NON-PAPER

Harmonisation of licensing regimes in electricity and gas

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1. Introduction

1.1. Scope

The present document proposes measures for harmonisation of licensing regimes applicable to supply of wholesale and final 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]

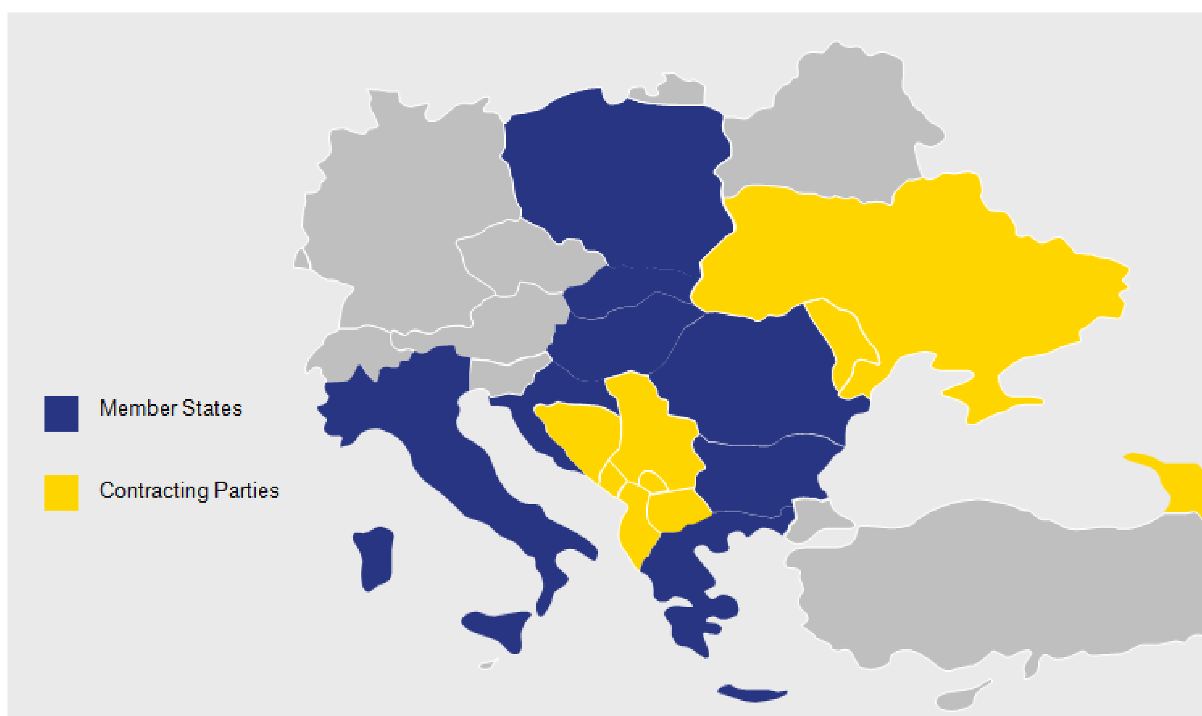

Figure 1: Title III countries

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 wholesale and retail 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 license regimes play a key role.

The measures proposed in this document aim at minimising administrative and financial burden for existing market participants and new market entrants on both wholesale and retail supply level while maintaining the necessary regulatory supervision. Licensing regimes may indeed serve the purpose of reaching legitimate public policy objectives, such as market oversight, taxation, fraud prevention, recognition and enforcement of regulatory and judicial decisions or financing of national regulatory authorities (hereinafter 'regulators'). The document assesses to which extent national licensing regimes are necessary to fulfil the objectives pursued, and to which extent they can be attained by other, less burdensome measures. The measures proposed

[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.

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') in Annex I 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.

The present document has been presented to the CESEC gas 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.[3] Feedback was provided by the Ministry for Sustainability and Tourism of Austria, the Ministry of Environment and Energy of Croatia, the Ministry of Environment and Energy of Greece, the European Federation of Energy Traders (EFET) as well as the regulatory authorities of Croatia, Greece and Moldova. The inputs prevailingly supported the intention of the proposal, namely to reduce administrative burdens for new market entrants, while pinpointing to the requirement of legislative changes. This confirms the need for the adoption of a binding Measure under Title III of the Energy Community Treaty. The feedback also drew attention to the financing of regulatory authorities and regulatory enforcement powers. The present proposal has been amended by further related elaborations in chapters 2.1 and 3.1.

1.2. Reasoning and background

The Third Energy Package (TEP)[4], 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*

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

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

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."

