

Non-Paper

Harmonisation of licenses in electricity and gas in the countries
subject to Article 27 of the Energy Community Treaty

Informal Draft

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I. PROPOSAL

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 legal and regulatory framework that is able to attract new market entrants;

Recognising that administrative burdens for new market entrants stand against the target of establishing liquid and competitive markets in electricity and gas and, thus, have to be abolished;

Acknowledging that the existing licensing regimes in the countries subject to Article 26 of the Energy Community Treaty require streamlining as to prevent upholding unnecessary administrative burden for new market entrants;

Recognising the importance of applying harmonised principles, legal requirements and methodologies for the establishment and operation of a single Energy Community gas and electricity market;

Having regard to the proposal from the Energy Community Secretariat;

Having regard to the endorsement of this Decision by the Permanent High Level Group at its 48th meeting on 19th October 2017;

Article 1

General provisions

1. This Decision is addressed to the Parties referred to in Article 26 of the Treaty ('the Parties').
2. This Decision shall be made binding on all market participants.
3. The Parties shall take the necessary measures to align their national legislative and regulatory framework with the requirements ruled by this Decision.
4. The Parties shall notify the European Commission and Energy Community Secretariat of completed transposition within two weeks following the adoption of such measures.

Article 2

Definitions

1. For the purpose of this Decision the definitions of Article 2(19) of Directive 2009/72/EC and Article 2(7) of Directive 2009/73/EC of the term "supply" shall apply.
2. For the purpose of this Decision the definitions of Article 2(9) of Directive 2009/72/EC and Article 2(27) of Directive 2009/73/EC of the term "final customer" shall apply.
3. For the purpose of this Decision the definitions of and Article 2(8) of Directive 2009/72/EC and Article 2(29) Directive 2009/73/EC of the term of "wholesale customers" shall apply.

4. For the Contracting Parties of the Energy Community 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

Supply to wholesale customers

1. Supply to wholesale customers in electricity and gas shall not require obtaining a license.
2. Supply to wholesale customers in electricity and gas shall not require establishing a local subsidiary or any other taxable or non-taxable establishment provided that the wholesale customer undertaking such activity has its seat within the Energy Community.

Article 4

Supply to final customers

3. The requirements for obtaining a license for the supply to final customers in electricity and gas shall be limited to the provision of a certificate of registration, contact details of the applicant and compliance with the requirement of Article 5(2) of this Decision.
4. Following the principle of reciprocity and mutual recognition of licenses, a legal or natural person holding a license for the supply to final customers in electricity and gas issued in any of the Parties shall be entitled to supply final customers in electricity and gas without additional licensing requirements.
5. New obligations shall not be created in jurisdictions that do not require licenses for the supply to final customers at the date of this Decision.

Article 5

Taxation

1. Supply to final customers in electricity and gas by a company registered in any of the Parties shall not require additional registration of a subsidiary, registered office, enterprise or organizational unit in the Party of supply.
2. Suppliers to final customers in electricity and gas in the Contracting Parties shall establish a tax representative.

Article 6

Financing of national regulatory authorities

The budget of national regulatory authorities shall be financed from a regulatory fee collected from the network charges applicable to final customer and/or producers.

Article 7

Entry into force

This Decision shall be transposed and implemented by no later than [...].

II. EXPLANATORY MEMORANDUM

1. INTRODUCTION

1.1. Scope

The present document proposes measures for harmonisation of the licensing regimes applicable to the supply of wholesale and final customers in electricity and gas in the countries subject to Article 26 of the Energy Community Treaty (hereinafter 'Title III countries').

