Decision 2005/214/JHA reads: „The competent authorities in the executing State shall recognise a decision which has been transmitted in accordance with Article 4 without any further formality being required and shall forthwith take all the necessary measures for its execution, unless the competent authority decides to invoke one of the grounds for non-recognition or non-execution provided for in Article 7.“

Annex I – Licensing requirements (status quo)

	Electricity Wholesale	Gas Wholesale
Albania	yes ¹ [*]	yes ²
Austria		no
Bosnia and Herzegovina	yes ³	yes ⁴ <small>Republika Srpska</small>
Bulgaria	yes ⁵	
Croatia		Yes [**]
fYR of Macedonia	yes ⁶	yes
Georgia		no
Greece	yes ⁷	no
Hungary	yes ⁸	yes
Kosovo*	yes ⁹ [*]	yes ¹⁰ [*]
Moldova	yes ¹¹	yes ¹²
Montenegro	No	No gas market
Poland		yes ¹³
Romania	yes ¹⁴	yes ¹⁵
Serbia		yes ¹⁶ [*]
Slovakia [**]		yes ¹⁷
Ukraine	yes ¹⁸	no

Legend: [*] Reciprocity clause for all Parties of the Energy Community explicitly included in national legislation. [**] Recognition of licenses issued in another Member States of the European Union.

1 Article 37(2) lit (e) of the Power Sector Law no 43/2015. Electricity trading (wholesale) is subject to licensing according to the terms and conditions established by the Energy Regulator Entity of Albania (ERE) which are reflected in the "Regulation on the procedures and terms for license issue, modification, transferring, renewal or license termination in the power sector" approved by ERE Board decision No. 109 of 29.06.2016 (cf Article 4).

2 Article 22 (1) (c) Natural Gas Law. According to Article 17 leg cit licenses are issued by the national energy regulator.

3 Article 7 Law of the Law "On transmission of electric power, regulator and system operator of Bosnia and Herzegovina" (OG 07/02 of 10.04. 2002). The State Electricity Regulatory Commission (SERC) issues licenses for international and trade in Bosnia and Herzegovina according to its Licensing Rules (OG No. 63/16 of 26.08. 2016).

4 There is no regulation of the gas sector Bosnia and Herzegovina at the federation level. In Republika Srpska, the natural gas sector is regulated under the Law on Gas of Republic of Srpska No. 01-247-1025/07.

5 Article 39 Energy Sector Act No. 107/ of 9.12.2003 (amended 24.07.2015). According to Article 21 of the Energy Sector Act, the Energy and Water Regulatory Commission is in charge to issue, modify, supplement, suspend, terminate and withdraw licenses.

6 Article 4(11) and 5(1) Energy Law (OG 16/2011 of 10.02.2011)

7 The licensing procedure for the activities in electricity trading in Greece is regulated under the Law 4001/2011 "For the operation of the energy markets of Electricity and Natural Gas, for research, production and transmission networks of hydrocarbons and other arrangements" (OG A'176/22.08.2011). The terms and conditions for the licensing are described in Licensing Regulation of Greece. Article (cf Licensing Regulation (φEK B'464/19.04.2010)). 134 of the Law 4001/2011 establishes the criteria that must be met for obtaining the electricity trading license. Additionally, according to Article 13 of the Law 4001/2011, licenses are issued, amended or revoked by the decision of the Regulatory Authority for Energy of Greece (R.A.E).

8 Article 74 (1) lit (e) of the Law on Electricity LXXXVI of 2007 (lastly amended on 30.06.2017). The license is granted by the Hungarian Energy and Public Regulatory Authority.

9 Article 4(2) Law on Electricity (OG No. 26/2016 of 21.07.2016). The national energy regulatory authority, ERO, is responsible for issuing licenses according to its Rules on Licensing of Energy Activities of 29.08.2011.