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 and final customers (trade and retail supply) as a priority target to enable gas market integration in the Title III countries.[5]
- 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).*"[6]
- The Central and South-Eastern European Energy Connectivity Initiative (CESEC) pilots easing regulations on licensing by initiating a mutually recognizable license/registration.[7] 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*".[8]
- 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.[9]

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. 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.[10]

[5] Energy Community Gas 2020 Action, chapter 3.1, project 6.

[6] 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).

[7] 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.

[8] Conclusion no 23.

[9] See: ACER, Gas Regional Initiative Status Review Report 2016, chapter 3.2.5.

[10] Gas Regional Initiative South South East of the Agency for the Cooperation of Energy Regulators, gas wholesale trading license

Having in view the conclusions in the WB6 and the similarity of the issues for gas and electricity, the present paper extends the analysis to electricity wholesale markets and additionally proposes a simplified licensing regime for retail markets in gas and electricity. In doing so, the present document builds on the work performed in the framework of the GRI SSE in extending the findings to retail licensing. As a preliminary step, a sequenced process starting at the wholesale level and moving to the retail level in a second step is a possible option.

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.[11]

The present document understands the terms "supply", "final customer" and "wholesale customer" as defined in the TEP.[12] 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. 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.

2. The purpose and scope of licenses and license regimes

Obtaining a license from the regulator is a pre-condition for performing supply to wholesale and final customers in the majority of the Title III countries. Annex II provides a detailed country-by-country review.

The rationale for licensing in these jurisdictions is often based on its dimension to be used (by way of conditions imposed or the threat of revocation) as a tool for monitoring and enforcement activities by regulatory authorities, including the possibility of the national energy regulator to verify and enforce the technical capability and economic viability of market participants to avoid risks for security and safety of supply to end-users as well as financial damage to other market participants by non-capable, non-solvent or even criminal entities.[13]

While the legitimacy of these objectives is beyond doubt, in reality excessive licensing requirements may not be needed or even suitable to address these desired policy goals. Licenses indeed have been frequently criticised as a hampering factor for the creation of liquid trade, in particular when complemented by burdensome administrative requirements.[14] According to this line of argument, already the diversity of

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proposal, 2017 (hereinafter 'GRI SEE 2017').

[11] Such as: supplier of vulnerable customers, supplier of last resort, default suppler.

[12] 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").

[13] See as well *Brattle and Skadden, Arps Slate, Meagher & Flom* (2011).

[14] Cf. EFET, most recently in: market inefficiencies in the Contracting Parties of the Energy Community / Member States of the European Union (June 2017); See also: CEER, Final advice on the introduction of a Europe-wide energy wholesale trading passport (2011), chapter 1 (hereinafter 'CEER 2011'); initiative of the Baltic regulators, 2016; GRI SSE 2017, p.1; an extensive list of arguments for the need to ease burdens for wholesale suppliers is also argued at: *ibd*, p 4.

different national licensing requirements and procedures are time-consuming and cause high costs. They are thus perceived a barrier to market entry.[15] The following chapters critically evaluate the validity of the brought forward arguments.

In doing so, the present document takes a differentiated position for licenses and license regimes pertaining to wholesale supply (trade) and retail supply based on the particularities of and differences between those activities.

2.1. Licenses for supply to wholesale customers (trade)

Requirements for obtaining a license for wholesale supply in different Title III countries vary, though not significantly. The list hereinafter provides a non-exhaustive overview of frequent wholesale licensing requirements, the objective of which is to ensure that the applicant is:

- A registered undertaking disposing of, for instance,
- Local establishment in a form of branch / subsidiary;
- Certificates from authorities (commercial registrar, tax authorities, customs);
- Information on the mother company;
- Contact persons and information on staff (to be) involved in licensed activity;
- Providing sufficient information to the regulator to understand the business of the company by requiring, for instance:
- A business plan for three years and information on other activity;
- Financial reports.
- Financially fit and has no debts and is able to manage credit risk (hence not causing systemic risk to the market) requiring, for instance,:
- Financial reports;
- Audited financial statements (consolidated and specific to the licensed activity);
- Certificates from tax and customs authorities
- Bank account statements;
- Collateral or opening a specific bank account with some minimum requirement for cash.
- Fit and proper to ensure that its management/executives are not engaged in criminal activity requiring for instance":
- Copies of passports and personal information of management;
- Criminal clearance by authority for members of the board / executives / management;

Compilation of the required documentation is time- and resource-consuming for market participants. It often includes the need to submit them in a legalised version (with apostille), and with a certified translation into the national language. If any information provided for the purpose of licensing is changed later on, usually also the updated information must be submitted to the regulator.