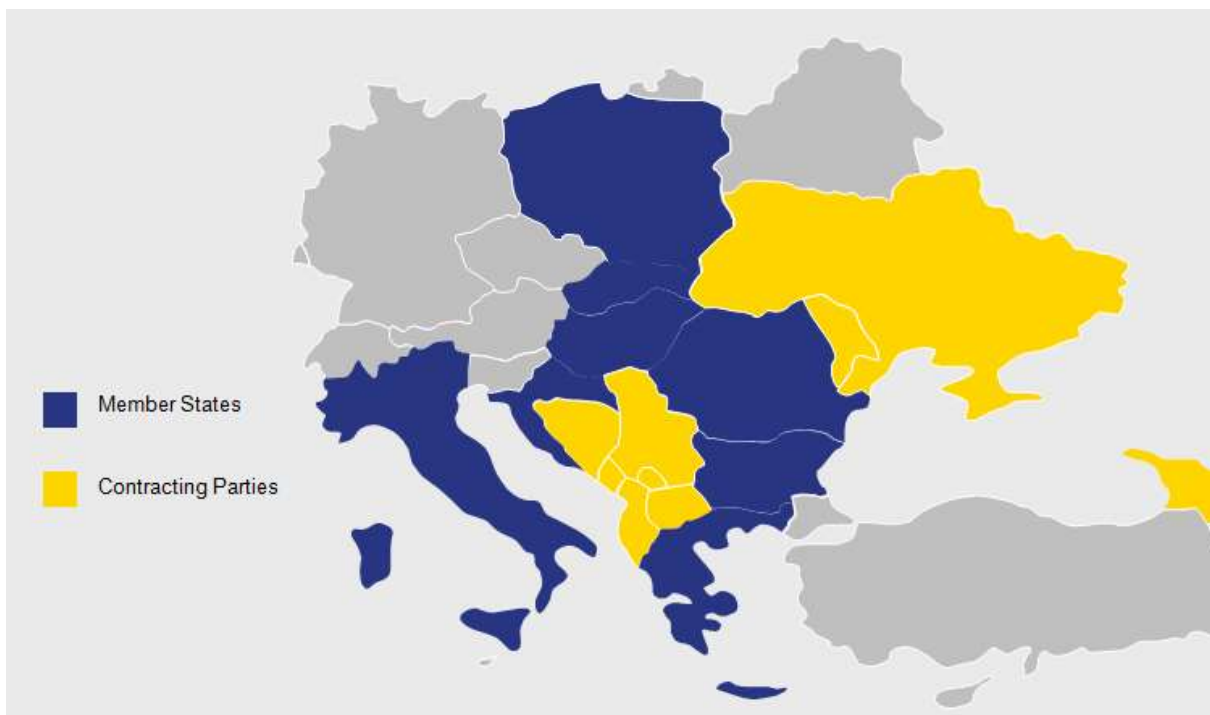


Figure 1: Title III countries

1.2. Reasoning

The Third Energy Package (TEP), as applicable in all Title III countries¹, calls for the creation of pan-European gas and electricity markets and access for customers to their supplier of choice. Whereas the earlier is indispensably linked to the creation of liquid wholesale markets, the latter targets access of new suppliers to end-customer markets. In both cases, unnecessary administrative and regulatory requirements create undue barriers to reaching these scopes.

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

¹ Adopted and adapted for the Contracting Parties by Decision 2011/02/MC-EnC of the Ministerial Council.

“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].”

Article 34 of the Energy Community Treaty (hereinafter ‘Treaty’) foresees

“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.”

Licenses for supply of wholesale supply (trade) have been constantly criticised as a hampering factor for the creation of liquid trade², in particular when complemented by high administrative requirements. At the same time, diversity of different national licensing requirements and procedures can cause high costs and is thus perceived a barrier to entry.³

At the same time the 2017 Western Balkan 6 Summit invited the Energy Community Secretariat (‘Secretariat’) to investigate further integration measures between the Title III countries.⁴

In the light of the above, the present proposal for harmonisation of licensing regimes targets minimising administrative burden for new market entrants on both wholesale and retail supply level while maintaining the necessary regulatory supervision and avoiding the establishment of new obligations in Title III countries where a license is currently not required.

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 obligations⁵.

