



# Annual Implementation Report

Executive Summary

Energy Community Secretariat

1 November 2023

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**Energy Community Secretariat**  
Am Hof 4  
1010 Vienna  
AUSTRIA

Tel: + 43 1 535 2222  
Fax: + 43 1 535 2222 11

Internet: [www.energy-community.org](http://www.energy-community.org)  
E-mail: [contact@energy-community.org](mailto:contact@energy-community.org)  
X: [twitter.com/ener\\_community](https://twitter.com/ener_community)

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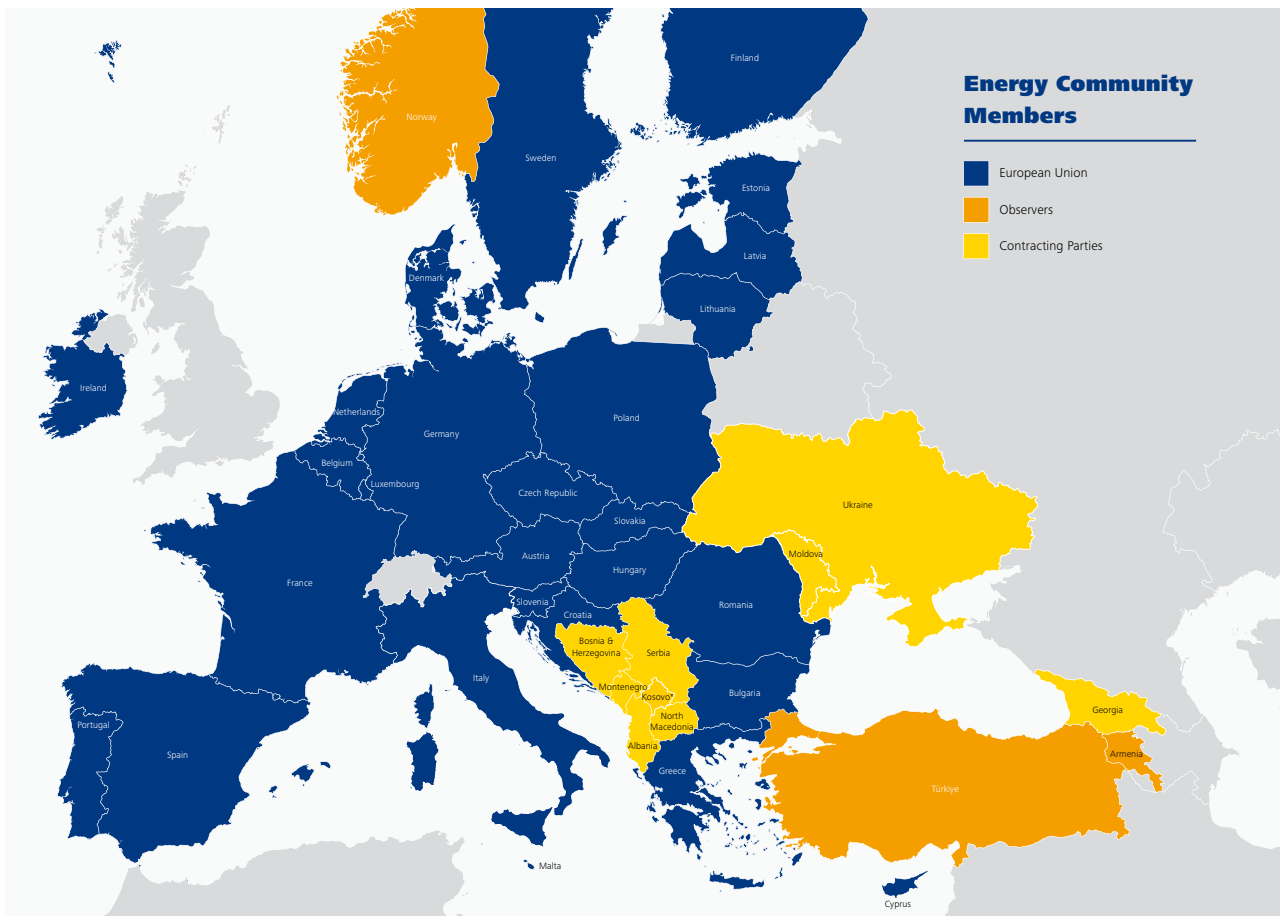


# 01 About us

## a. Presenting the Energy Community

The Energy Community extends the European Union (EU) internal energy market to its neighbouring countries. The principle objectives of the Energy Community are to create a regulatory

and market framework which is capable of attracting investments for a stable and continuous energy supply. By signing the Energy Community Treaty, the Contracting Parties committed to implementing key EU energy legislation within a fixed timeframe.



## b. Members

The Treaty establishing the Energy Community was signed in October 2005 in Athens. Following ratification by all Parties, the Treaty entered into force on 1 July 2006. As of 1 November 2023, the Parties to the Treaty are the European Union, and nine Contracting Parties, namely Albania, Bosnia and Herzegovina, Georgia, Kosovo\*,<sup>1</sup> North Macedonia, Moldova, Montenegro, Serbia and Ukraine. Armenia, Norway and Türkiye are Observers under Article 96 of the Treaty.

## c. Institutional setting

The Energy Community has its own institutional framework. The highest decision-making body is the Ministerial Council, which meets once a year to establish key priorities and adopt new legislation.

The Energy Community Secretariat, based in Vienna, is independent and performs the day-to-day work of the Community. The Secretariat is responsible for reviewing the progress made by the countries in transposing and implementing European energy law incorporated by the Energy Community Treaty.

<sup>1</sup> Throughout this Implementation Report, this designation is without prejudice to positions on status, and is in line with UNSCR 1244 and the ICJ Opinion on the Kosovo declaration of independence.



## 02 State of Implementation

Once again, the passing year saw the Energy Community entering new territory while staying true to its mission. The three key words defining 2023 were solidarity, integration and transition.

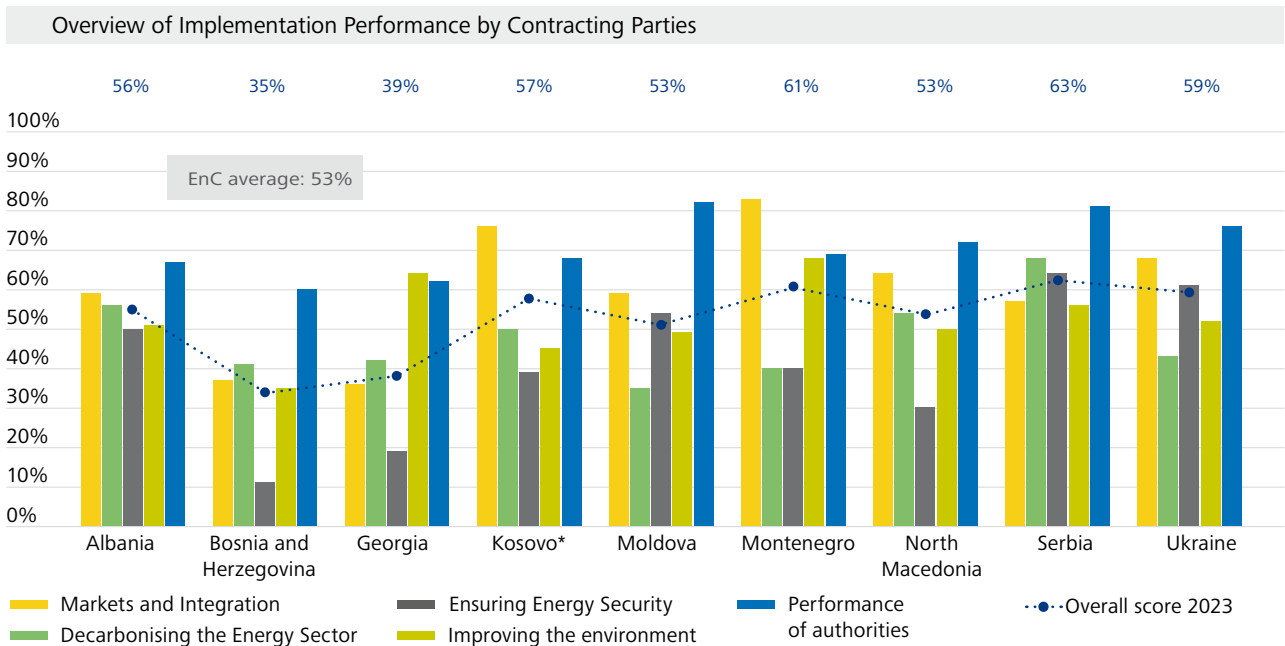
**Solidarity**, because the Energy Community continues to firmly stand behind its largest member, Ukraine, whose energy system remains under constant attack by the Russian invaders. At the Secretariat, we have reinforced our efforts to get Western equipment to where it is needed, we operate one of the largest and most efficient Funds procuring support on demand of Ukrainian energy companies, and facilitate the preparation of their lawsuits against the Russian aggressors. And all the while, we assist Ukraine in fast-tracking market reforms and observe the progress, showcased to international partners and investors under the umbrella of a market observatory established for that purpose.