10 Article 5 Law on Natural Gas (OG No 24/13 of July 2016)

11 Article 48 and 68 Electricity Law no 107/2016 (OG no 193-203 of 8.7.2016). The National Agency for Energy Regulator (ANRE) of Moldova is in charge to issue, prolong, re-issue and suspend the licenses (cf Article 7 Electricity Law) in accordance with the Law "On Regulation of Entrepreneurial Activities through Licensing", No 451-XIX, as of 30.06.2001.

12 Article 85 Law on Natural Gas. According to Article 7 leg cit the license is issued by the national energy regulator.

13 Cf Article 32 section 1(4) of the Energy Law. In terms of licensing there are no distinctions between wholesale trading and supply to end consumers, which means that a retailer supplier may also engage in wholesale trading, and a wholesale trader may also be involved into the activity of supply electricity to end consumers. The exception to the licensing requirements are: 1) trading electricity by means of installations with a voltage below 1 kV owned by the recipient, and 2) trading of electricity traded on a commodity exchange within the meaning of the provisions of the Act of 26 October 2000 on commodity exchanges or market organized by an entity operating in the Republic of Poland regulated market within the meaning of the Act of 29 July 2005 on Trading in Financial Instruments.

14 According to Article 10 lit (h) of the Order on approving the Regulation for granting licenses and authorizations in the electricity field of Romania, no. 12/2015, issued by National Regulatory Authority for Energy of Romania (OG no. 180 of 07.03.2015).

15 See the legal references for electricity.

16 Articles 2, 17 and 22 Energy Law (OG No. 145/2014 of 29.12.2014, lastly amended on 01.06.2016). The Energy Agency of the Republic of Serbia (AERS) is competent for granting licenses (cf Art Article 49 Energy Law).

17 A license for "wholesale supply" is to be issued according to section 6, 2 (a) of the Energy Act of Slovakia No 251/2012. According to Section 3(10) "wholesale supply" means supply to consumers of electricity except households. Section 13(1) lit (a) of the Act On regulation in Network Industries No. 250/2012 of 31.07.2012 stipulates that license shall be issued by the Regulatory Office for Network Industries. Performing supply additionally requires establishment of a national branch office. Also for trading activities a license for "wholesale supply" is required, however establishment of a national branch office is not needed.

18 Article 8(1) an 13(2) Electricity Market Law No. 2019-VIII of 13.04.2017. The national energy regulatory authority, NEURC, is competent for granting licenses (cf Art Article 6 Electricity Market Law).



Annex II – financing sources of regulators' budgets

	License based	Financing source
Albania	✓	From license fees (one-off and annual) based on the company's turnover determined by the regulator ¹⁹
Austria		Regulatory fee collected via network tariff applied to final customers
Bosnia and Herzegovina	✓	License fee paid by license holders; determined by the regulator as annual fix sum ²⁰
Bulgaria	✓	fees for consideration of applications, issuance of certificates, sale of tender documents, licensing fees, and experts registration fees ²¹
Croatia	✓	License fees (one-off and annual) for performing the energy activities ²²
fYR of Macedonia	✓	License fees (one-off and annual) ²³
Greece	✓	License fees (one-off and annual) based on the companies' annual revenue, participation to research projects etc. ²⁴
Hungary		Composed of a supervision fee, penalties imposed by the regulator, administrative and service fees and other revenues. ²⁵
Kosovo	✓	license fees (one-off and annual) ²⁶
Moldova	✓	license fee based on the companies' revenues ²⁷
Montenegro	✓	From license fees, annual charges for the use of licenses, charges for determining of status of the closed distribution system, annual charges for use of the status of closed distribution system, and charges for settlement of disputes, that the Agency sets pursuant to this Law. ²⁸
Poland	✓	License fee ²⁹
Romania	✓	fees charged for licenses, permits and certificates, annual contributions levied economic operators regulated sector of electricity and heat and gas, as well as funds provided by international organizations ³⁰
Serbia	✓	One-off license fee and annual license fee for performing transmission activities activities ³¹
Slovakia		state budget
Ukraine		regulatory contributions paid by economic entities that carry out activities in the fields of energy and utilities [regulatory fee] ³²