For the sake of clarity the present document understands the terms “supply”, “final customer” and “wholesale customer” as defined in the TEP⁶. Consequently, wholesale supply means purchase and sale of electricity to wholesale customers and excludes supply to final customers who purchase electricity exclusively for their ultimate use and do not participate in the organized market. Retail supply is activity including purchase of electricity and sale to those final customers, which are not involved in the transactions in the wholesale market.

² Cf. EFET, most recently in: market inefficiencies in the Contracting Parties of the Energy Community / Member States of the European Union, June 2017; CEER, Final advice on the introduction of a Europe-wide energy wholesale trading passport (2011), chapter 1.

³ Cf CEER 2011, chapter 1; similar: *Brattle and Skadden, Arps Slate, Meagher & Flom*, Wholesale energy trading licenses in the EU, 2010.

⁴ http://www.esteri.it/mae/it/sala_stamp/archivionotizie/approfondimenti/trieste-western-balkan-summit-declaration.html.

⁵ Such as: supplier of vulnerable customers, supplier of last resort, default supplier.

⁶ 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”).

2. STATUS QUO ANALYSIS

2.1 Existing licensing regimes in the Title III countries

Obtaining a license by the national regulatory authority is a pre-condition for performing for wholesale and retail supply in the majority of the Title III countries. Annex I provides a detailed country-by-country review.

2.1.1 Mutual recognition and reciprocity

Recognition of licenses issued in another Title III country based on the principle of reciprocity is explicitly mentioned only in the national legislation of Albania and Kosovo⁷. In turn, this means that in these countries the applicable national licensing requirements are omitted for in case of suppliers registered in a Party to the Energy Community that does not require licenses. Slovakia recognises licenses issued in another EU Member State.

It is worth noting that the principle of mutual recognition of licenses and reciprocity as outlined in Article 34 of the Treaty is applicable to all Parties to the Energy Community, i.e. all Title III countries. According to this principle market participants registered and active as wholesale or retail suppliers in one of the gas and electricity markets within the Energy Community can become market participants with the same function in any other gas and electricity markets of the Parties, provided that the jurisdiction where certain market participant is registered and undertaking its activity in the market allows access of market participants registered in the very Party for the same or similar function in the market.

3. ARGUMENTS PRO AND CONTRA LICENSES

3.1 Regulatory oversight

Licensing is frequently reasoned by need for regulatory oversight, namely the possibility of the national energy regulator to verify the technical capability and economic viability of market participants, also to avoid risks for security and safety of supply to end-users as well as financial damage to other market participants. According to this argument, the aim of a licensing regime is to ensure a minimum quality of the firms active in the market, avoiding criminal entities from gaining trading licenses or identifying entities that are in the process of going bankrupt and establishing a record of who is active in the market to facilitate the monitoring tasks of the national regulators.⁸

In reality it is, however, questionable whether comprehensive licensing requirements are needed or even able to address the desired policy goals. While it is certainly valid for regulators to have an overview of the suppliers active in the market, this scope can be equally met by provision of company registration and contact details only.⁹

⁷ Article 32 of the Electricity Law.

⁸ See as well Brattle and Skadden, Arps Slate, Meagher & Flom 2011.

⁹ Similar: CEER 2011, chapter 2.1.

If the register of market participants and energy market integrity regime is covered by Regulation (EU) No 1227/2011 on wholesale energy market integrity and transparency (REMIT), the licensing regime for wholesale supply is even more legitimately questioned. According to REMIT, market participants active in the wholesale energy trading (i.e. that engage in trading wholesale electricity and gas products) are required to register with the national regulatory authority or regulatory authority of the country where they are mostly active. Registration involves, providing basic information on the company which is then stored in the Centralised European Register of Energy Market Participants (CEREMP)¹⁰ where all national regulators have access. Furthermore, REMIT targets the energy market integrity in a more comprehensive way and provides a framework for all the trade and fundamental data reporting by market participants and surveillance by ACER and national regulators. Indeed even in the absence of REMIT or any licensing regime the market participants active in electricity and gas wholesale market are required to register with the relevant system operators (electricity or gas TSOs) and provide adequate collaterals to cover potential exposure. The Secretariat is working with relevant stakeholder on the plan to implement REMIT in the Contracting Parties. This will finally cover the regulatory gap in relation to market integrity regime and part of will be also centralised register of market participants.