**Integration**, because the Energy Community finally lives up to its original promise: to create a true energy market with the EU based on reciprocity and a level playing field. The electricity sector pioneers this development, based on the Electricity Integration Package adopted by the Ministerial Council in 2022. Once applied, it will include the Contracting Parties in the single day-ahead coupling, the single intraday coupling, the balancing platforms and the security of supply system established within

the European Union. Although yielding the full economic and security benefits for the EU and Contracting Parties from market coupling will require more efforts in years to come, the path of further energy integration is irreversible, taking into account an unambiguous EU enlargement perspective.

**Transition**, because the Energy Community delivers on the goals enshrined in the 2021 Decarbonisation Roadmap. Over the last months, renewable energy generation incentivized by market-based support schemes and auctions continued to attract investors to the Contracting Parties. The 2030 targets adopted last year guide the National Energy and Climate Plans (NECPs), the drafts of which are being submitted to the Secretariat for review. And finally, the introduction by the European Union of the carbon border adjustment mechanism (CBAM) underpinned the need to make progress on carbon pricing, the key instrument of the EU climate policy. The discussion about the appropriate design of such a system, possibly resulting in yet another integration milestone for the Energy Community and the EU, will continue during next year.

Harnessing these new opportunities and mastering the challenges depends on a solid foundation: implementation of the *acquis communautaire*. Without a sound legal framework, investors in renewables will not feel comfortable to expand in



the jurisdictions of the Contracting Parties, without increased efforts to transpose the Electricity Integration Package, market coupling will remain but a vision and without taking climate and environmental commitments seriously, the Green Deal will stop at the borders of a European Union which decided to charge for carbon leakage. The importance of timely transposition and full implementation even increases now that the Contracting Parties' energy stakeholders do not operate in a parallel system but are expected to comply with processes applied and bodies created within the European Union. Their relevance for the Energy Community has increased: The Agency for the Coordination of Energy Regulators (ACER), for instance was tasked to act "in the interest of the Energy Community as a whole" by a Procedural Act adopted at the end of 2022.

This year's Implementation Report features a number of changes, most notably a clustering of the areas which matter for the Energy Community: Markets and Integration, Decarbonising the Energy Sector, Ensuring Energy Security, Improving the Environment and Performance of the Authorities. What remains constant is a true and fair view of each Contracting Party's progress in the journey to become fully integrated members of Energy Europe. Among other factors, the relative changes in the Contracting Parties' implementation performance compared to last year are due to the entry into force of parts of the Clean Energy Package at the end of 2022. The Electricity Integration Package, to be transposed by 1 January 2024, will be reflected in next year's assessment. Enjoy the read.



Artur Lorkowski






Dirk Buschle



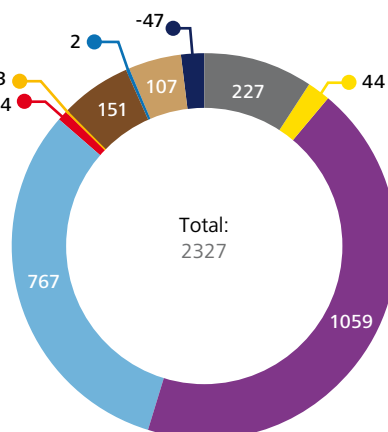
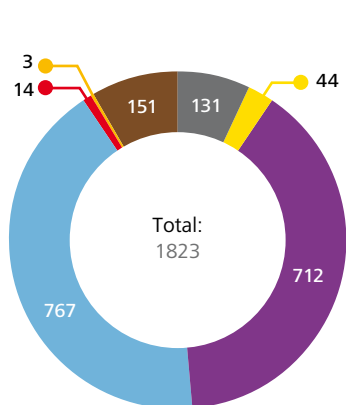
# Albania

## IMPLEMENTATION OVERVIEW

CLUSTER	IMPLEMENTATION STATUS	2023 HIGHLIGHTS AND NEXT STEPS
 <b>Markets and integration</b>	 <b>58%</b>	<p>A day-ahead electricity market was launched by the power exchange ALPEX in April 2023. Albania should proceed with the opening of the intraday electricity market along with the transposition and implementation of the Electricity Integration Package as a precondition for market coupling. Albania should implement the certification conditions for Albgaz to make it an operational gas transmission system operator.</p>
 <b>Decarbonising the energy sector</b>	 <b>56%</b>	<p>Albania revised the Renewables Law and established an operational registry for guarantees of origin for electricity. Albania should adopt the long-term building renovation strategy and complete the implementation of the Energy Efficiency Law.</p>
 <b>Ensuring energy security</b>	 <b>50%</b>	<p>Emergency state continues to be in force with the latest prolongation until 31 December 2023. Albania should transpose Regulation (EU) 2019/941 on Risk-preparedness in the Electricity Sector and start its implementation with the designation of a competent authority.</p>
 <b>Improving the environment</b>	 <b>53%</b>	<p>Albania progressed further in the field of nature protection, with the designation of the Vjosa national park, a development that should be expanded to other areas.</p>
 <b>Performance of authorities</b>	 <b>66%</b>	<p>By approving the electricity market rules and appointing the NEMO, ERE created one of the prerequisites for further market integration in line with the Electricity Integration Package. Following up on REMIT transposition, ERE should closely monitor the electricity market and take enforcement actions, if needed.</p>

2021 Fuel mix in primary production of energy (in ktoe)

2021 Gross available energy per product (in ktoe)










- Solid fossil fuels
- Natural gas
- Oil and petroleum products
- Hydro
- Solar thermal
- Solar photovoltaic
- Charcoal
- Primary solid biofuels
- Pure biodiesels
- Electricity

Source: EUROSTAT database

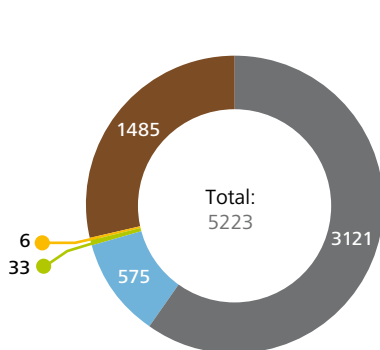


# Bosnia and Herzegovina

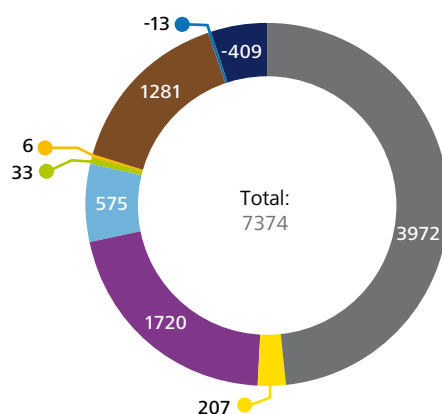
## IMPLEMENTATION OVERVIEW

CLUSTER	IMPLEMENTATION STATUS	2023 HIGHLIGHTS AND NEXT STEPS
 Markets and integration	 37%	The Law on Electricity adopted in the Federation of Bosnia and Herzegovina in August 2023 defined the missing legal framework for unbundling of distribution system operators, however with a two-year implementation period. The virtual interconnection point introduced by Gas Promet Pale increases opportunities for gas trading.
 Decarbonising the energy sector	 42%	Bosnia and Herzegovina submitted to the Secretariat its draft NECP within the prescribed deadline. Also its long-term low-emission development strategy was sent to UNFCCC. The Federation of Bosnia and Herzegovina adopted a renewable energy law and an energy labelling regulation, while Republika Srpska established an operational registry for guarantees of origin. Bosnia and Herzegovina should adopt the final NECP in line with the Recommendations provided by the Secretariat.
 Ensuring energy security	 11%	No progress has been made in establishing a compliant legal framework governing the security of supply in electricity, gas and oil sectors.
 Improving the environment	 35%	Environmental compliance remains low and the pressing issue of large combustion plants is still far from being resolved. The situation was worsened by the extended use of opted-out plants. Emission abatement measures must be taken immediately to address this.
 Performance of authorities	 60%	The energy regulator's institutional framework does not comply with the acquis. Within its limited legal competences, SERC continues to fulfill its regulatory tasks. The state aid authority rendered three decisions on illegal State aid.

