



***Energy Governance in Belarus
Policy Recommendations***

Energy Community Secretariat
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INTRODUCTION

The Republic of Belarus is situated in Eastern Europe at the crossroads of strategic transit pipelines for gas and oil, connecting Western Europe, the Russian Federation and Asia. The landlocked country's electricity system is interconnected with Russia to the northeast, Ukraine to the south, Poland to the west, and Lithuania to the northwest.

The strategy for the development of the energy potential of Belarus until 2020 aims to improve the legal, organizational, economic and technical conditions for ensuring effective development of the energy potential of Belarus and improving the level of energy security of the country.

Belarus joined the Eurasian Economic Union (EAEU) in 2014. It has thus chosen a policy orientation, which does not completely comply with the *acquis communautaire*. In any event, there is broad agreement between experts and government representatives that electricity sector reform following the basic principles of the legal framework upon which the European Union and the Energy Community Contracting Parties have successfully reformed their energy sectors would be beneficial also for Belarus.

The energy sector of Belarus shares many characteristics and challenges with other countries in the Eastern Partnership region, which are already Parties or Observers to the Energy Community. The similarities between the energy sector of Belarus and its neighbours are of a historical, technical and regulatory nature. The status of Moldova (Party) and Armenia (Observer) show that infrastructure operation by a third-country company and membership in the Eurasian Economic Union, respectively, are no obstacles to an accession of a country to the Energy Community as Observer (or even as a Party).

By the present analysis, including the policy recommendations therein, the Energy Community Secretariat makes an effort to support Belarus in designing and implementing effective reform measures in its energy sectors in line with best European and Energy Community practices. The analysis shows that energy governance as envisaged by the EAEU is on many occasions compatible with the EU/Energy Community *acquis*.

The Secretariat stands ready to assist Belarus in related policy reforms should such assistance be requested.

1. Policy Context

a. The Status of Belarus in the Energy Community

The Energy Community is an international organisation which brings together the European Union¹ and its neighbours to create an integrated pan-European energy market. The organisation was founded by the Treaty establishing the Energy Community signed in October 2005 in Athens, Greece, in force since July 2006². The key objective of the Energy Community is to extend the EU internal energy market rules and principles to countries in South East Europe, the Black Sea region and beyond on the basis of a legally binding framework. By signing the Energy Community Treaty, the countries committed to implementing key EU energy legislation within a fixed timeframe.

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. Since 2006, the Energy Community *acquis* has significantly evolved to incorporate new directives and regulations. Presently, the *acquis* consists of nineteen directives and eight regulations, covering legislation on electricity, gas, oil, infrastructure, renewable energy, energy efficiency, competition and State aid, environment and statistics.

The Energy Community Secretariat, based in Vienna, 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 EU energy law covered by the Energy Community Treaty.

Article 96 of the Energy Community Treaty provides that a neighbouring third country may, upon a reasoned request, be accepted by the Ministerial Council as Observer to the Energy Community. The adoption of a related Decision requires unanimity of all Parties to the Treaty. Observers are entitled to attend the meetings of the Energy Community institutions. As opposed to Parties to the Treaty, Observers are not obliged to implement the *acquis*, they do not participate in decision-making procedures and are not part of the Single Energy Market established by the Treaty. Current Observers to the Treaty are Armenia, Norway and Turkey. Georgia, a former Observer, acceded to the Energy Community as a Party by Decision of the Ministerial Council of 14 October 2016.

By letter dated 4 October 2016 addressed to the Presidency in Office of the Energy Community, the Minister of Energy of Belarus requested the Ministerial Council “to accept Republic of Belarus as an Observer to the Energy Community under Article 96 of the Treaty establishing the Energy Community”. At its meeting on 14 October 2016 in Sarajevo, “[the] Ministerial Council took note of the request of Belarus to become an Observer under Article 96 of the Treaty. The Ministerial Council will come back to this request by written procedure as soon as possible.”

