

Unbundling and Certification - Lessons Learnt

Dr. Rozeta Karova

Senior Energy Lawyer, Energy Community Secretariat

- 1. TSO unbundling & certification in the EU***
- 2. Legal basis in the Energy Community***
- 3. TEP – status quo in the Contracting Parties***
- 4. TSOs unbundling in the Contracting Parties***
- 5. Energy Community experience***

1. **Rationale:** to ensure independence of electricity and gas transmission services from generation, production and supply in order to increase competition in energy markets.
2. **Third Energy Package (2009)**
 - Directive 2009/73/EC concerning common rules for the internal market in natural gas
 - Directive 2009/72/EC concerning common rules for the internal market in electricity
3. **Choice from three models of unbundling**
 - Ownership unbundling (OU)
 - Independent System Operator (ISO)
 - Independent Transmission Operator (ITO)

Unbundling Options Comparison

	(A) owner (assets)	(B) operation (technical and commercial)	investment decision
Ownership Unbundling	acts as TSO		
	>> independent from supply/production		
ISO	assets <u>remain with vertically</u> integrated company	ISO (acting as TSO)	
	>> legal & functional unbundling	>> independent from production & supply	
		>> ownership unbundled from (A)	x
ITO	ITO		x
	>> independent from vertically integrated company (assets, management, supervisory board)		

□ **Ministerial Council Decision** 2011/02/MC-EnC, 6 October 2011

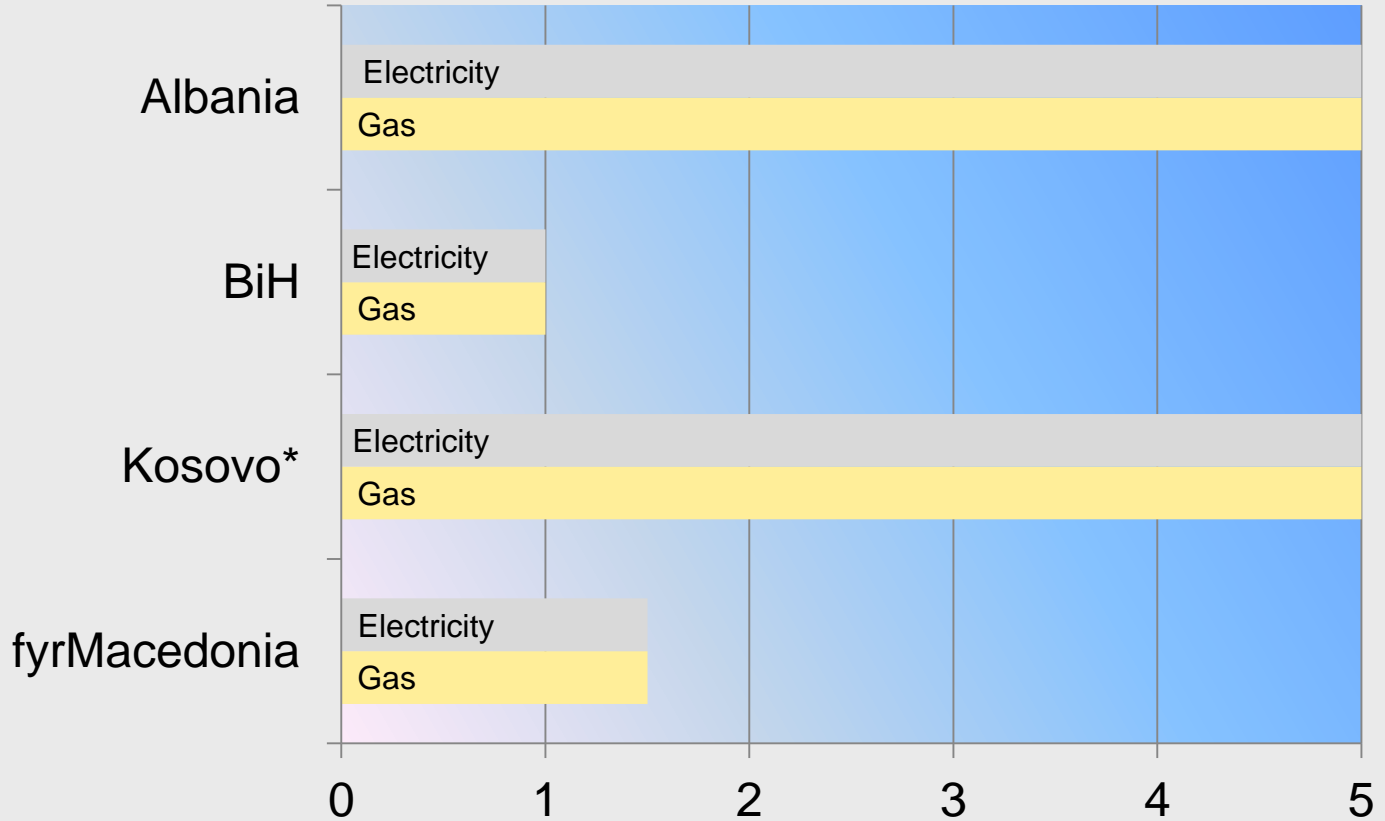
- Adopted & adapted the Third Energy Package in the Energy Community
- Deadline for Contracting Parties to transpose and apply - **1 January 2015**
- Deadline for TSOs unbundling – **1 June 2016**