Licenses are also not necessarily the only means to ensure enforcement. Examples in many European countries show that the national regulator has power to request information and enforce relevant legislation to the companies that are active in the market. Replacing national regime for licensing with provisions via which national regulators enforce relevant legislation based on either registration with the relevant TSO or similarly to REMIT based on activity they are engaged would avoid administrative burdensome requirements and maintain the same benefits.

Similarly, the argument of an economic success check via a licensing procedure tends to run short in terms of *de facto* regulators technical ability to verify an applicant's economic situation in all details and continuously. At the same time the sanction of withdrawing a license in case economic viability indicators are not met any longer *per se* fails to remedy damage caused with other market participants, including end-customers, in case of bankruptcy. Finally, credit worthiness and exposure is addressed and managed bilaterally by trading companies or via central clearing houses that provide credit facilities. In this respect licensing regime does not add any value. In fact it might be misleading as it may be perceived as a credit check from the national regulator which is not the case in reality.¹¹

3.2 Financing of regulators

Licenses are sourcing the budgets of national regulatory authorities in the majority of the Contracting Parties and also a number of European Member States among the Title III countries. Annex II provides a detailed country-by-country review. In case of abolishment of license requirements for wholesale supply, as proposed by the Secretariat, a replacement for related contributions to the regulators' budgets has to be identified.

License fee based funding of national regulatory authorities has been constantly criticised by the Federation of European Energy Traders (EFET) in particular in context with transaction based charging applied in a

¹⁰ <https://www.acer-remit.eu/portal/ceremp>.

¹¹ Similar: CEER 2011, chapter 2.2.2.

number of Title III Contracting Parties and Member States¹²: such are giving wrong signals to the market as payments increase with the level of volumes traded.¹³

Sourcing the authorities' financing from regulatory fees that are collected from all end-users as part of the regulated network charges is an advisable alternative. Increase of license fees collected from licensees supplying final customers would be another option. Most of the Title III regulators have the right to define the level of licensing fees autonomously. It is to be noted that in both cases, costs at the end are covered by end-customers.

4. INTERLINKED ASPECTS

4.1 Taxable entity requirement

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 Contracting Party [Member State]. This means that supplier registered in any Contracting Party [Member State] is entitled to supply any customer in another Contracting Party [Member State], as long as it complies with trading and balancing rules and, for gas, security of supply requirements. Equal applicability of this requirement between Member States and Contracting Parties results from Article 34 of the Treaty.

In the case of Contracting Parties as well as Contracting Party-Member State relations, direct implementation of this provision might lead to non taxation of certain transactions and therefore adjustments are needed. Access to national customers for suppliers registered in another Contracting Party should be ensured to the extent compliant with the tax legislation.

In case that import of electricity is not subject to value added tax (VAT) and that VAT is charged on supply of electricity in the place of final consumption, the taxable person shall be the person supplying electricity to final customer. Subsequently, a supplier established and registered outside the Contracting Party is authorized to supply domestic customers, as long as these customers may be considered as taxable persons, i.e. holding relevant VAT identification.

- In case of industrial and commercial final customers, if they are registered for VAT purposes, such supply may have no fiscal risk since the supply will be taxed in the place of final consumption.
- In case of household customers or other customers that cannot be identified as taxable persons for VAT purposes, it is still not possible for foreign entity or supplier without registered seat in the Contracting Party to supply these final customers.

Introduction of the institute of tax representative to register for a local tax is a solution that may overcome fiscal obstacles to recognition of foreign licenses for retail supply.