Belarus is already a member of the Eastern Partnership group and part of the European Union’s (EU) Neighbourhood Policy. In the same capacity, Belarus is also one of six beneficiaries of the EU4Energy Programme. The latter’s Component 3 “Legislative and Regulatory Environment and Key

¹ Signed originally by the European Community, succeeded in the meantime by the European Union.

² The original signatories are Albania, Bosnia and Herzegovina, Bulgaria, Croatia, former Yugoslav Republic of Macedonia, Kosovo*, Montenegro, Romania and Serbia. Bulgaria, Croatia and Romania have meanwhile left the Energy Community by becoming EU Member States, while Moldova, Ukraine and Georgia have acceded to the Energy Community later on.

Energy Infrastructure" is co-financed and implemented by the Energy Community Secretariat and the Energy Charter Secretariat.

b. Belarus as Member of the Eurasian Economic Union

On 29 May 2014, the Presidents of Belarus, Kazakhstan and the Russian Federation signed the Treaty on the Eurasian Economic Union (EAEUT), while Armenia and Kyrgyz Republic became members and in 2015.³ The members agreed *"to develop long-term mutually beneficial cooperation in the energy sector, conduct coordinated energy policies and gradually create common energy markets with a view to ensuring energy security"*⁴.

The EAEUT governs the legal, institutional, organisational and technical issues related to the creation of common energy (electricity, gas and oil) markets. Particularly, Section XX of the Treaty on Energy Industry defines the principles of cooperation, compilation of indicative (projected) balance of gas, oil and petroleum products, establishment of a common electricity market and common gas, oil and petroleum product markets and access to services of natural monopolies for the transportation of energy resources⁵.

In accordance with Article 79 of the EAEUT, *"in order to effectively utilise the potential of the fuel and energy complex of the Member States, as well as to provide national economies with the main types of energy resources (electricity, gas, oil and petroleum products), the cooperation and coordination of energy policy as well as the gradual creation of common energy markets shall be based on the following fundamental principles: 1) ensuring market pricing for energy resources; 2) ensuring the development of competition in the common markets of energy resources; 3) no technical, administrative and other barriers to trade in energy resources, equipment, technology and related services⁶; 4) ensuring the development of a transport infrastructure for the common markets of energy resources; 5) ensuring non-discriminatory conditions for economic entities of the Member States in the common markets of energy resources; 6) creation of favourable conditions for attracting investments in the energy sector of the Member States; 7) harmonisation of national rules and regulations for the functioning of the process and business infrastructure of the common markets of energy resources"*⁷.

The following institutions of the EAEU have been established by the EAEU Treaty⁸:

- The Supreme Council is the EAEU's supreme authority composed of Heads of State;
- The Intergovernmental Council consists of the Heads of Government;

³ A Decision approving establishment of a common electricity market No.261, 04.12.2012.

⁴ Article 79 of the Treaty on the establishment of the Eurasian Economic Union; Article 81 provides a legal basis for establishing common electricity market.

⁵ Section XX of the EAEUT.

⁶ The members identified constraints that limit development of mutual trade in energy resources. The main ones are related to the restrictions established by bilateral agreements on the supply of oil, petroleum products and gas between the member states. Thus, the parties agreed that these bilateral agreements between member states will be valid until the formation of common gas, oil markets of the EAEU. In October 2017, the heads of government approved an action plan ("Roadmap") to eliminate such exemptions and restrictions as part of the activities of the programmes for the formation of common markets for electricity, gas, oil and petroleum products of the EAEU, the development of which is envisaged by the Treaty (Art. 68). See also: The White Paper of 2017 "Barriers, derogations and restrictions in the EAEU, <https://barriers.eaeunion.org/api/info/document/38/file>.

⁷ Article 104 of the EAEUT establishes the procedure and terms of approval of concepts and programmes, as well as international agreements on the establishment of common energy markets.