2021 Fuel mix in primary production of energy (in ktoe)



2021 Gross available energy per product (in ktoe)



- Solid fossil fuels
- Natural gas
- Oil and petroleum products
- Hydro
- Wind
- Solar photovoltaic
- Primary solid biofuels
- Charcoal
- Electricity (exports)

Source: EUROSTAT

ECS-5/17 Electricity	Overall number of cases: <b>6</b>		ECS-8/11 S Gas
ECS-1/14 Energy efficiency	Procedures under Article <b>91</b> EnCT	Procedures under Article <b>92</b> EnCT	ECS-2/13 S Environment
ECS-3/18 Infrastructure			ECS-6/16 S Third Energy Package

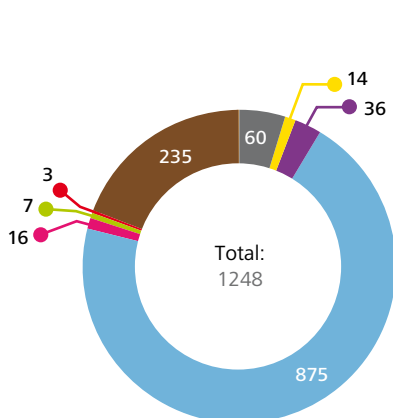


# Georgia

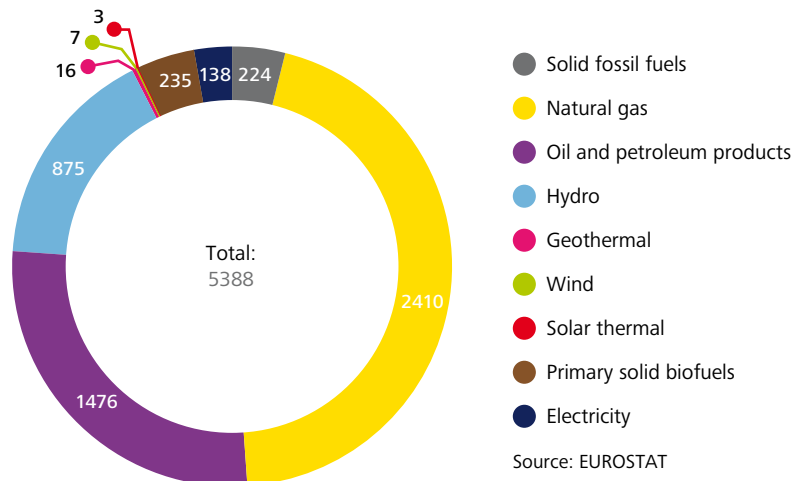
## IMPLEMENTATION OVERVIEW

CLUSTER	IMPLEMENTATION STATUS	2023 HIGHLIGHTS AND NEXT STEPS
 <b>Markets and integration</b>	 <b>36%</b>	<p>The Government postponed the opening of the electricity day-ahead, intraday balancing and ancillary services markets for 1 July 2024. The implementation of natural gas market concept design, gas market rules, gas distribution rules, unbundling of gas distribution system operator has also been postponed. Georgia should strive to open the wholesale electricity and gas markets and urgently finish the unbundling and certification of the electricity and gas transmission system operators, along with the transposition and implementation of the Electricity Integration Package.</p>
 <b>Decarbonising the energy sector</b>	 <b>42%</b>	<p>Georgia has submitted its draft NECP to the Secretariat. The country has also conducted its inaugural auction for renewable energy and established an operational registry for guarantees of origin for electricity by signing an agreement with a service provider. Georgia should adopt the Renewable Energy Law and adopt amendments to the Energy Efficiency Law in line with the acquis.</p>
 <b>Ensuring energy security</b>	 <b>19%</b>	<p>The Ministry has been appointed as the competent authority in line with the Risk-preparedness Regulation. The Government is postponing the adoption of gas security of supply rules which would transpose the Security of Supply Regulation. Parallel to the need to transpose the Regulation, Georgia should perform a risk assessment for the gas market and complete the risk-preparedness plan for the electricity sector.</p>
 <b>Improving the environment</b>	 <b>64%</b>	<p>Georgia stepped up its legislative efforts with the adoption of the Industrial Emissions Law and achieved good progress in the area of environment. Secondary legislation for combustion plants should be adopted.</p>
 <b>Performance of authorities</b>	 <b>62%</b>	<p>GNERC adopted the electricity market rules as well as dispute resolution rules in 2023. GNERC is yet again not investigating any anti-competitive conduct nor reviewing State aid measures in the energy sector.</p>

2021 Fuel mix in primary production of energy (in ktoe)



2021 Gross available energy per product (in ktoe)













Source: EUROSTAT





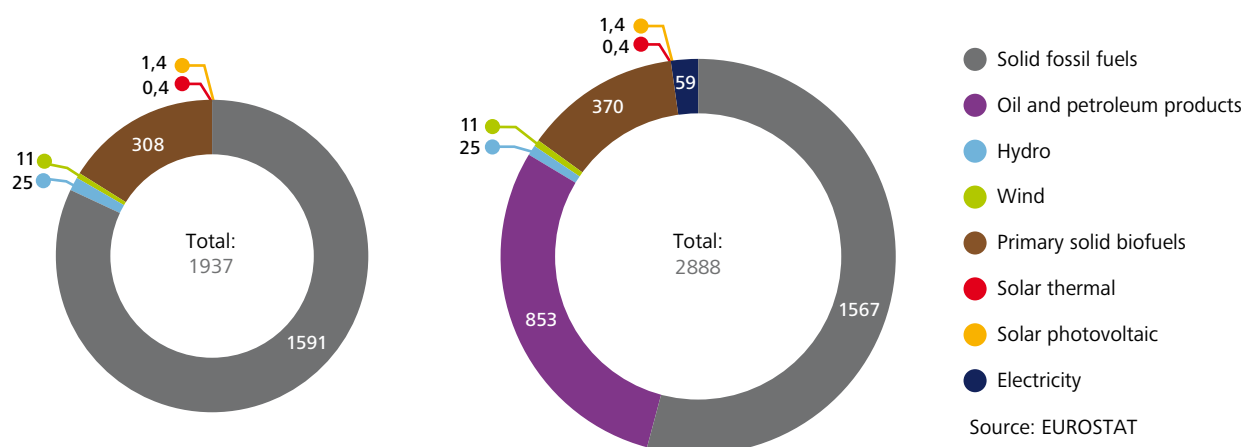
# Kosovo\*

## IMPLEMENTATION OVERVIEW

CLUSTER	IMPLEMENTATION STATUS	2023 HIGHLIGHTS AND NEXT STEPS
 Markets and integration	 76%	Opening of the day-ahead electricity market and its coupling with Albania is delayed. Kosovo* should proceed with the market coupling of Albania – Kosovo*, as well as with the adoption of the laws transposing the Electricity Integration Package.
 Decarbonising the energy sector	 49%	During the reporting period, Kosovo* submitted to the Secretariat its draft NECP and launched its inaugural solar PV auctions. Kosovo* should adopt the long-term building renovation strategy and adopt of the Renewable Energy Law in line with the acquis.
 Ensuring energy security	 39%	Significant unintentional deviations of the control area of Kosovo* and delayed payment for the costs incurred continue to represent a risk to the operational security in the synchronous area. The Law on Security of Networks and Information systems was adopted in February 2023. Kosovo* should transpose Regulation (EU) 2019/941 on Risk-preparedness in the Electricity Sector and start its implementation with the designation of a competent authority.
 Improving the environment	 45%	The implementation status in the area of environment remains at a low level. The long-standing breach of non-compliance with the National Emission Reduction Plan ceilings remains unaddressed. Emission abatement measures must be taken immediately to address this.
 Performance of authorities	 68%	By approving a set of rules governing the power exchange operation and appointing the NEMO, ERO created one of the prerequisites for further market integration in line with the Electricity Integration Package. The State Aid Commission remains inoperational due to the failure to appoint its members. The establishment of an operational State aid authority constitutes a priority.