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

If the goal of these requirements is to assess and control the planned activity of an applicant and to ensure that it is established in line with national legislation as well as financially fit to engage in supply to wholesale customers there are other means or instruments through which such objectives can be met equally well or even better. They could thus replace the existing wholesale licensing regimes in virtually all cases. Moreover, it is questionable whether the technical and human resources of regulators are sufficient to assess and fully comprehend a licensee's economic situation, including a fit and proper test of the management in *all* details and *continuously.*[16]

A comparison of the licensing regime in electricity and natural gas with the authorisation regime in the financial sector shows that the energy sector indeed has in place more administrative requirements for undertakings buying and selling in the wholesale market compared to financial markets. In the financial sector, undertakings that buy and sell commodity derivatives/financial instruments on their own account are exempted from authorisation (licensing) requirements as financial institutions. [17] On the other hand, if financial traders buy and sell interest in the commodity derivatives/financial instruments on the account of a client, then they need to be authorised in order to undertake such activity. The objective of such regime is to protect the interest of the clients that cannot mitigate risks as opposed to the interests of undertakings that trade on their own account only.

With regards to electricity and natural gas markets, a similar logic applies. Undertakings active in energy wholesale markets address the exposure and the credit risk when trading between themselves, directly with the clearing houses (for PX trades) and with the TSOs (for the purpose of balancing responsibility). Undertakings active in the retail market (supplying end users) are expected to be subject to licensing in the same way as the undertakings that buy and sell interest in commodity derivatives on behalf of a client is subject to authorisation.

Furthermore, the objectives pursued by wholesale licenses issued by regulators are equally well or even better achieved through less restrictive and more market instruments:

- Proof of a registered undertaking

To the extent that a wholesale license requirement includes the necessity to establish a local establishment (seat or branch), empirical evidence shows that the financial and organizational efforts implied effectively deters market entrants and is disproportionate to the objectives allegedly pursued which contradicts the rules of the EU and Energy Community Treaty, as demonstrated in chapter 3.2.

Incorporating Regulation (EU) 1227/2011 on wholesale energy market integrity and transparency (REMIT)[18] in the Energy Community would provide for a transparent registration system of suppliers to wholesale customers. Until REMIT is in place, general information and contact persons of undertakings active in the market are always available to the TSOs even if no license is required. As a matter of fact supply of electricity or natural gas can only happen once arrangements with a TSO are in place. In addition, the abolishment of licensing requirements on wholesale level, do not prevent national regulatory authorities to

[16] Cf. initiative of the Baltic regulators, 2016.

[17] See Article 2(1) litera (d) of the Markets in Financial Instruments Directive 2014/65/EU (MiFID II).

[18] OJ L 326 of 8.12.2011, p 1 et seq.

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. Fees for such registration should not exceed the actual costs incurred in order not to (re-)introduce additional financial barriers.

- Understanding the business of the company

Business plans of undertakings on wholesale level are a source of limited informative value for a regulator. They are of non-binding nature and are frequently reviewed and adapted by undertakings depending on changes in the market and other fundamental information.

- Financially fit, absence of debts, able to manage credit risk

The greatest exposure that has a direct impact on the sound operation of the market, is the credit exposure, and in particular the exposure from non-financially fit undertakings. However, 'Financially fit' checks would require continuous monitoring of the market behaviour of the company which cannot be achieved by a license procedure covering the moment of entering the market only. In this respect, the licensing requirement may display a false picture and suggest as security which it can actually not guarantee. .

- Fit and proper to ensure that its management/executives are not engaged in criminal activity

Similarly, checks of criminal records of the management at the time when an undertaking is entering a market runs short of providing the desired guarantees. Undertakings may deliberately put a management with clean records who in fact does not run the company that is changed immediately after the license is issued. Such risks can be better mitigated through using specialised authorities and firms monitoring undertakings and intervening on a case-by-case basis and not in a non-suitable and non-proportionate systematic manner as inherent in a license regime.

The figure below represents a graphical visualisation of the effectiveness of the present licensing regimes in meeting the objectives compared to the efforts by market participants on a scale of 1 to 10.