* **Except:** Moldova – derogation for gas – 1.1.2020

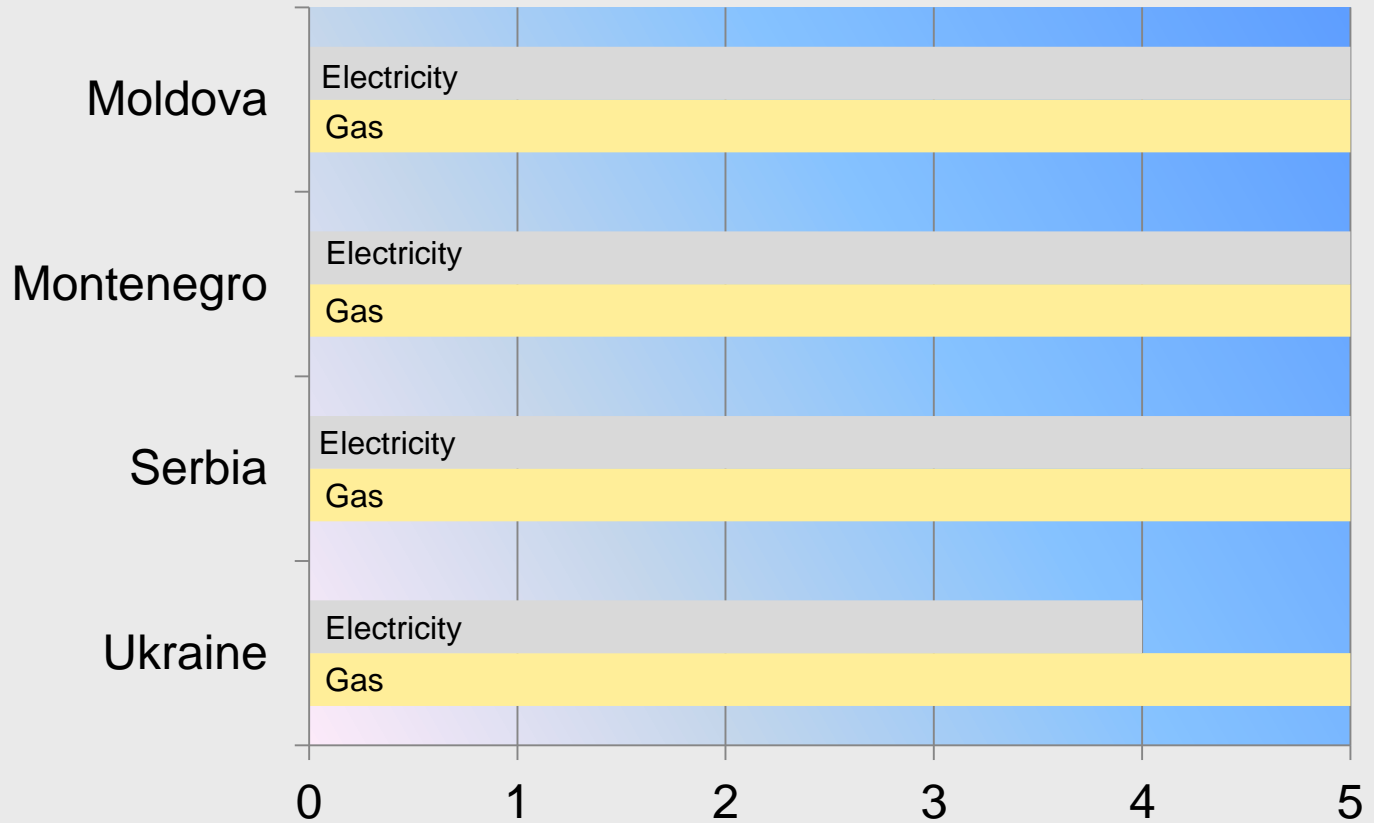
Georgia – joined EnC 24 April 2017

– law transposition: *electricity* 31.12.2018 & *gas* – 31.12.2020

Third Package Transposition in Contracting Parties (I)



Third Package Transposition in Contracting Parties (2)



TSOs Unbundling in the Contracting Parties (I)