2021 Fuel mix in primary production of energy (in ktoe)

2021 Gross available energy per product (in ktoe)



Overall number of cases: **1**











Procedure under Article **91** EnCT

ECS-5/22 Environment

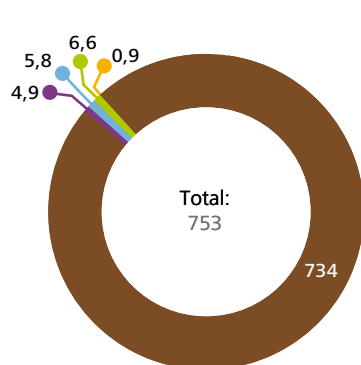


# Moldova

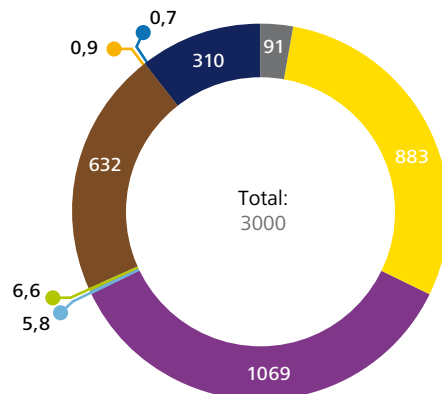
## IMPLEMENTATION OVERVIEW

CLUSTER	IMPLEMENTATION STATUS	2023 HIGHLIGHTS AND NEXT STEPS
 <b>Markets and integration</b>	 59%	<p>The transmission system operator Moldelectrica was certified on 11 July 2023 as an independent system operator. ANRE provisionally designated Vestmoldtransgaz as a natural gas transmission operator of the Moldovatransgaz network, the basis for the unbundling of the country's gas infrastructure operators. Moldova should accelerate the transposition and implementation of the Electricity Integration Package, prioritizing short-term electricity markets and their integration. The certification of Vestmoldtransgaz should be finalized, followed by the removal of barriers to create a genuine free gas market.</p>
 <b>Decarbonising the energy sector</b>	 37%	<p>Moldova keeps expanding its renewable energy capacities through a self-consumption scheme. It has made significant progress with the Clean Energy Package alignment by adopting the Energy Efficiency Law. To have the final version adopted within the deadlines set by the Governance Regulation, Moldova should submit the draft NECP to the Secretariat.</p>
 <b>Ensuring energy security</b>	 54%	<p>The emergency state is in force until 30 November 2023. The electricity supply contract with MGRES was extended until the end of 2024. The Law on Cybersecurity was approved in 2023. Moldova is independent of Russian gas supplies. It achieved the gas storage targets without formally implementing them. As a matter of priority within the regional context, the Government should transpose Regulation (EU) 2019/941 on Risk-preparedness in the Electricity Sector and update its sectoral risk-preparedness plan. Moldova needs to speed up the transposition of the Security of Gas Supply Regulation.</p>
 <b>Improving the environment</b>	 49%	<p>Due to fuel supply switches, the good compliance record of Moldova with emission regulations was broken. Compliance should be re-established without delay.</p>
 <b>Performance of authorities</b>	 82%	<p>ANRE exercised its competences regarding the unbundling of the gas transmission system operator and withdrew the license of Moldovatransgaz. Competences on REMIT in the electricity sector should be established.</p>

2021 Fuel mix in primary production of energy (in ktoe)



2021 Gross available energy per product (in ktoe)



- Solid fossil fuels
- Natural gas
- Oil and petroleum products
- Hydro
- Wind
- Primary solid biofuels
- Solar photovoltaic
- Charcoal
- Electricity

Source: EUROSTAT

Procedures under Article **91** EnCT

Overall number of cases: **2**











ECS-7/18 Environment

ECS-24/21 Environment



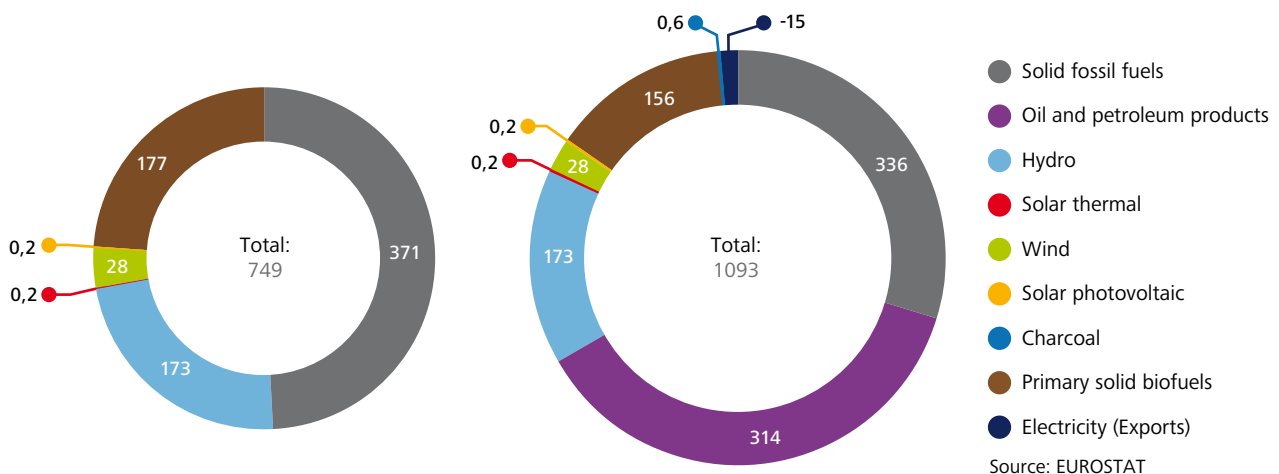
# Montenegro

## IMPLEMENTATION OVERVIEW

CLUSTER	IMPLEMENTATION STATUS	2023 HIGHLIGHTS AND NEXT STEPS
 Markets and integration	 83%	A day-ahead electricity market was launched by the Montenegrin power exchange MEPX in April 2023. Montenegro should focus on the transposition and implementation of the Electricity Integration Package as a precondition for the coupling of its day-ahead market.
 Decarbonising the energy sector	 40%	Montenegro progressed with amendments of the Energy Efficiency Law and new labelling regulations. Montenegro should submit the draft NECP to the Secretariat with a targeted approach to coal phase-out.
 Ensuring energy security	 40%	A draft Law on Information Security transposing the NIS2 Directive was drafted in 2023. It should be adopted in the next reporting period. Regulation (EU) 2019/941 on Risk-preparedness in the Electricity Sector should be transposed and its implementation should start with the designation of a competent authority.
 Improving the environment	 68%	Montenegro's good track record in the area of environment is overshadowed by the long-standing non-compliance of TPP Pljevlja with the rules on limited lifetime derogation under the Large Combustion Plants Directive. The plant is expected to comply with the Industrial Emissions Directive's limit values after its rehabilitation.
 Performance of authorities	 69%	The Agency for Competition Protection adopted its first two decisions regarding State aid in the energy sectors.