¹² Namely in: Croatia, fYR of Macedonia, Hungary, Kosovo*, Poland and Romania.

¹³ Most recently: EFET, market inefficiencies in the Contracting Parties / Member States, June 2017.

If tax legislation is an obstacle for customers to be supplied from suppliers registered abroad, Contracting Parties shall take all measures necessary to ensure that administrative procedures do not discriminate against supply undertakings already registered in another Contracting Party.

4.1.1 Harmonisation of VAT regimes in the Contracting Parties

The Secretariat has already launched a process on harmonisation of VAT regimes for network energy related transaction. The following measures are envisaged:

- Access to retail supply
 - All customers who independently carry out any economic activity as *taxable persons* are entitled to have their electricity provided by a supplier, subject to the supplier's agreement, regardless of the Contracting Party in which the supplier is registered, as long as the supplier follows the applicable trading and balancing rules.
 - Final customers who are *not registered as taxable persons* may be supplied by a supplier registered in another Contracting Party subject to national commercial and tax laws.
 - VAT laws should introduce a possibility for foreign undertakings to appoint a tax representative to act as authorized fiscal guarantor.
 - Harmonization of licensing conditions, allowing access to retail market to suppliers registered in any Contracting Party, shall take due care that VAT is accrued and paid in accordance with law.
- Taxation of supply
 - To ensure applicability of internal market legislation, the Contracting Parties shall ensure that electricity and gas are treated as goods in all related transactions and taxable at the place of customer, i.e. the place where the customer has established his business.
 - The supply of electricity from suppliers to end users is taxed at the place of final consumption.
 - Contracting Parties shall consider exemption of VAT on import of electricity and gas with the aim to create a single market without internal frontiers, in accordance with Article 42 of the Treaty.
- Mitigating risks of tax evasion
 - Contracting Parties shall make full use of the REMIT registration scheme to help improve transparency on who is active in the market and to facilitate the detection of fraudsters.
 - Market operators and system operators shall invest all efforts to establish a platform for continuous exchange of information about active market participants and fiscal treatment of transactions they report or nominate.

4.2 Seat requirements

Different from the 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. The reason lies in the requirements for a taxable entity as described in chapter 4.1).

EFET has constantly criticised the requirement to establish local presence as an obstacle and entry barrier¹⁴.

Also from a legal perspective the requirement for a foreign company willing to undertake wholesale energy trading activities in another Party of the Energy Community to establish a seat there constitutes a measure having equivalent effect and is, therefore, prohibited by Article 41 of the Treaty. It creates an obstacle to the free movement of goods, namely gas and electricity, and in this way deters these companies from entering new markets, prevents the circulation of energy commodities and impedes the creation of a single energy market. 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.

Contracting Parties shall fulfil the *pacta sunt servanda* principle binding them in international law and enshrined in Article 6 of the Treaty as the duty of loyal cooperation. Consequently, they shall ensure efficient implementation of their obligations arising from the Treaty in good faith, abstain from measures jeopardizing the attainment of the Community's objectives and facilitate the achievement of its tasks. Therefore, the requirement to establish a seat as a pre-condition to undertake energy supply activities shall be eliminated by the Contracting Parties.

4.3 Recognition and enforcement of judgments in civil and commercial matters

The Brussels I Regulation¹⁵ lays down the rules governing jurisdiction, recognition and enforcement of judgments in civil and commercial matters. 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 substance¹⁶. However, the regulation lists grounds for non-enforcement¹⁷ and shall not apply to revenue, customs or administrative matters as well as to the status or legal capacity of natural persons, matrimonial matters, wills and succession, bankruptcy, social security, and arbitration¹⁸.

The Lugano Convention of 2007¹⁹ governs the jurisdiction and the recognition and enforcement of judgments in civil and commercial matters between the EU Member States and Iceland, Norway and Switzerland. Based on the rules of the Brussels I Regulation, the convention established a similar framework for mutual recognition and enforcement of judgements.