19 Article 17(2) Power Sector Law; Article 14 Gas Law.

20 Article 4 of the Law "On transmission of electric power, regulator and system operator of Bosnia and Herzegovina",

21 Article 28 (1) of the Energy Sector Act.

22 Article 32 of the Statue of the Energy Agency of Croatia.

23 Article 34 of the Law on Energy.

24 Provisions of L. 2837/2000.

25 Law on the Hungarian Energy & Utilities Regulatory Office.

26 Article 19 Energy Regulator Law.

27 Article 3 of the Law on Energy.

28 Article 51 of the Energy Law.

29 Article 34 (1) of the Energy Law of Republic of Poland.

30 Article 5(1) of the Internal Order 01 / 29.01. 2016 - Rules of organization and functioning of ANRE.

31 Article 62 Energy Law.

32 Article 11 Law on National Utility and Energy Regulatory Commission.

Annex III – requirements for a local establishment

	Requirement for a local establishment	
	Wholesale Electricity	Wholesale gas
Austria		no
Albania		yes ³³ [*]
Bosnia and Herzegovina	yes	yes ³⁴ Republika Srpska
Bulgaria		no
Croatia		no
fYR of Macedonia		yes ³⁵
Greece		no ³⁶
Hungary		no ³⁷
Kosovo*		yes ³⁸ [*]
Moldova		yes ³⁹
Montenegro	no	<i>No gas market</i>
Poland		no ⁴⁰
Romania		no ⁴¹
Serbia		yes ⁴² [*]
Slovakia		yes ⁴³
Ukraine	yes ⁴⁴	no

33 According to Article 6 of the "Regulation on the procedures and terms for license issue, modification, transferring, renewal or license termination in the power sector" approved by ERE Board decision No. 109 of 29.06.2016 only a person with a headquarter in Albania has the right to apply for a license. Any foreign person shall set up a company.

34 There is no regulation of the gas sector Bosnia and Herzegovina at the federation level. In Republika Srpska, the natural gas sector is regulated under the Law on Gas of Republic of Srpska No. 01-247-1025/07.

35 The license is issued by the Energy Regulatory Commission only to 1) domestic companies and public enterprises registered in Republic of Macedonia, and 2) foreign entities which founded the company which is registered in the FYR of Macedonia (cf Article 5(1) of the Law on Energy Law and Article 6 of "The Rulebook for licenses for performing energy activities" adopted by the Energy Regulatory Commission).

36 Cf Article 134 section A, of the Law on Operation of Electricity and Natural Gas Markets, No. 4001/201.

37 Cf Article 88 of the Electricity Law LXXXVI requires a seat in a EU/EEA country.

38 Article 30 Energy Regulator Law. Article 9 of the Rules on Licensing of Energy Activities in Kosovo issued by ERO.

39 Article 2 of the Law "On Regulation of Entrepreneurial Activities through Licensing" only a legal or natural person, registered and established in the Republic of Moldova as an enterprise or organization, irrespective of the type of ownership and legal form of organization, as well as a natural person may obtain a the license to perform energy-related activities.

40 According to Article 33 of the Energy Law of Poland, the President of the Energy Regulatory Office (ERO) grants the license to an applicant who 1) is established or domiciled in the territory of a Member State of the European Union, Swiss Confederation, European Member State Free Trade Agreement (EFTA) - Parties to the European Area Agreement Economic or Turkey. There is no requirement to set up a company or a branch in Poland (cf Section 6(3) of the Energy Law).

41 Cf Article 15 of the Order on approving the Regulation for granting licenses and authorizations in the electricity field of Romania.

42 Article 22 Energy Law (OG No. 145/2014 of 29.12.2014, lastly amended on 01.06.2016)

43 According to Section 7(2) lit (a) of the Energy Act a foreign applicant for the license has to have a location of the registered office, enterprise or organizational unit of the legal entity in Slovakia within the meaning of the Slovak Commercial Code, or has to set up a Slovak subsidiary in order to perform wholesale supply activity in electricity sector.