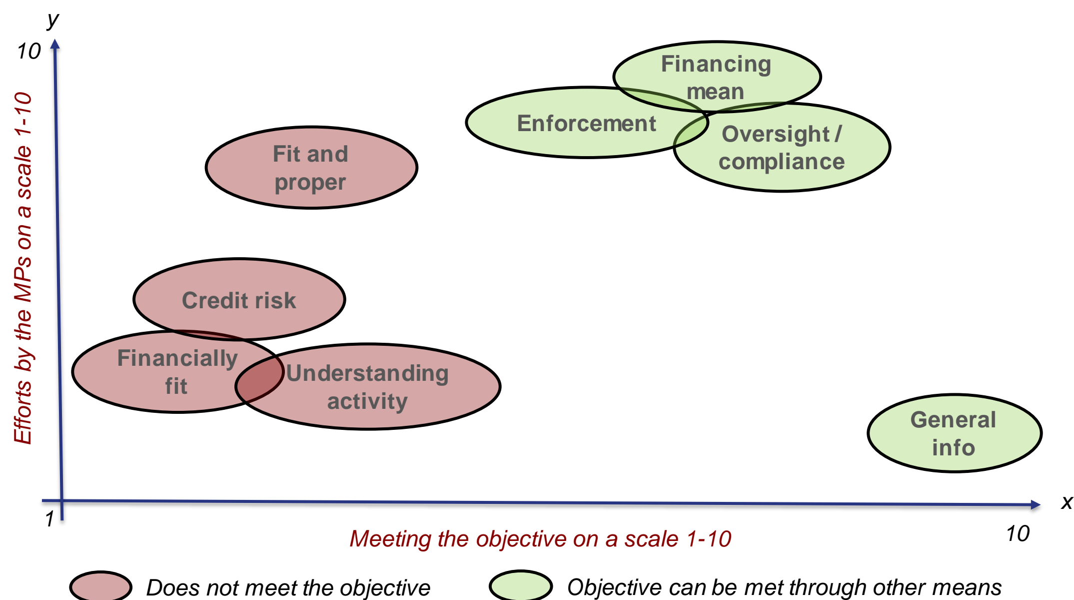

Figure 2: Effectiveness of wholesale licensing regime

We conclude that beyond the clearly disproportionate seat and branch requirements, wholesale licensing and its conditions as currently applied in the Title III countries are not suitable for conducting economic, commercial or financial checks. Credit worthiness and exposure on wholesale level is better addressed and managed bilaterally between trading companies or via central clearing houses that provide credit facilities.[19] When engaging in wholesale trading activities, market participants apply those checks on bilateral basis based on mutual exposure. Transmission system operators (TSOs) also apply similar checks regarding the exposure from the balancing mechanism, to the extent so provided for in national legislation. For this purpose, they should ensure that such exposure is covered fully by market participants through an appropriate financial security, be it in the form of cash, bank guarantee or other means. In this respect a licensing regime does not add any value but only additional burden. It may even be misleading as it may be perceived as a credit check from the national regulator which is not the case in reality.[20]

While the power of national regulators to enforce compliance with national legal requirements is an important issue, licenses are not necessarily the only means to reach the target of ensuring compliance of market participants with legal and regulatory rules. The practice of sanctioning non-compliance with withdrawing (or the threat of withdrawing) a license is disproportionate and should be replaced by financial penalties as stipulated in the Third Energy Package. Financial penalties are also more suitable to remedy damage caused by market participants to economy in general or to other market participants. Moreover and specifically linked to trading activities, the experience of EU Member States in context with the REMIT Regulation shows that regulators can be granted the power to request information and enforce laws de-coupled from companies holding a license. Instead, the legal competences are in the case of REMIT applicable to all companies based on the activity they are engaged in. Legislative adjustments which would

[19] Similar: GRI SSE, 2017, p 7; ECRB, Proposal for Harmonised Systems of Wholesale Trade Licensing (July 2009).
[20] Similar: CEER 2011, chapter 2.2.2.

de-couple market supervision-, enforcement- and penalty-imposing -rights of regulators from holders of a license while extending these powers to all undertakings performing an energy activity[21] in the national market, would ensure continuation of these central tasks and powers of regulators after licenses for wholesale supply are abolished.

2.2. Licenses for supply to final customers (retail)

On retail level the duty of regulators to protect final customers and the need to avoid risks for security and safety of their supply is typically the main argument for justifying the license requirement by the regulator as pre-condition for starting the activity of supply to final customers.[22]

The arguments against a licensing regime are less strong and evident on retail level compared to supply to wholesale customers. The role of regulators in customer protection, as also enshrined in the TEP, can be considered a valid argument for keeping a license requirement per se and certain conditions attached to obtaining and maintaining such a license. To reduce the administrative burdens and resulting barriers for new market entries, these conditions should be, however, limited to requirements that grant regulators the necessary level of market surveillance and the possibility of actual enforcement. While it is certainly valid for regulators to have an overview of the undertakings active in the market, it needs to be assessed to what extent this scope can be equally met by provision of company registration and contact details,[23] in particular in combination with a license procedure and requirements already complied with, as well as enforcement ensure by the regulatory authority in the home state. To facilitate the concept of mutual recognition of licenses for supply to final customers a minimum set of common requirements would need to be agreed between the regulators of the Title III countries. Ensuring creditworthiness on retail level will be among the key challenges. In this respect, a set of commonly agreed requirements for licenses for supply to final customers would help avoiding a race-to-the bottom.