State of play



CP	AL	BiH	KS	MK
Sector				
Electricity	OST <i>ou certified</i>	<ul style="list-style-type: none"> •NOS BiH (system operator) & •Transco <i>no unbundling & certification envisaged</i>	KOSTT <i>ou (law)</i> Gov to control KEK and Parliament - KOSTT)	MEPSO <i>no law</i>
Gas	TAP <i>ITO certified</i> Albgaz <i>applied for ou to ERE</i>	<ul style="list-style-type: none"> •BH Gas (F BiH) •Sarajevo-gas Istocno Sarajevo (RS) •Gas Promet <i>no 2pck unbundling</i>	No TSO <i>ou (law)</i> – <i>future TSO</i>	GAMA –only licensed TC <i>no law</i>

TSOs Unbundling in the Contracting Parties (II)

State of play



CP	MD	MNE	SR	UA	GE
Sector					
Electricity	Moldelectrica <i>ou (law)</i>	CGES <i>ou (law)</i>	EMS <i>ou – in process</i>	Ukrenergo <i>ou (law)</i>	<ul style="list-style-type: none"> •GSE •Sakrusenergo •Energotrans
Gas	<ul style="list-style-type: none"> •Moldovatransgaz •Vestmoldtransgaz <i>all three models (law)</i> 1.1.2020	No TSO <i>ou (law)</i> – future TSO	<ul style="list-style-type: none"> •Yugorosgaz Transport •Srbijagas <i>ISO in process</i> <i>all three models (law)</i> <i>no 2pck unbundling</i>	Ukrtransgaz <i>ou and ISO (law)</i>	Georgian Gas Transportation Company

Two certified TSOs (I)

□ TAP

- pipeline project aimed to transport the gas from Azerbaijan to European gas markets via Greece, Albania and Italy
- Certification followed up regulatory decision (joint AL, GR, IT – June 2013) exempting the project from certain provisions of the TEP (including ou) and imposing ITO

ECS Opinion 1/16 (3 Feb 2016) – on ERE's preliminary decision, taking into account EU COM Opinion on GR & IT decisions

*** ECS agreed with certification of TAP AG and invited ERE to open a new certification procedure once TAP becomes operational*

❑ **OST – AL electricity TSO**

ECS Opinion 1/17 (23 Jan 2017) – on ERE’s preliminary decision

*** ECS agreed with certification of OST subject to several conditions and invited ERE to elaborate on and monitor OST’s continuous compliance with unbundling*

Issue: separation of control over transmission and generation/supply - 2 Ministries

- CoM approval of new interconnectors upon proposal of the Ministry of Energy;
- Ministry of Energy’s right to give an opinion to ERE in relation to TYNDP

ERE adopted final decision - 15 March 2017:

- in 12m TSO to present proof of primary and secondary legislation amendments regarding the transfer of the competences of the Ministry of Energy and Industry to the Ministry of Economy
- In 3m appoint Compliance officer and compliance program

✓ *ENTSO-E accepted OST as a full member – 30 March 2017*

EnC experience with unbundling/certification so far

Two certification procedures in progress



☐ Yugorosgaz – SR gas TSO

ECS Opinion 2/17 (22 April 2017) – on AERS's preliminary decision

*** ECS concluded that Yugorosgaz-Transport is currently not able to operate the system effectively and independently from the system owner Yugorosgaz and considers that it can currently not be certified as envisaged by the Preliminary Decision.*

Issue: TSO still directly and indirectly controlled by persons active in production and/or supply of natural gas or electricity, does not have required resources for carrying out its tasks as TSO, does not have the ability to comply with all TSO's tasks and obligations independently. The owner-Yugorosgaz does not comply with unbundling requirements. No Art.11 risk assessment performed.

AERS to adopt final decision taking into account ECS Opinion.

☐ EMS – SR electricity TSO - ECS Opinion due by 15 June 2017

□ **Unbundling plans**

– **Naftogaz unbundling**

CoM Naftogaz Unbundling Plan (July 2016): delay in implementing OU

main challenge - define an efficient way for transferring transmission & storage assets and staff, putting in place necessary legal framework for the transfer

– **CGES electricity TSO (Montenegro)**

TA (under Connectivity project / WB6) to MNE NRA in certification procedure

□ **Other CPs** – significant **delays** => *infringements under Energy Community Dispute Settlement Rules to follow*

□ **Certification of TSOs – procedure and timeline in EnC**

- notification by TSO to national TSO
- draft NRA decision in **4m** => notified **immediately** to ECS
- ECRB gives opinion to ECS; ECS gives its opinion to NRA in **4m** from notification
- NRA adopts final decision (utmost account of ECS opinion) in **2m** from ECS Opinion

**** Strict deadlines** => unbundling model to be chosen while law drafting
changes in legal, admin., reg. framework other than energy-related

□ **Assistance & (in)formal consultations with ECS**

- close cooperation and informal exchange on challenging issues
- advice & advanced (potential) problems solving
- public hearings organised by ECS – clarifying open issues
- TA – independent consultants/experts involvement
- EU experience / COM Opinions followed

...

The background is a satellite-style image of the Earth at night, showing city lights. Overlaid on this are numerous glowing blue lines that represent energy transmission paths, connecting various points across the globe.

*Thank you
for your attention!*

www.energy-community.org