

Proposal for endorsement of a draft

[Decision of the Ministerial Council of the Energy Community 2018/xx/MC-EnC on]
Mutual recognition of licenses for supply to wholesale customers (trade)

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

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

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

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

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

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

Having regard to the proposal from the Energy Community Secretariat;

HAS ADOPTED THE FOLLOWING DECISION

Article 1
Objective

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

Article 2
Definitions

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

Article 3
Mutual recognition requirements

1. Undertakings aiming to become engaged in the activity of supply to wholesale customers in electricity and/or gas in a Host State shall not be required to obtain an administrative license to the extent such was issued by the national regulatory authority of a Home State and provided such license complies with the minimum criteria set in paragraph 2 of this Article (mutual recognition).
2. In order to be subject to mutual recognition according to paragraph 1, an administrative license issued by the Home State must include the following minimum requirements:
 - a. Contact details of the wholesale supplier;
 - b. A valid and authentic certificate of register such as an excerpt from the commercial and/or professional register, Energy Identification Code or similar;
 - c. Evidence for financial capacity, absence of insolvency procedures and professional capability;
3. Where a Home State’s legislation or administrative practice does not require an administrative license, a Host Country shall not require undertakings aiming to become engaged in the activity

of supply to wholesale customers in electricity and/or gas to obtain an administrative license. Notwithstanding, the Host Country's national regulatory authority may require undertakings engaged in the activity of supply to wholesale customers in electricity and/or natural gas to enlist in a register solely based on easily obtainable documentation such as commercial and/or professional register, Energy Identification Code or similar. Any fees for registration may not exceed the actual costs incurred.

4. National regulatory authorities may require legalized translation of the documents referred to in paragraphs 2 and 3 in the official language of the Host Country.
5. The recognition of an administrative licence shall be established by the national regulatory authority of the Host State in the form of a declaratory decision based on the Home State's confirmation of the requirements listed in paragraph 2 or 3 and not subject to any additional requirements.

Article 4

Local establishment

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

Article 5

Obligations of wholesale suppliers

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

Article 6

Principles of taxation in the Contracting Parties

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

Article 7

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

1. National regulatory authorities of Contracting Parties and Member States referred to in Article 26 and 27 of the Treaty shall use their enforcement powers, including penalty rights and investigations as required by Directive 2009/72/EC and Directive 2009/73/EC, vis-a-vis all undertakings active on the electricity and/or natural gas markets, regardless of whether they operate under an administrative license or not.
2. National regulatory authorities of Contracting Parties and Member States referred to in Article 26 and 27 of the Treaty shall cooperate, inform and support each other in the procedure leading up to (including investigations), and the execution of any final decision taken against wholesale suppliers of electricity and/or natural gas. For the purpose of applying this Decision, national regulatory authorities shall have the power to provide one another with and use in evidence any matter of fact or of law, including confidential information. Information exchanged shall only be used in evidence for the purpose of applying this Decision and in respect of the subject-matter for which it was collected by the transmitting authority.
3. For the purposes of Articles 3, national regulatory authorities of Contracting Parties and Member States referred to in Article 26 and 27 of the Treaty shall publish on their websites and transmit to each other, and to the Energy Community Secretariat, any decision adopted concerning wholesale suppliers of electricity and/or natural gas established on their territory within one week, including a summary in English.
4. National regulatory authorities of Contracting Parties and Member States referred to in Article 26 and 27 of the Treaty shall regularly discuss and align their actions within the framework of the Energy Community Regulatory Board [or ACER]. They may ask the Regulatory Board [or ACER] for an opinion at any stage of a procedure.
5. Contracting Parties and Member States referred to in Article 26 and 27 of the Treaty shall support the adoption of a framework for the mutual recognition of judgments, decisions and financial penalties imposed by judicial or administrative authorities based on the legal framework applicable in the European Union.