3. Horizontal aspects

3.1. Financing of regulators

In the majority of the Title III countries the budget of national regulatory authorities is financed from license fees. Annex III provides a detailed country-by-country overview. At the same time, in most of the Title III countries regulators have the right to define the level of licensing fees autonomously. To this extent, certain flexibility is already allowing for possible adjustment of the financing models.

In case of abolishment of license requirements for wholesale supply, as proposed in this paper, a replacement for related payments to the regulators' budgets may have to be found to compensate for the loss of financial contributions so far paid by traders.

<u>One option</u> is to finance the regulator's budget from **other licensed undertakings** than traders. This means that with the abolishment of wholesale licenses, undertakings performing trade activities would be

[21] As defined per national legislation.
[22] Cf GRI SSE 2017, p 2.
[23] Similar: CEER 2011, chapter 2.1.

automatically exempted from regulatory charges. This approach accommodates the argument that the payment of *national* charges should be associated to activities that are performed *nationally*, thus for the case of natural gas and/or electricity, the country where the energy is either produced or consumed locally. The national wholesale market on which electricity or natural gas is traded is not necessarily identical to the jurisdiction in which the commodity is consumed or produced. Quite on the contrary, the characteristic of trade typically entails manifold transfer of ownership titles de-coupled form the place of consumption or production. License fee based funding of national regulatory authorities has also been constantly criticised by the Federation of European Energy Traders (EFET) in particular when calculated on transaction base as applied in a number of Title III countries.[24] According to EFET, such fees provide wrong signals to the market as payments increase with the level of volumes traded.[25] This has detrimental effect on liquidity while it, at the same time, does not provide a stable income to the regulators.

V**arious forms** are possible and already being applied in some Title III countries:

- Collection of licensing fees from *all* licensees (excluding traders), e.g. transmission, distribution, supply, generation. This model is used e.g. in Montenegro.
- Collection of licensing fees from transmission system operators *only*. This model is used e.g. in Serbia.[26]

Another option is to finance the regulator's budget **regardless of licenses**: this concept is relatively far-reaching and may require legislative adjustments (hereinafter referred to as 'regulatory fee'). Such regulatory fee can be designed in different ways:

- One option is to collect the regulatory budget directly from all natural gas and electricity final customers. Such model is, e.g. applied in Austria where the regulator distributes its budget among the gas and electricity transmission system operators corresponding to the ratio of energy transported by the relevant undertaking to final customers. Related costs are invoiced to the natural gas and electricity transmission system operators by the regulator. The companies are entitled for acknowledgement of their payments in the regulated network fees meaning that, finally, the regulatory budget is financed from all final natural gas and electricity customers.[27]
- A slightly different model is in force in Ukraine. Also here the regulatory budget is not financed by undertakings holding a license for but by all undertaking *performing* any of the regulated activities of production, transmission, distribution or supply. The charge is calculated by the regulator based on the individual companies' net income from its regulated activity with an overall ceiling of maximum 0.1% of the net income.[28] The same model is applied in Italy. These examples proof that financing of regulatory authorities de-coupled from licensing is a workable approach.
- Another option would be to collect the regulatory fee from all undertakings active in the market, which could also include wholesale suppliers/traders. As a result, *all* undertakings performing a gas natural and/or electricity related activity in a given jurisdiction will contribute directly to the budget of the

[24] Namely in: Croatia, fYR of Macedonia, Hungary, Kosovo*, Poland and Romania.
[25] Most recently: EFET, market inefficiencies in the Contracting Parties / Member States (June 2017).
[26] Based on the formula RegFee=(OPEX+DEPR+WACC*RAB)*0.9%. When calculating OPEX for the purpose of setting the regulatory fee, TSO costs for ancillary services, losses, balancing and own consumption are excluded.
[27] Law on E-Control Articles 30 and 32.
[28] Law on the Commission for the State Regulation of Energy Utilities Article 13 in conjunction with Article 2(1).

regulator, which would correspond to the fact that regulators also perform their duties in the interest of traders.[29]