2021 Fuel mix in primary production of energy (in ktoe)

2021 Gross available energy per product (in ktoe)





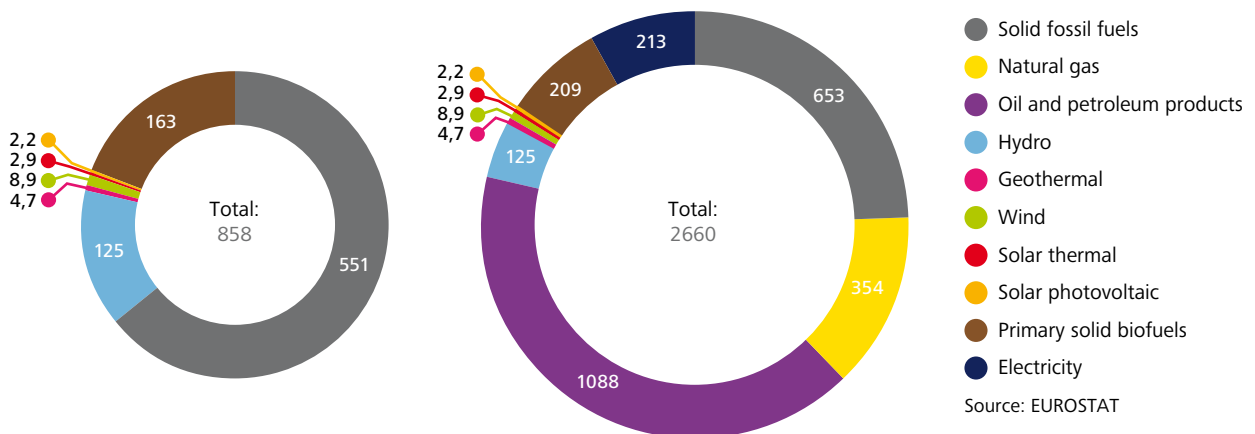
# North Macedonia

## IMPLEMENTATION OVERVIEW

CLUSTER	IMPLEMENTATION STATUS	2023 HIGHLIGHTS AND NEXT STEPS
Markets and integration	64%	<p>A day-ahead electricity market was launched in May 2023 by the market operator MEMO. North Macedonia should focus on the transposition and implementation of the Electricity Integration Package as a precondition for the coupling of its day-ahead market. North Macedonia merged two gas companies into one functional transmission system operator and prepared its unbundling. The gas transmission system operator signed an interconnection agreement with Bulgaria, unlocking a part of hoarded gas capacities. The certification of Nomagas should be finalized.</p>
Decarbonising the energy sector	53%	<p>North Macedonia has considerably expanded its renewable energy capacities through a self-consumption scheme and has progressed on energy efficiency with a focus on finalising the amendments of the Energy Efficiency Law. North Macedonia should adopt the Renewable Energy Law and the amending the Energy Efficiency Law.</p>
Ensuring energy security	30%	<p>The regulatory authority adopted cybersecurity rules in June 2023. Regulation (EU) 2019/941 on Risk-preparedness in the Electricity Sector should be transposed and its implementation should start with the designation of a competent authority. North Macedonia should transpose the Security of Gas Supply and the Storage Regulations.</p>
Improving the environment	50%	<p>North Macedonia achieved limited progress in the area of environment. The long-standing non-compliance with the National Emission Reduction Plan ceilings remains unaddressed. Emission abatement measures must be taken immediately to address this.</p>
Performance of authorities	72%	<p>The regulatory authority completed the transposition of REMIT by adopting three secondary legal acts.</p>

2021 Fuel mix in primary production of energy (in ktoe)

2021 Gross available energy per product (in ktoe)



Overall number of cases: **1**

Procedure under Article **91** EnCT

ECS-22/21 Environment

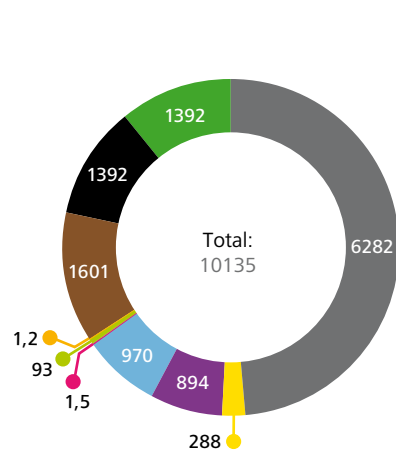


# Serbia

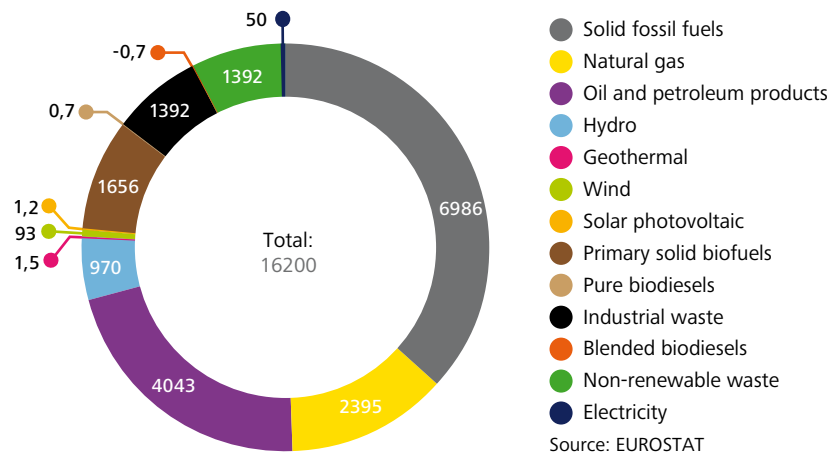
## IMPLEMENTATION OVERVIEW

CLUSTER	IMPLEMENTATION STATUS	2023 HIGHLIGHTS AND NEXT STEPS
Markets and integration	57%	Amendments to the Serbian Energy Law as of July 2023 allow for the compliant unbundling of the electricity and gas transmission system operators. The intraday electricity market was launched in July 2023. Serbia should focus on the transposition and implementation of the Electricity Integration Package as a precondition for the coupling of its short-term markets. Serbia should certify the gas transmission and storage operators, grant third party access at the interconnection points, and remove any other obstacles to new market entrants.
Decarbonising the energy sector	68%	Serbia submitted its draft NECP within the prescribed deadline and adopted its long-term strategies on low-emission development and building renovation strategy. Serbia revised its Renewable Energy Law and conducted an inaugural auction for renewable energy. Serbia should adopt the final NECP in line with the Recommendations provided by the Secretariat.
Ensuring energy security	64%	Although the Gas Storage Regulation is yet to be transposed, Serbia fulfilled its storage targets. Serbia should transpose the Security of Gas Supply and the Storage Regulations. Regulation (EU) 2019/941 on Risk-preparedness in the Electricity Sector should be transposed and its implementation should start with the designation of a competent authority.
Improving the environment	56%	Serbia made moderate progress in the area of environment. Environmental impact assessments are still not regulated in a compliant manner, which should be addressed without further delay.
Performance of authorities	81%	No progress was made with regard to the enforcement by AERS of unbundling of gas transmission operators or third party gas access to gas interconnection points.