Article 8

Final Provisions

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

Article 9
Entry into force

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

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

Explanatory note

1. Introduction

1.1. Scope

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

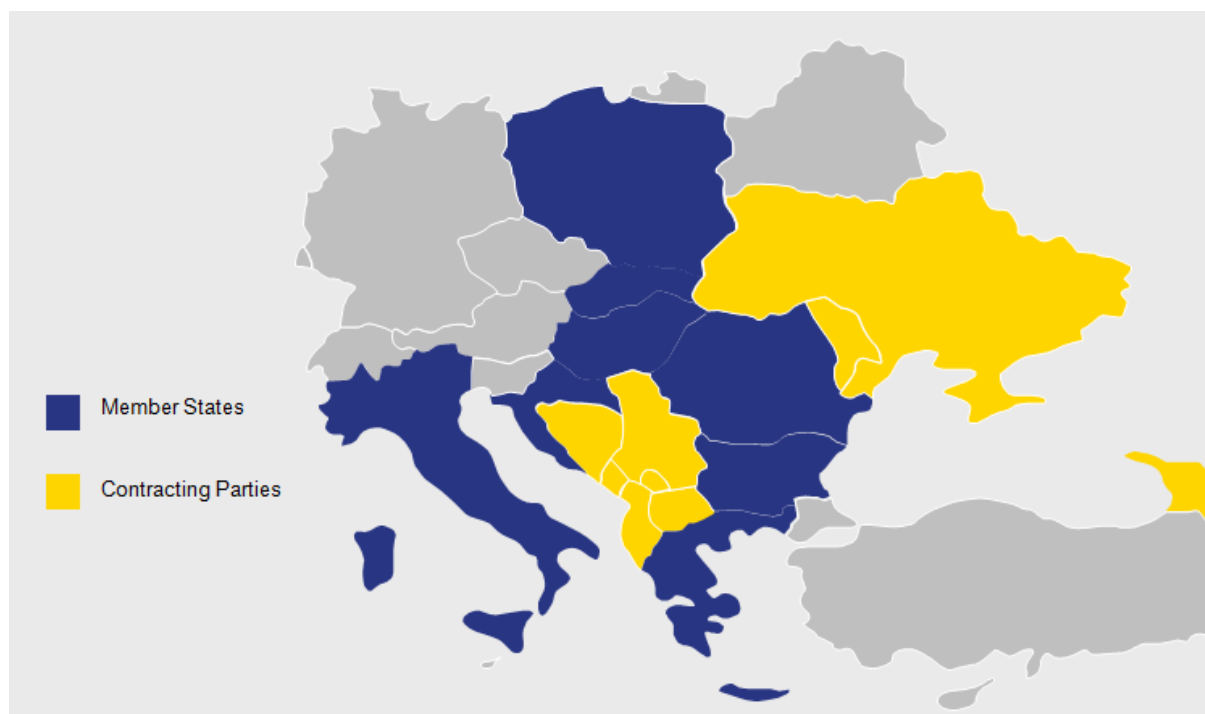


Figure 1: Title III countries

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

The measures proposed in this document aim at minimising administrative burden for existing market participants and new market entrants on wholesale supply level while maintaining the

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>.

necessary regulatory supervision. The measures proposed here are also conscious to avoid the establishment of new obligations in countries where a license is not required.

Based on these analyses, concrete proposals are made by the Energy Community Secretariat (hereinafter 'Secretariat') for measures possibly to be adopted by the bodies in charge in the Energy Community.² With a view to actively create a level playing field between the two categories of countries covered by Title III and CESEC, this proposal also covers aspects specific for the Energy Community Contracting Parties only, such as taxation as well as recognition and enforcement of judgements.

1.2. Reasoning and background

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

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

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

Article 41 of the Treaty reads:

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

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

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

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

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

Parties [Member States] shall take all measures necessary to ensure that administrative procedures do not discriminate against supply undertakings already registered in another Contracting Parties [Member States].”

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

- The Gas 2020 Action for the Energy Community lists mutual recognition of licenses for supply to wholesale customers as a priority target to enable gas market integration in the Title III countries.⁴
- In the context of establishing a regional electricity market, the 2017 Summit in Trieste of the Western Balkan 6 initiative (Berlin Process) invited the *“the CESEC Electricity and the Energy Community Secretariat to explore opportunities for cooperation with the neighbouring EU Member States building on the WB6 Memorandum of Understanding on Regional Electricity Market Development and the Treaty establishing the Energy Community (Title III).”*⁵
- The Central and South-Eastern European Energy Connectivity Initiative (CESEC) pilots easing regulations on licensing by initiating a mutually recognizable license/registration.⁶ The 2017 High Level meeting of CESEC concluded *“to set up a CESEC working group to investigate the application of Title III of the Energy Community Treaty to develop specific regional rules to overcome barriers in the CESEC gas and electricity markets”*.⁷
- The Gas Regional Initiative South South East (GRI SSE) of the Agency for the Cooperation of Energy Regulators (ACER) includes a project on harmonisation of wholesale licenses in gas.⁸

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

1.3. Terminology

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

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

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

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

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

⁷ Conclusion no 23.

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

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

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

1.4. Stakeholder consultation

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

During consultation written feedback was provided by the Ministry for Sustainability and Tourism of Austria, the Ministry of Environment and Energy of Croatia, the Ministry of Environment and Energy of Greece, the Ministry of Energy of Poland, the Ministry of Economy of Slovakia, the European Federation of Energy Traders (EFET) as well as the regulatory authorities of Croatia, Greece and Moldova.