The abolishment of trade licenses shall not prevent national regulators to require market participants undertaking the activity of supply to wholesale customers in electricity and/or natural gas to **register** their market activity with the regulator and/or provide the regulator a certificate confirming related company activities established in any of the Title III countries such as public company records, Energy Identification Code or similar. Where this approach is introduced, the need to present related information may be combined with the payment of a **one-off registration charge** that is fixed by the regulator. To a certain extent, such one-off registration charges compensate the loss of budgetary contributions from trade license fees and reduce the amount to be covered by suppliers of final customers and producers. One-off charges are already widely applied in the Title III countries to cover the administrative costs of issuing / changing a license by the regulator, as is the case e.g. in Albania, Croatia, fYR of Macedonia, Greece, Kosovo*, Serbia, With the abolishment of wholesale supply license the one-off *license* fee for trade licenses can be easily transformed into an one-off *registration* fee.

3.2. Local seat requirements

As discussed already above, and 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. This often extends to both wholesale and retail supply. Annex IV provides a detailed country-by-country overview.

EFET has constantly criticised the requirement to establish a local presence as an obstacle and entry barrier.[30]

From a legal perspective the requirement for a foreign company willing to undertake energy supply activities in another Party of the Energy Community Treaty[31] 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*."[32] 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

[29] This argument is typically supported by regulators, cf. e.g. GRI SSE, gas wholesale trading license proposal, p 8.

[30] 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.

[31] 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.

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

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 supplier registered in any Title III country must be entitled to supply any 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 or retail 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 the 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.

3.3. Taxation

Despite the assessment of seat requirements against the fundamental freedoms in the EnCT and the TFEU elaborated above, the absence of a seat or branch of suppliers in the host country might lead to non-taxation of certain transactions. Therefore adjustments are being proposed. The analysis is valid only for the Contracting Parties, as unlike in the EU, no harmonizing measures on indirect taxation in cross-border situations apply.

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

- In case of industrial and commercial final customers, if they are registered for VAT purposes, such (cross-border) supply bears 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, supply by a foreign supplier without a presence in the host country may indeed lead to a loss

in tax revenue. However, the introduction of the institute of tax representative is a less onerous solution to overcome fiscal concerns related to the (mutual) recognition of foreign licenses for retail supply.

In any event, the Treaty provisions and the Third Energy Package requires Contracting Parties to take all measures necessary to ensure that domestic fiscal and administrative rules and procedures do not discriminate against supply undertakings registered in another Title III country. Instead of insisting on compliance through enforcement procedures, the Secretariat proposes harmonization through the present paper.

Moreover, the Secretariat has launched a more comprehensive process on harmonisation of VAT regimes for network energy related transaction in the Energy Community under Title II (Contracting Parties only) based on a study completed in 2017.

3.4. Market surveillance and tax fraud prevention

According to Regulation (EU) 1227/2011 on wholesale energy market integrity and transparency (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)[33] to which national regulators have access. Furthermore, REMIT targets 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. Even in the absence of REMIT (as currently under the EnCT) 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 incorporate REMIT in the Energy Community. This should cover the regulatory gap in relation to market integrity regime and part of it will be also centralised register of market participants.

Until REMIT registration applies also to Contracting Parties, TSOs should provide the national regulatory authority with all the necessary information and contact details of market participants delivering electricity or gas in their grid as part of their wholesale trading activity. In addition, the national regulatory authorities should ensure that compliance is enforced through the primary or secondary acts and is associated with the activity that market participant is undertaking in their jurisdictions. Hence instead of enforcing compliance through the licensing process, the same level of compliance can be imposed through regulatory activities corresponding to the model established under REMIT.

Checks undertaken by the regulators on registering the general information of applicant and also using the license as an instrument for enforcement and oversight do meet the objective however there are other instruments through which such objective can be met.

[33] https://www.acer-remit.eu/portal/ceremp.

3.5. 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 Regulation[34] 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 substance[35]. However, the Regulation lists grounds for non-enforcement[36] and shall not apply to revenue, customs or administrative matters.[37] The Lugano Convention of 2007[38] 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 penalties[39] 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 cases[40], 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.[41]

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

[34] 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).

[35] Article 36 of the Brussels I Regulation.

[36] Article 34 of the Brussels I Regulation.

[37] Article 1 of the Brussels I Regulation.

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

[39] 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).

[40] Cf Article 7 of Council Framework Decision 2005/214/JHA.