2021 Fuel mix in primary production of energy (in ktoe)



2021 Gross available energy per product (in ktoe)













Source: EUROSTAT

ECS-23/21 Environment	Overall number of cases: <b>5</b>		ECS-9/13 S Gas
ECS-9/23 Environment	Procedures under Article <b>91</b> EnCT	Procedures under Article <b>92</b> EnCT	ECS-10/17 S Gas
			ECS-13/17 S Gas



# Ukraine

## IMPLEMENTATION OVERVIEW

CLUSTER	IMPLEMENTATION STATUS	2023 HIGHLIGHTS AND NEXT STEPS
 <b>Markets and integration</b>	 69%	<p>The Law on REMIT was adopted in June 2023 and its implementation started. Ukraine certified its gas storage operator. Ukraine should accelerate transposition and implementation of the Electricity Integration Package as a precondition for the coupling of its short-term markets. Ukraine should re-establish the gas market fundamentals and further strengthen the unbundling status of GTSOU.</p>
 <b>Decarbonising the energy sector</b>	 44%	<p>Ukraine adopted a law which provides the legal framework for implementing a guarantees of origin registry, introduces a net billing scheme for self-consumption and provides directions for future renewable energy auctions. Ukraine should submit the draft NECP to the Secretariat.</p>
 <b>Ensuring energy security</b>	 61%	<p>The operation of the electricity system was preserved despite severe energy infrastructure damages caused by the Russian military aggression. Ukraine fulfilled the gas storage targets. Ukraine should improve the risk-preparedness planning starting with the transposition of the Regulation (EU) 2019/941 on Risk-preparedness in the Electricity Sector and the designation of a competent authority. Ukraine should adopt a risk assessment for the gas market and transpose the Security of Gas Supply Regulation.</p>
 <b>Improving the environment</b>	 52%	<p>In Ukraine, implementation of the environmental acquis is overshadowed by the ongoing military aggression. Nevertheless, compliance is still high.</p>
 <b>Performance of authorities</b>	 76%	<p>The regulator certified the gas storage system operator in line with the Energy Community gas regulation and adopted a set of secondary legislation acts enabling REMIT implementation. NEURC should adopt the remaining REMIT legislation and launch the relevant investigatory and enforcement actions.</p>

Overall number of cases: **2**

Procedures under Article **91** EnCT

ECS-1/18 Energy efficiency

ECS-4/18 Infrastructure



# 03 Focus: Electricity Integration Package

The commitment of the Energy Community Contracting Parties and the European Union to fully integrate Contracting Parties' markets into the EU internal electricity market based on reciprocity was sealed by the adoption of the Electricity Integration Package by the Ministerial Council of the Energy Community in December 2022.

Incorporating the European Union's electricity market acquis in the Energy Community, the Electricity Integration Package consists of nine legal acts underpinned by the Procedural Act on Regional Market Integration, which establishes reciprocity between the energy sector stakeholders of the Contracting Parties and the EU Member States.

## Transposition – an ultimate precondition

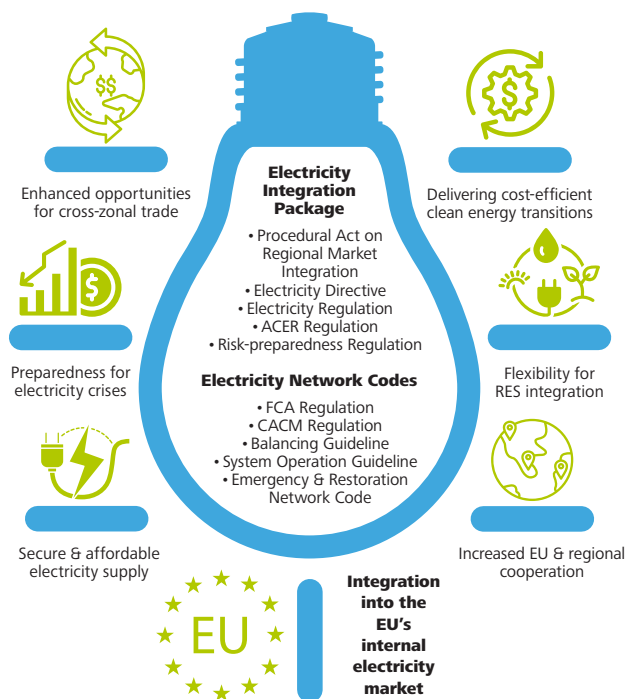
With 31 December 2023 as the deadline, the transposition of the Electricity Integration Package into the national legislation was in the focus of the Energy Community's activities throughout 2023.

The Contracting Parties commenced the transposition of the Electricity Integration Package with consultancy support provided by the European Union under the EU4Energy project, other donors or by the Secretariat. However, up to date none of the Contracting Parties was able to complete this challenging task. While the Secretariat received draft primary legislation submitted by Serbia and Ukraine, the other Contracting Parties are still to develop. Delays in transposition are to be expected for all Contracting Parties. In addition, the need to subsequently develop and adopt secondary legislation will further delay full transposition, and the start of the implementation. As a precondition for the integration into the EU internal electricity market, the transposition of the new Electricity Integration Package must speed up and be completed in a fully compliant manner. Full harmonisation with the EU rules, including ACER's decision-making power on the borders between EU Member States and the Contracting Parties, is required for the Contracting Parties' stakeholders to join the EU's electricity market and projects such as the single day-ahead (SDAC) or intraday market coupling (SIDC).

## Implementation – impossible without regional cooperation

Along with the transposition, some elements of implementation of the Electricity Integration Package were already due during 2023. In accordance with the Commission Regulation (EU) 2015/1222 establishing a Guideline on Capacity Allocation

and Congestion Management (CACM), as adapted and adopted in the Energy Community, the Contracting Parties were required to notify the Secretariat by 15 February in case of the existence of a national legal monopoly for day-ahead and intraday trading services. Further to this, Contracting Parties were obliged to ensure that at least one nominated electricity market operator (NEMO) is designated to perform the single day-ahead and intraday coupling by 15 June 2023. With delay, Albania, Kosovo\*, North Macedonia and Serbia have informed the Secretariat of a NEMO designation.



At European level, a plan setting out a timeline and detailed description of the Contracting Parties' NEMOs integration into Market Coupling Operator (MCO) functions, the so-called MCO Integration Plan, was initiated by all EU Member States' NEMOs. The draft MCO Integration Plan will be submitted for ACER's approval by 15 December 2023.

Furthermore, the CACM established capacity calculation regions (CCRs) in the Energy Community, namely Eastern Europe (EE), Italy-Montenegro and Shadow South-East Europe (Shadow SEE). The CCRs include bidding zone borders with neighbouring EU Member States. Transmission system operators of the respective CCRs should have submitted coordinated capacity calculation methodologies, along with cooperation agreements within the Shadow SEE and the EE CCR by 15 June 2023. Discussions in the Energy Community Task Force within ENTSO-E on a possible reconfiguration of the established CCRs are delaying their

operationalisation. This also affects other milestones depending on the establishment of the CCRs, including operationalisation of system operation regions, regional coordination centers and the implementation of Regulation (EU) 2019/941 on Risk-preparedness in the Electricity Sector.

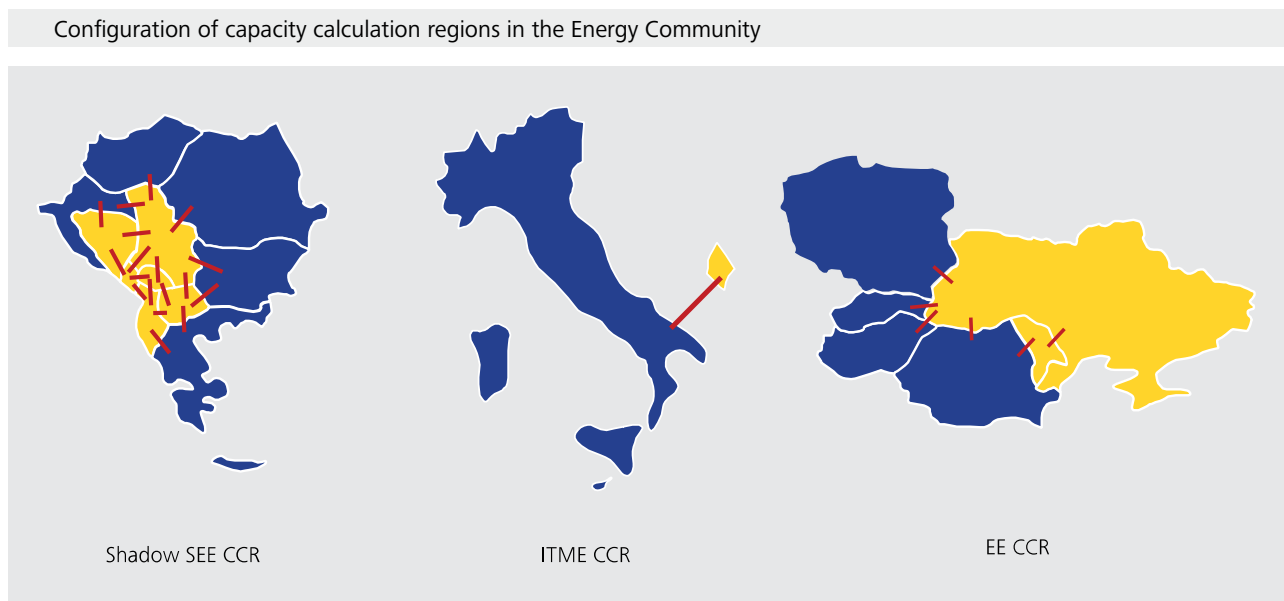
Moreover, the implementation of the Commission Regulation (EU) 2016/1719 establishing a Guideline on Forward Capacity Allocation should have already started. All transmission system operators were expected to apply EU harmonized allocation rules by 15 June 2023, and were required to submit to all national regulatory authorities requirements for the regional allocation platform serving the transmission system operators of Contracting Parties. By 31 December 2023, transmission system operators of Contracting Parties and neighbouring EU Member State are expected to conclude bilateral agreements on whether the forward capacity allocation for bidding-zone borders between two transmission system operators will be performed by the regional allocation platform (SEE CAO) or the single European allocation platform (JAO).