44 Terms and conditions of business from the wholesale supply of electricity" approved by the National Commission for Electricity Regulation of Ukraine on 16.12.1996.



Appendix II

Increasing liquidity in Ukraine

Background

In March 2017 the Energy Community Secretariat ('Secretariat') presented its concept for actions needed for establishing truly functioning gas markets in the Energy Community and enabling a pan-European gas market integration- the "Energy Community Gas Action 2020". The Secretariat identified three groups of instruments for reaching the goals set: legal, market and infrastructure related actions, both national and regional, interlinked one with another.

While other market related measures, related to improving interoperability, capacity allocation and reforming transmission tariffs are envisaged for parallel implementation in all Energy Community Contracting Parties (and neighboring EU Member States, where relevant), increase of liquidity in emerging Ukrainian gas market requires special attention and offers a solid base for further facilitation. The box below presents the goals and actions of the Energy Community Gas Action 2020 envisaged for improving balancing and liquidity in the Energy Community Contracting Parties.

For the purpose of identifying the concrete actions needed for increase of liquidity and improving balancing in Ukraine, two documents are used: EFET Guide on Features of a Successful Virtual Trading Point²⁴ (accompanied by 2016 Review of Gas Hub Development²⁵) and, partially, the evaluation tool developed by ACER for the 2016 Report on Implementation of Balancing Network Code²⁶. Having in mind that the Network Code on Balancing is still not an obligation for the Energy Community Contracting Parties, only limited number of elements covered by ACER's tool i.e. those that represent the basis for implementation of Article 21 of Regulation (EC) 715/2009, are explored.

Balancing and increase of liquidity

Goal	Establishment of functioning virtual trading points (VTP) and trading platforms as precondition for harmonization of balancing rules and increase of liquidity Harmonization of balancing systems starting with balancing system, nominations and re-nominations, information provision Introduction of CAM NC on domestic entry/exit points.
ECS action	Develop with the WG a roadmap for identifying the measures needed to establish functional VTPs and trading platforms as well as the measures needed for harmonized regional balancing rules.
Timeline	Roadmap finalization: Q4 2017 functional VTPs and organization of or joining the existing trading platform(s): Q2 2018 BAL NC implementation: Q3 2018 – Q2 2019 (in parallel: CAM NC introduction: Q1 2017 – Q1 2018)

²⁴ http://www.efet.org/Cms_Data/Contents/EFET/Folders/Documents/EnergyMarkets/GasPosPprs/2005Today/~contents/HJ92XT8KN44RVVXA/EFET-Guide_Hub-Features_Final.pdf

²⁵ http://www.efet.org/Cms_Data/Contents/EFET/Folders/Documents/EnergyMarkets/VTP_Assessment/~contents/E3326GFNEGX4UA9C/EFET-Gas-Hub-Review-2016.pdf

²⁶ http://www.acer.europa.eu/en/Gas/Framework%20guidelines_and_network%20codes/Documents/Annex%20II-IV_2016_11_07_for_publication.pdf

Requirements for increase of liquidity and status quo of their fulfillment in Ukraine