[41] 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 – Energy Community Secretariat's proposal for a draft decision

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 Reflection Group to develop investigate in specific regional rules to overcome barriers in the CESEC gas and electricity markets;

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 harmonizes certain aspects pertaining to the regimes applicable to administrative licensing of electricity and natural gas supply in the Contracting Parties and Member States 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 "supply", "customer", "wholesale customer", "final customer", "household customer", "non-household customer" and "supply" shall apply.
2. For the Contracting Parties of the Energy Community, 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
Supply to wholesale customers

1. Undertakings engaged in the activity of supply to wholesale customers in electricity and/or natural gas shall not be required to obtain an administrative license issued by a national regulatory authority or any other national authority as a precondition for performing such activity.
2. Notwithstanding the provisions of paragraph (1), national regulatory authorities 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. The national regulatory authorities may require legalized translation of such documents in the official language of the host country. Any fees for registration may not exceed the actual costs incurred.
3. Undertakings 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.
4. 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 4
Supply to final customers

1. Undertakings engaged in the activity of supply to final customers in electricity and/or gas shall not be required to obtain an administrative license issued by a national regulatory authority or any other national authority as a precondition for performing such activity to the extent such license was issued by a Contracting Party or Member State referred to in Article 26 and 27 of the Treaty in which the undertaking is established (mutual recognition), and provided that the license complies with the minimum criteria set in paragraph 2 of this Article.
2. In order to be subject to mutual recognition by another Contracting Party or Member State referred to in Article 26 and 27 of the Treaty, administrative licenses as a precondition for performing supply of electricity and/or gas to final customers must include the following minimum requirements
    1. Contact details of the supplier
    2. Excerpt from the commercial and/or professional register
    3. Evidence for financial capacity, absence of insolvency procedures and professional capability
    4. Establishment of a tax representative
    5. […]
    6. […]

3. 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 implied in the license, and not subject to any additional requirements.
4. Once the administrative license is recognized in accordance with paragraphs 1-3, an undertaking engaged in the activity of supply to final 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 may not be required to establish a local seat, branch, subsidiary or any other establishment.
5. Paragraphs 1 and 2 shall not apply to undertakings established in a Contracting Party or Member State referred to in Article 26 and 27 of the Treaty which does not require an administrative license as a precondition for performing supply to final customers in electricity and/or natural gas to wholesale of final customers. Instead, Article 3 shall apply mutatis mutandis.
6. To ensure customer protection, regulators shall be empowered to approve the general terms and conditions for supply to final customers in electricity and/or natural gas.
7. Undertakings engaged in the activity of supply to final customers in electricity and/or natural 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.
8. Undertakings engaged in the activity of supply to final customers in electricity and/or natural gas established in another Party shall appointed a tax representative to act as authorized fiscal guarantor in the host state.

Article 5
Principles of Taxation

- 1. The supply of electricity and gas 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.
- 2. The supply of electricity and/or gas to final customers shall be taxed at the place of final consumption.

Article 6
Financing of national regulatory authorities

1. Any loss of budgetary resources of national regulatory authorities resulting directly from abolishment of licenses pursuant to Article 3 may be compensated by any of the following instruments or a combination of them:

- a. Redistribution of funds to all undertakings holding a license ;
- b. Collection of a registration fee pursuant to Article 3(2) ;

c. Replacement of budget contributions collected from licensed market participants by a regulatory fee collected via network charges or from all market participants carrying out activities in the national

electricity and natural gas market including undertakings engaged in the activity of supply to wholesale customers in electricity and/or natural gas.

2. The previous paragraph shall not exclude other ways of contributing to the resources of national regulatory authority ('alternative financing schemes'), provided that such alternative financing schemes are notified to the European Commission and the Energy Community Secretariat before adoption, and the authority in charge of adoption has taken due account of the European Commission's and the Energy Community Secretariat's opinion.

Article 7
Enforcement powers and cooperation of national regulatory authorities

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 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 and 4 of this Decision, 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 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. This Decision is addressed to the Contracting Parties and Member States referred to in Article 26 and 27 of the Treaty. They shall take the necessary measures to align their national legislative and regulatory framework with this Decision by […].
2. Contracting Parties and Member States referred to in Article 26 and 27 of the Treaty shall notify the Energy Community Secretariat of completed transposition within two weeks following the adoption of such measures.

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 [...]