According to the Commission Regulation (EU) 2017/2195 establishing a Guideline on Electricity Balancing, each transmission system operator was required to submit national terms and

conditions for balancing to their regulator for approval by 15 June 2023. Unfortunately no such rules have been approved. Furthermore, no European, regional or national terms, conditions and methodologies defined by the Electricity Integration Package have been submitted for approval.

The timeline for Contracting Parties to adhere to the SDAC and SIDC will de facto also be driven by the CBAM Regulation, which requires the market coupling to be completed by the end of 2025 as one of the preconditions for obtaining an exemption for imports into the EU.

Ultimately, the progress towards integration into the European SDAC and SIDC will largely depend on the transmission system operators' cooperation on a regional and European level, as a basic building block of the Electricity Integration Package. They will not achieve market coupling in opposition to each other and risk foregoing significant welfare gains for their respective economies if implementation is not managed in cooperation and good faith.







# 04 Report on enforcement and dispute resolution activities

OCTOBER 2022 – OCTOBER 2023

Based on Article 67(b) of the Treaty establishing the Energy Community, the Secretariat reviews the proper implementation by the Parties of their obligations under the Treaty and initiates dispute settlement procedures when needed (Article 90 of the Treaty). The Secretariat reports annually on implementation and, in accordance with Article 2(5) of the Energy Community Dispute Settlement Rules as amended in 2015 (Dispute Settlement Rules), submits to the Ministerial Council an annual report on the application and interpretation of Energy Community law by national authorities of the Contracting Parties within the framework of cooperation between the Secretariat and the national authorities of the Contracting Parties. Finally, the Secretariat's Procedural Act on the Establishment of a Dispute Resolution and Negotiation Centre (the "Centre"), together with Article 19(2) of the Dispute Settlement Rules require the Centre to draft a report on the results of the negotiations and the closure of the cases for submission to the Ministerial Council.

The present report covers these three sets of dispute resolution activities with the involvement of the Secretariat and is divided in three parts: activities based on Articles 90 et seq. of the Treaty related to dispute settlement cases (Part I), activities based on Article 2 of the Dispute Settlement Rules related to cooperation with national authorities (Part II) and activities of the Dispute Resolution and Negotiation Centre (Part III).

## PART I: Dispute settlement cases

The Energy Community Treaty provides for a dispute settlement procedure, which is meant to ensure the enforcement of the commitments under the Treaty. A preliminary procedure precedes the submission of a case of non-compliance to the Ministerial Council under Article 91 of the Treaty. It may be initiated by the Secretariat by way of an Opening Letter to be followed, as the case may be, by a Reasoned Opinion and Reasoned Request to the Ministerial Council. The procedure is closed upon compliance by the Party concerned with its obligations under the Treaty at any time of the preliminary procedure or with a decision of the Ministerial Council. If a breach identified by the Ministerial Council has not been rectified, a procedure for a decision under Article 92 of the Treaty may be initiated. If a Party to the Treaty persistently fails to comply with its obligations, the Ministerial Council may suspend certain rights derived from the application of the Treaty, including voting rights and right to participate in meetings or mechanisms provided for in the Treaty.

By the time of drafting the present report, 18 cases are open in preliminary procedure under Article 91 of the Treaty, of which seven have been referred to the Ministerial Council by way of Reasoned Requests under Article 91 of the Treaty. No case has

been referred to the Ministerial Council under Article 92 of the Treaty in this reporting period.

The state of implementation for each Contracting Party contains information about the open dispute settlement cases. In addition, for each Contracting Party the report includes information on dispute settlement cases presented in boxes: under Article 91 in cases where the procedure has been closed with the adoption of a Ministerial Council decision, but the breach has not been rectified yet and under Article 92 where the breaches are not rectified despite adoption of Ministerial Council decisions establishing a serious and persistent breach or imposing measures under Article 92 of the Treaty.

Cases in which the Ministerial Council has adopted a decision under Article 91 and have been followed up by opening a procedure under Article 92 of the Treaty, are reflected only in the boxes related to Article 92.

### Reasoned Requests submitted to the Ministerial Council for a Decision under Article 91 of the Treaty

On 13 July 2023, the Secretariat submitted three Reasoned Requests to the Ministerial Council under Article 91 of the Treaty based on Article 11(3) of the Dispute Settlement Rules for non-transposition of *acquis communautaire*. Those cases address the lack of transposition of Environmental Liability Directive 2004/35/EC in Cases ECS-10/23 against Bosnia and Herzegovina, ECS-11/23 against Kosovo\* and ECS-13/23 against Moldova. In addition, Reasoned Requests in Cases ECS-7/21 against North Macedonia, ECS-8/21 against Kosovo\* and ECS-9/21 against Bosnia and Herzegovina related to the non-compliance with the emission ceilings established under the National Emission Reduction Plans (NERPs), as well as in Case ECS-15/21 against Montenegro for non-compliance with the rules of the Large Combustion Plants Directive on limited lifetime derogation of TPP Pljevlja have been submitted to the Ministerial Council pursuant to Article 90 of the Energy Community Treaty, in line with Article 29 of the Dispute Settlement Rules.

### Cases where breaches have been established by the Ministerial Council Decision (Article 91 of the Treaty) which have been subsequently rectified by the Party in question

Out of 34 cases in which the Ministerial Council adopted a decision establishing a breach under Article 91 of the Treaty, 18 cases have been complied with by the Contracting Parties concerned. Only one of those breaches has been rectified during

the reporting period, whereas compliance with the others has been achieved earlier. Namely, with the entry into force on 2 July 2023 of the Law on Amendments to some laws of Ukraine regarding the prevention of abuse in the wholesale energy markets, the REMIT Regulation has been transposed, and Ukraine ensured compliance with the Ministerial Council decision in Case ECS-4/21.

### **Cases where breaches have been established by the Ministerial Council Decision (Article 91 of the Treaty) which have not been subsequently rectified by the Party in question**

The two cases in which the 2022 Ministerial Council adopted decisions establishing breaches under Article 91 of the Treaty have not been complied with by the Contracting Parties concerned. These are Cases ECS-5/17 against Bosnia and Herzegovina related to lack of unbundling of the distribution system operator and ECS-5/22 against Kosovo\* for non-transposition of Environmental Impact Assessment Directive. The third case that has also been referred to the Ministerial Council for decision in 2022, Case ECS-4/22 against North Macedonia concerning the lack of transposition of the REMIT Regulation, has been closed in a preliminary procedure after Parliament adopted amendments to the Energy Law and North Macedonia rectified the breach.