Moreover, it should be noted that the Council Framework Decision on the mutual recognition of financial penalties²⁰ introduces without any further formality mutual recognition and execution of judicial and

¹⁴ 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.

¹⁵ Council Regulation (EC) No 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).

¹⁶ Article 36 of the Brussels I Regulation.

¹⁷ Article 34 of the Brussels I Regulation.

¹⁸ Article 1 of the Brussels I Regulation.

¹⁹ Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 339, 21.12.2007, p. 3–41).

²⁰ 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).

administrative final decisions 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 cases²¹, in particular where the infringing acts concerned do not constitute an offence under the law of the executing State. Thus, where there are harmonised legal situations or identical provisions, the default rule is the mutual recognition.²²

These underlying principles can be considered for the mutual recognition of trade and supply licenses in electricity and gas in the Title III countries. Energy Community law aims at creating a harmonised regulatory space for the gas and electricity markets. This common framework provides equal standards and shared commitment with respect to the establishment and functioning of energy markets. Energy Community law sets minimum requirements for electricity and gas markets, including security of supply and infrastructure policies. Against this backdrop, mutual trust in the sense of the Brussels I Regulation and the Lugano Convention can be justified.

5. CONCLUSIONS

Based on the above considerations the Secretariat proposes:

- Abolishment of licenses for wholesale supply (trade);
- Reduction of the requirements for obtaining a license for supply of final customers (retail) to the minimum necessary;
- Mutual recognition of licences based on the principle of reciprocity;
- Replacement of requirements for local establishment by introduction of the institute of tax representative;
- Financing of regulatory authorities from regulatory fees collected from all end-users as part of the regulated network charges.

²¹ Cf Article 7 of Council Framework Decision 2005/214/JHA.

²² 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		GAS	
	WHOLESALE	RETAIL	WHOLESALE	RETAIL
Albania	yes ⁱ [*]		yes ⁱⁱ	
Austria		no		
Bosnia and Herzegovina	yes ⁱⁱⁱ		yes Republika Srpska ^{iv}	
Bulgaria	yes ^v			
Croatia		Yes [**]		
fYR of Macedonia	yes ^{vi}		yes	
Georgia		no		
Greece	yes ^{vii}		no	yes
Hungary	yes ^{viii}		yes	
Kosovo*	yes ^{ix} [*]		yes ^x [*]	
Moldova	yes ^{xi}		yes ^{xii}	
Montenegro	no	yes ^{xiii}	No gas market	
Poland		yes ^{xiv}		
Romania	yes ^{xv}	yes ^{xvi}	yes ^{xvii}	
Serbia		yes ^{xviii} [*]		
Slovakia [**]		yes ^{xix}		
Ukraine	yes ^{xx}		no	yes ^{xxi}

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.

Annex II – financing sources of regulators' budgets (status quo)

	License based	Financing source
Albania	✓	From regulatory fees and licenses; determined by the regulator ^{xxii}
Austria		Regulatory fee collected via network tariff applied to final customers
Bosnia and Herzegovina	✓	regulatory fee paid by license holders; determined by the regulator ^{xxiii}
Bulgaria	✓	fees for consideration of applications, issuance of certificates, sale of tender documents, licensing fees, and experts registration fees ^{xxiv}
Croatia		fees for performing the energy activities ^{xxv}
fYR of Macedonia	✓	Fee for issuance of licenses and by charging an annual fee from the holders of licenses for energy activities ^{xxvi}
Greece		revenue based fees from the regulated industry, participation to research projects etc. ^{xxvii}
Hungary		Composed of a supervision fee, penalties imposed by the regulator, administrative and service fees and other revenues. ^{xxviii}
Kosovo	✓	fees collected by the Regulator in respect of licensing and other activities ^{xxix}
Moldova	✓	regulatory payments applied by the Agency to license holders each year and other sources provided by law ^{xxx}
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. ^{xxxi}
Poland	✓	License fee ^{xxxii}
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 ^{xxxiii}
Serbia	✓	on the basis of the issuance of licenses for performing energy-related activities ^{xxxiv}
Slovakia		state budget
Ukraine		regulatory contributions paid by economic entities that carry out activities in the fields of energy and utilities [regulatory fee] ^{xxxv}