Annex II – Licensing requirements (status quo)

<table>
<tr><th></th><th colspan="2">ELECTRICITY</th><th colspan="2">GAS</th></tr>
<tr><th></th><th>WHOLESALE</th><th>RETAIL</th><th>WHOLESALE</th><th>RETAIL</th></tr>
<tr><td>Albania</td><td colspan="2">yes[i] [*]</td><td colspan="2">yes[ii]</td></tr>
<tr><td>Austria</td><td colspan="4">no</td></tr>
<tr><td>Bosnia and Herzegovina</td><td colspan="2">yes[iii]</td><td colspan="2">yes Republika Srpska[iv]</td></tr>
<tr><td>Bulgaria</td><td colspan="2">yes[v]</td><td></td><td></td></tr>
<tr><td>Croatia</td><td colspan="4">Yes [**]</td></tr>
<tr><td>fYR of Macedonia</td><td colspan="2">yes[vi]</td><td colspan="2">yes</td></tr>
<tr><td>Georgia</td><td colspan="4">no</td></tr>
<tr><td>Greece</td><td colspan="2">yes[vii]</td><td>no</td><td>yes</td></tr>
<tr><td>Hungary</td><td colspan="2">yes[viii]</td><td colspan="2">yes</td></tr>
<tr><td>Kosovo*</td><td colspan="2">yes[ix] [*]</td><td colspan="2">yes[x][*]</td></tr>
<tr><td>Moldova</td><td colspan="2">yes[xi]</td><td colspan="2">yes[xii]</td></tr>
<tr><td>Montenegro</td><td>No</td><td>yes[xiii]</td><td colspan="2">No gas market</td></tr>
<tr><td>Poland</td><td colspan="4">yes[xiv]</td></tr>
<tr><td>Romania</td><td>yes[xv]</td><td>yes[xvi]</td><td colspan="2">yes[xvii]</td></tr>
<tr><td>Serbia</td><td colspan="4">yes[xviii] [*]</td></tr>
<tr><td>Slovakia [**]</td><td colspan="4">yes[xix]</td></tr>
<tr><td>Ukraine</td><td colspan="2">yes[xx]</td><td>no</td><td>yes[xxi]</td></tr>
</table>

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 III – financing sources of regulators' budgets (status quo)

	License based	Financing source
Albania	✔	From license fees (one-off and annual) based on the company's turnover determined by the regulator[xxii]
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[xxiii]
Bulgaria	✔	fees for consideration of applications, issuance of certificates, sale of tender documents, licensing fees, and experts registration fees[xxiv]
Croatia		License fees (one-off and annual) for performing the energy activities[xxv]
fYR of Macedonia	✔	License fees (one-off and annual)[xxvi]
Greece		License fees (one-off and annual) based on the companies' annual revenue , 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	✔	license fees (one-off and annual) [xxix]
Moldova	✔	license fee based on the companies' revenues [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	✔	One-off license fee and annual license fee for performing transmission activities 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 IV – requirements for a local establishment (status quo)

<table>
<tr><th></th><th colspan="4">REQUIREMENT FOR A LOCAL ESTABLISHMENT</th></tr>
<tr><th></th><th>WHOLESALE ELECTRICITY</th><th>RETAIL ELECTRICITY</th><th>WHOLESALE GAS</th><th>RETAIL GAS</th></tr>
<tr><td>Austria</td><td colspan="4">no</td></tr>
<tr><td>Albania</td><td colspan="4">yes[xxxvi] [*]</td></tr>
<tr><td>Bosnia and Herzegovina</td><td colspan="2">Yes</td><td colspan="2">yes Republika Srpska[xxxvii]</td></tr>
<tr><td>Bulgaria</td><td colspan="4">no</td></tr>
<tr><td>Croatia</td><td colspan="4">no</td></tr>
<tr><td>fYR of Macedonia</td><td colspan="4">yes[xxxviii]</td></tr>
<tr><td>Greece</td><td colspan="4">no[xxxix]</td></tr>
<tr><td>Hungary</td><td colspan="4">no[xl]</td></tr>
<tr><td>Kosovo*</td><td colspan="4">yes[xli] [*]</td></tr>
<tr><td>Moldova</td><td colspan="2">yes[xlii]</td><td>yes[xliii]</td><td></td></tr>
<tr><td>Montenegro</td><td>no</td><td>yes[xliv]</td><td colspan="2">No gas market</td></tr>
<tr><td>Poland</td><td colspan="4">no[xlv]</td></tr>
<tr><td>Romania</td><td colspan="4">no[xlvi]</td></tr>
<tr><td>Serbia</td><td colspan="4">yes[xlvii] [*]</td></tr>
<tr><td>Slovakia</td><td colspan="4">yes[xlviii]</td></tr>
<tr><td>Ukraine</td><td colspan="2">yes[xlix]</td><td>no</td><td></td></tr>
</table>

[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.