In addition to those cases, the Contracting Parties concerned have not complied with 14 decisions by the Ministerial Council establishing breaches under Article 91 of the Treaty adopted at earlier meetings. In six of those cases, procedures under Article 92 of the Treaty have been initiated. This concerns cases in which Bosnia and Herzegovina and Serbia have not complied with a number of Ministerial Council decisions adopted under Article 92 of the Treaty already. Those are Cases ECS-9/13 S and ECS-10/17 S against Serbia for unbundling of natural gas transmission systems operators, as well as Case ECS-13/17 S for the failure to ensure third party access to the Horgoš interconnection point between Serbia and Hungary. Bosnia and Herzegovina has not ensured compliance in Case ECS-8/11 S concerning the lack of implementing the Second Energy Package in gas, the lack of transposition of the Third Energy Package in Case ECS-6/16 S and the lack of implementation of Sulphur in Fuels Directive in Case ECS-2/13 S. Due to progress, the Secretariat did not continue the procedure under Article 92 of the Treaty. Namely, in July 2023, amendments to the Energy Law were adopted in Serbia, the implementation of which is expected to rectify the breaches related to unbundling of transmission system operators. Moreover, in August 2023 the Federation of Bosnia and Herzegovina adopted a new Electricity Law, so that both entities of this Contracting Party now have legislation compliant with the Third Energy Package related to electricity.

### **Open preliminary procedures in 2022**

Currently, there are 18 cases subject to a preliminary procedure. As explained above, seven of those cases have been referred to the Ministerial Council by way of Reasoned Requests under Article 91 of the Treaty. In addition to the three cases for non-transposition of the Environmental Liability Directive

which have been referred to the Ministerial Council without a preliminary procedure, another new case has been opened after last year's Implementation Report: Case ECS-1/23 against Georgia concerning the failure to unbundle and certify the gas and electricity transmission system operators.

### **Reporting on open cases in 2023 Implementation Report/Contracting Party chapters**

On the first page of each Contracting Party chapter, the report displays open cases under both Article 91 and Article 92 of the Treaty, as well as cases where the procedure under Article 91 of the Treaty has been closed with adoption of a Ministerial Council decision, but the breach has not been rectified yet. Cases in which the Ministerial Council has adopted a decision under Article 91 and have been followed up by opening a procedure under Article 92 of the Treaty, are reflected only in the boxes related to Article 92.

It also includes cases where the breaches are not rectified despite adoption of Ministerial Council decisions establishing serious and persistent breach or imposing measures under Article 92 of the Treaty.

### **PART II: Report on cooperation with national authorities under Article 2 DSR**

Article 2 of Dispute Settlement Rules provides for a cooperation mechanism between national authorities and the Secretariat by which national authorities can ask the Secretariat for assistance regarding questions of interpretation or application of Energy Community law. In the past reporting period, this mechanism has been used once.

In Bosnia and Herzegovina, the Secretariat was consulted by the State aid authority regarding the calculation of the value of State aid in case of State guarantees. In particular, the State aid authority inquired about the level of the unpaid market premium constituting the illegally conferred economic advantage which must be recovered.

### **Part III: Activities of the Energy Community Secretariat's Dispute Resolution and Negotiation Centre**

The Energy Community Secretariat's Dispute Resolution and Negotiation Centre has continued to be involved in the settlement of disputes in the Contracting Parties, thus increasing regulatory stability for the benefit of consumers, governments and investors alike. Considering the general instability on the energy markets throughout the region, most of the instances in which the Dispute Resolution and Negotiation Centre provided support remained at an informal level.

Dispute 12/2022 concerned three hydropower projects built on the Dečan river and the impacts resulting from their construction and operation. After a series of meetings between

the mediators, the Ministry of Environment, Spatial Planning and Infrastructure of Kosovo and KelKos Energy sh.p.k., Dispute 12/2022 was closed upon request of the latter.

Throughout 2023, the focus of the Secretariat's Dispute Resolution and Negotiation Centre was to support Ukrainian energy companies for the preparation of legal claims against the Russian Federation for its intentional destruction of Ukraine's energy infrastructure and generation facilities. To this end, it entered into memoranda of understanding with the biggest Ukrainian public energy companies, which have incurred significant amounts of damages: Ukrenergo (the Ukrainian electricity transmission system operator), Energoatom (the Ukrainian nuclear energy company) and Ukrhydroenergo (the Ukrainian hydropower generating company). This resulted in the establishment of the Ukraine Legal Support Platform, on which law firms and qualified independent practitioners can join the effort to recover the damages inflicted upon Ukraine's critical energy infrastructure by dedicating any number of pro bono hours for various projects. Until October 2023, 61 law firms and independent experts had joined the platform. The first requests for individual offers for services have been sent to the platform, and Ukrainian energy companies are in the process of selecting the legal service providers. In the coming months, under the coordination of the Centre, claims for establishing the accountability of the Russian Federation for destruction of Ukraine's critical energy infrastructure and recovering damages will be filed before national and international courts and tribunals.



# 05 Report on national measures to tackle the impacts of the energy price surge

## Background

The picking up of global energy demand due to increased economic activity necessary for the economic recovery from the COVID-19 pandemic, combined with the direct and indirect consequences of the military aggression of Russia against Ukraine, has resulted in a surge in energy commodity prices. The Contracting Parties have taken measures to tackle the impact of the energy price surge in the beginning of 2022.

Based on a checklist that the Secretariat shared with the Contracting Parties on 21 July 2022, it has assessed the measures adopted for compliance with the Energy Community acquis on public service obligations (PSO) and State aid. The findings and the recommendations of the Secretariat have been presented to the PHLG on 28 September 2022.

At its meeting on 15 December 2022, the Ministerial Council invited the Contracting Parties to align with the measures taken by the European Union to mitigate the exposure to high energy prices to the extent applicable to their economies. The Ministerial Council also invited the Secretariat to assist the Contracting Parties as well as to continue monitoring compliance of national measures with the acquis and to bring concerns to the attention of the Ministerial Council. The present report is prepared with that objective.

The Secretariat was also invited by the Ministerial Council to assist Contracting Parties wishing to negotiate with EU Member States bilateral agreements on the sharing of surplus revenues in the spirit of solidarity and Article 11 of Council Regulation (EU) 2022/11854 of 6 October 2022 on an Emergency Intervention to Address High Energy Prices. The only request was received by North Macedonia, which aimed at negotiating a bilateral contract for supply of electricity with Bulgaria, a contract that could have been concluded between the Bulgarian generators and importers from North Macedonia. However, the negotiations failed because the Bulgarian market model does not allow sale of electricity in bilateral contracts, and it imposes an obligation on all generators to sell electricity via the power exchange IBEX.

## Energy emergency situation and national measures

Albania, Kosovo\*, North Macedonia and Moldova declared the emergency state for the energy sectors. In Albania and Moldova those are still in place until December 2023.

Most of the measures adopted by the Contracting Parties to address the impact of the energy crisis have been phased out. Nonetheless, a few measures that are still in force raise concerns about compliance with the Energy Community acquis, namely:

- the measures for purchasing electricity for covering network losses in a non-market-based procedure in Albania for a not specified period of time fails to comply with the Directive 2009/72/EC requiring that the network operators have to purchase electricity for covering losses in a market-based procedure;
- the so-called equity fee in Moldova imposed on all customers that would like to exercise their eligibility right, representing a switching fee prohibited by the Directive 2009/73/EC;
- the provisions in the Energy Law of Montenegro allowing the Government to adopt retroactive PSOs and the lack of criteria establishing “*extreme electricity price increases on the market*”.

The Secretariat has communicated its assessment with the authorities of the Contracting Parties in question and has proposed steps to ensure compliance with the acquis. Amending the legislative framework to ensure transposition of the Electricity Integration Package would be an opportunity to repeal these measures.

Finally, the Secretariat has assessed also various measures taken during martial law in Ukraine and has published the relevant assessments under the Ukraine Energy Market Observatory.

Energy Community Secretariat (ECS)  
Am Hof 4, 1010 Vienna, Austria  
Phone: 0043 (0)1 535 2222  
Fax: 0043 (0)1 535 2222 11  
Email: [info@energy-community.org](mailto:info@energy-community.org)  
Web: <http://www.energy-community.org>