Virtual Trading Point/Trading platform	
EFET Indicators	Status quo in Ukraine
Established consultation mechanism (for consultations on local hub development) by NRA	No
Entry- exit system established	Yes, with network access/tariffs to VTP
Title transfer allowed	Yes
Cash out rules (long/short positions set to zero at the end of the balancing period against payment of penalty in EUR/MWh)	Yes, but the balancing period is still one month; units questionable
Accessible to non- physical traders (to trade gas it is not required to flow physically from entry to exit i.e. trade without signup to physical rules)	Yes, but on VTP only. There are two trading platforms where gas can be traded: CE UEEX and UGX, however they are still not liquid enough. They do not provide clearing services and do not cover counterparty risk.
Firmness of hub (via access to flexibility, through contracted services or, preferably, market based)	Yes. The allocation on VTP is equal to confirmed quantity. TSO provides balancing actions to selling party.
Credit arrangements not punitive	To be checked
Identified and resolved market structural issues including rules around participation of companies meeting dominance criteria (e.g. full market opening, gas release programs, transport capacity release program...)	No. A non-compliant government resolution on public service obligations currently prevents further liquidity of the wholesale market by locking-in the gas produced by Naftogaz' subsidiaries. The Secretariat proposed a gas release programme.
Defined role of hub operator (in comparison with TSO)	TSO is the hub operator; access to VTP is regulated by transmission network code, however there is no clear enough description of responsibilities related to hub operation. Procedure of access to VTP is described in the network code and is done under the following procedure: Network users submit the nomination to exit/enter virtual trading point in accordance with Form of application for nomination (http://utg.ua/FORMS-Nomination-12.05.2016%20eng.xlsx) and Form of covering letter for the planned gas allocation (http://utg.ua/covering-letter.docx). Network users also submit Natural gas acceptance delivery protocol on VTP (http://utg.ua/acceptance%20delivery%20protocol.doc). All other documents and forms are by the link: http://utg.ua/en/utg/business-info/documents.html
Establishment of the reference price at the hub for contract settlement	In progress.
Standardized contract(s)	To be checked, probably not
Price reporting agencies active at the hub	No
Brokers	No
Establishment of exchange	CE UEEX and UGX, however they are still not liquid enough
Index becomes reliable and used as benchmarked	No



Balancing	
Basic elements of BAL NC	Status quo in Ukraine
Information on balancing status available	Yes, monthly, not daily; not online
Trading platform available and used by the TSO	It is available (2 exchanges), though not liquid enough; it is not used by the TSO. There are no short- term products that can be used by the TSO; TSO ensures balancing gas via tenders 1-2 times per year
TSO uses balancing platform (as alternative to trading platform)	No, there is not balancing platform
TSO makes limited use of balancing services	No; TSO uses linepack and its own storage for balancing, not even balancing services
TSO transparency about balancing action costs/ calculation methodology for imbalance charges as well as the final tariffs made public	Applicable transmission network code includes provisions on balancing, including calculation of imbalance charges, however it is to be checked how it is implemented in practice.
Daily cash- out implemented	No; Daily balancing is currently considered within the TSO (there is a study launched by the TSO)
Cash- out prices set using trading platform trades	No

Actions and timelines

Based on the findings above, the Secretariat identifies the **following actions to be taken by the Ukrainian gas market stakeholders:**

Nr.	Actions	Who?	Timeline	Implementation
1.	Online availability of information on balancing status	TSO	End 2017	no
2.	Methodology for calculation of imbalance charges as well as the charges published on the web page	TSO/NRA	End 2017	no
3.	Definition of market/balancing rules (via amendments to the network code or preferably, by separate document). The rules should include precise definition of roles of market players, especially roles of VTP in comparison to existing exchanges.	TSO/NRA	End 2017	Transmission network Code adequately amended, implementation is pending
4.	Introduction of daily balancing, with daily cash-out	TSO/NRA	Q1 2018	no
5.	Introduction of balancing service contract	TSO	Q4 2017	no
6.	TSO uses trading platform or balancing services for buying short- term products	TSO	Q2 2018	no
7.	Rules for accessing and functioning of exchanges available (also in English)	Exchanges	Q1 2018	no
8.	Credit arrangements/guarantees for accessing both VTP and exchanges fair	TSO/exchanges	Q2 2018	
9.	Standardised contracts for VTP	TSO/NRA	End 2017	yes
10.	Full market opening and abandoning of price regulation	Government/ NRA	April 2018	no
11.	Full implementation of BAL NC	TSO/NRA	Depending on the implementation deadline for the EnC CPs- tentatively Q3 2018 – Q2 2019	Discussions on adoption of BAL NC for the EnC CPs to be launched late 2018/ early 2018



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