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

2. Mutual recognition, reciprocity and local seat requirements

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

From a legal perspective the requirement for a foreign company willing to undertake energy supply activities in another Party of the Energy Community Treaty¹⁴ to establish a local seat creates an obstacle to the free movement of natural gas and electricity within the meaning of Article 41 of the Treaty (and the corresponding fundamental freedoms in the Treaty on the Functioning of the

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

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

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

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

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

European Union, TFEU). It deters companies from entering new markets, prevents the circulation of energy commodities and impedes the creation of a single energy market. As the Court of Justice of the European Union found in the context of the provision of services, *“a provision of national law under which an undertaking established in another Member State must create a permanent establishment in the Member State in which it seeks to supply ... services breaches the prohibition ... of any restriction on the freedom to provide services A requirement of establishment is the very negation of the freedom to provide services and has the result of depriving Article 56 TFEU of all effectiveness.”*¹⁵ Hence such requirement, being unnecessary and not proportionate to the achievement of any of the objectives allowing for derogations from the prohibition of measures having equivalent effect, is not justified. In the Secretariat’s view, the requirement to establish a seat as a pre-condition to undertake energy supply activities contradicts the Parties’ obligations under the Treaty, especially to the extent there are less onerous means available to attain the same objectives.

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

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

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

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

The principles of mutual recognition and reciprocity must allow market participant that are registered and/or licensed as wholesale supplier in a gas/electricity market of a Party to the Treaty to perform the same activities in a gas/electricity market of another Party, provided that the

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

jurisdiction where the relevant wholesale supplier is registered/licensed allows likewise *vice versa*. The EU is

2.1. Recognition and enforcement of regulatory decisions and judgments

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

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

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

¹⁶ Council Regulation (EC) 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).

¹⁷ Article 36 of the Brussels I Regulation.

¹⁸ Article 34 of the Brussels I Regulation.

¹⁹ Article 1 of the Brussels I Regulation.

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

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

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

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

Annex I – Licensing requirements (status quo)

	ELECTRICITY	GAS
	WHOLESALE	WHOLESALE
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
Hungary	yes ^{viii}	yes
Kosovo*	yes ^{ix} [*]	yes ^{x[*]}
Moldova	yes ^{xi}	yes ^{xii}
Montenegro	No	<i>No gas market</i>
Poland	yes ^{xiii}	
Romania	yes ^{xiv}	yes ^{xv}
Serbia	yes ^{xvi} [*]	
Slovakia [**]	yes ^{xvii}	
Ukraine	yes ^{xviii}	no

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

Annex II – financing sources of regulators’ budgets

	License based	Financing source
Albania	✓	From license fees (one-off and annual) based on the company’s turnover determined by the regulator ^{xxix}
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 ^{xx}
Bulgaria	✓	fees for consideration of applications, issuance of certificates, sale of tender documents, licensing fees, and experts registration fees ^{xxi}
Croatia	✓	License fees (one-off and annual) for performing the energy activities ^{xxii}
fYR of Macedonia	✓	License fees (one-off and annual) ^{xxiii}
Greece	✓	License fees (one-off and annual) based on the companies’ annual revenue, participation to research projects etc. ^{xxiv}
Hungary		Composed of a supervision fee, penalties imposed by the regulator, administrative and service fees and other revenues. ^{xxv}
Kosovo	✓	license fees (one-off and annual) ^{xxvi}
Moldova	✓	license fee based on the companies’ revenues ^{xxvii}
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. ^{xxviii}
Poland	✓	License fee ^{xxix}
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 ^{xxx}
Serbia	✓	One-off license fee and annual license fee for performing transmission activities activities ^{xxxi}
Slovakia		state budget
Ukraine		regulatory contributions paid by economic entities that carry out activities in the fields of energy and utilities [regulatory fee] ^{xxxii}

Annex III – requirements for a local establishment

REQUIREMENT FOR A LOCAL ESTABLISHMENT

	WHOLESALE ELECTRICITY	WHOLESALE GAS
Austria		no
Albania		yes ^{xxxiii} [*]
Bosnia and Herzegovina	yes	yes Republika Srpska ^{xxxiv}
Bulgaria		no
Croatia		no
fYR of Macedonia		yes ^{xxxv}
Greece		no ^{xxxvi}
Hungary		no ^{xxxvii}
Kosovo*		yes ^{xxxviii} [*]
Moldova		yes ^{xxxix}
Montenegro	no	<i>No gas market</i>
Poland		no ^{xl}
Romania		no ^{xli}
Serbia		yes ^{xlii} [*]
Slovakia		yes ^{xliii}
Ukraine	yes ^{xliv}	no

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} 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.

^{xiv} 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).

^{xv} See the legal references for electricity.

^{xvi} 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).

^{xvii} 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.

^{xviii} 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).

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

^{xx} Article 4 of the Law “On transmission of electric power, regulator and system operator of Bosnia and Herzegovina”,

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

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

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

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

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

^{xxvi} Article 19 Energy Regulator Law.

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

^{xxviii} Article 51 of the Energy Law.

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

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

^{xxxi} Article 62 Energy Law.

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

^{xxxiii} 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.

^{xxxiv} 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.

^{xxxv} 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).

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

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

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

^{xxxix} 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.

^{xl} 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).

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

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

^{xliii} 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.

^{xliv} 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.

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