Annex III – requirements for a local establishment (status quo)

REQUIREMENT FOR A LOCAL ESTABLISHMENT

	WHOLESALE ELECTRICITY	RETAIL ELECTRICITY	WHOLESALE GAS	RETAIL GAS
Austria			no	
Albania			yes ^{xxxvi} [*]	
Bosnia and Herzegovina	yes		yes Republika Srpska ^{xxxvii}	
Bulgaria			no	
Croatia			no	
fYR of Macedonia			yes ^{xxxviii}	
Greece			no ^{xxxix}	
Hungary			no ^{xl}	
Kosovo*			yes ^{xli} [*]	
Moldova		yes ^{xlii}	yes ^{xliii}	
Montenegro	no	yes ^{xliv}	No gas market	
Poland			no ^{xlv}	
Romania			no ^{xlvi}	
Serbia			yes ^{xlvii} [*]	
Slovakia			yes ^{xlviii}	
Ukraine		yes ^{xlix}	no	

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ⁱ 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).

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

ⁱⁱⁱ 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).

^{iv} 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.

^v 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.

^{vi} Article 4(11) and 5(1) Energy Law (OG 16/2011 of 10.02.2011)

^{vii} 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 (ΦΕΚ Β’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).

^{viii} 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.

^{ix} 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.

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

^{xi} 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, pro-long, 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.

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

^{xiii} Article 65 Energy Law. The license is issued by the national energy regulator.

^{xiv} 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.

^{xv} 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).

^{xvi} Article 8(1) Law of Romania on Electricity and Natural Gas no. 123/2012 (OG no. 485 of 16.07.2012). Within the meaning of the Law, the supply of electricity covers the supply to the wholesale customers and supply to the end customers.

^{xvii} See the legal references for electricity.

^{xviii} 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).

^{xix} 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.

^{xx} 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).

^{xxi} Article 9 Natural Gas Market Law.

^{xxii} Article 17(2) Power Sector Law; Article 14 Gas Law.

^{xxiii} Article 4 of the Law "On transmission of electric power, regulator and system operator of Bosnia and Herzegovina",

^{xxiv} Article 28 (1) of the Energy Sector Act.

^{xxv} Article 32 of the Statue of the Energy Agency of Croatia.

^{xxvi} Article 34 of the Law on Energy.

^{xxvii} Provisions of L. 2837/2000.

^{xxviii} Law on the Hungarian Energy & Utilities Regulatory Office.

^{xxix} Article 19 Energy Regulator Law.

^{xxx} Article 3 of the Law on Energy.

^{xxxi} Article 51 of the Energy Law.

^{xxxii} Article 34 (1) of the Energy Law of Republic of Poland.

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

^{xxxiv} Article 62 Energy Law.

^{xxxv} Article 11 Law on National Utility and Energy Regulatory Commission.

^{xxxvi} 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.

^{xxxvii} 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.

^{xxxviii} 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).

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

^{xl} Cf Article 88 of the Electricity Law LXXXVI requires a seat in a EU/EEA country.

^{xli} Article 30 Energy Regulator Law. Article 9 of the Rules on Licensing of Energy Activities in Kosovo issued by ERO.

^{xlii} 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.

^{xliii} Article 14(3) Natural Gas Law.

^{xliv} Article 65(3) Energy Law.

^{xlv} 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).

^{xlvi} Cf Article 15 of the Order on approving the Regulation for granting licenses and authorizations in the electricity field of Romania.

^{xlvii} Article 22 Energy Law (OG No. 145/2014 of 29.12.2014, lastly amended on 01.06.2016)

^{xlviii} 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.

^{xlix} 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.

Informal Draft