⁸ Article 8 of the EAEUT.

- The Eurasian Economic Commission is a permanent supranational regulatory body of the EAEU. The Council (Deputy Heads of Government) of the Commission and the Board of the Commission support the operation and development of the EAEU; and
- The Court of the Eurasian Economic Union is the court of justice of the Eurasian Economic Union, which ensures the uniform application of the EAEU Treaty and other Union treaties by the EAEU member states and bodies.

1. Common Electricity Market of the EAEU

The common electricity market of the EAEU is to be finalised by mid-2019, while the concepts for oil and gas are to be implemented in stages by 2024 and 2025 respectively. Based on Article 104(2) of the EAEUT, in order to create the common electricity market of the Union, the Supreme Council approved a Concept on establishing a common electricity market (Concept) on 8 May 2015,⁹ and a Programme for its creation on 26 December 2016¹⁰, providing a timeframe for the implementation of the Programme until 1 July 2018. Upon completion of the Programme, an international agreement shall be concluded between the members of the EAEU on the establishment of the common electricity market, which shall enter into force no later than 1 July 2019¹¹. At present, the EAEU Concept and Programme are the main policy documents of the EAEU related to establishment of a common electricity market between the member countries.

Belarus submitted a special opinion to the Concept suggesting to align the deadline for completion of the CEM with the deadline stipulated for the establishment of the common gas market (deadline for the latter being 2025)¹².

The EAEU Concept determines the stages for establishment of the common electricity market within the following timeframe:

- Stage I (2015 - I and II quarter of 2016) - development and approval of the Programme;
- Stage II (III and IV quarter of 2016 - I and II quarter of 2018) – implementation of the Programme;
- Stage III (III and IV quarter of 2018 - I and II quarter of 2019) – conclusion and entry into force of an international treaty on the establishment of a common electricity market.

Currently, the members of the EAEU are working on implementation of the Programme (Stage II), a key result of which shall be the establishment of all necessary legal, institutional, technical and other conditions ensuring functioning of the common electricity market of the EAEU¹³.

⁹ The concept defines the framework for the CEM, such as main objectives, principles and elements for the functioning of the common electricity market. Approved on 8 May 2015.

¹⁰ The Programme prescribes a set of specific organizational, technological and other activities the implementation of which will establish the conditions for formation and efficient functioning of the common electricity market. Approved on 26 December 2016.

¹¹ Currently there are three annexes to the EAEUT, one of them related to electricity: “*Protocol No 21 on Rules of Access to Services of Natural Monopoly Entities in the Sphere of Electric Power.*” All three Protocols shall be valid until the entry into force of the respective international treaties (Article 104, paras.8-10 EAEUT).

¹² Concept on establishing a common electricity market of the EAEU <http://www.eurasiancommission.org/ru/act/energetikaiinfr/energ/Documents/%D0%9A%D0%BE%D0%BD%D1%86%D0%B5%D0%BF%D1%86%D0%B8%D1%8F%20%D0%9E%D0%AD%D0%A0%20%D0%A1%D0%BE%D1%8E%D0%B7%D0%B0.pdf>.

¹³ The members together with the Commission of the EAEU shall draft the following system of acts: International Agreement; set of rules on mutual electricity trade; transmission capacity determination and distribution rules; development

The EAEU Concept is based on existing infrastructure and on agreements, some of which were signed between the members of the Commonwealth of Independent States (CIS). The Agreement on Establishment of the Common Electricity Market of the CIS Member States provides for its creation based on equality, mutual benefit and fair competition. The parties agreed to ensure harmonization of national legislation and gradually transform their national markets in order to create a common electricity market, providing non-discriminatory access of economic entities to the services of natural monopolies, in compliance with the national legislation of the Parties¹⁴.

The EAEU Concept on electricity sector introduced several new elements. Namely, in addition to the existing non-regulated bilateral contracts, a trading platform for centralised trading for both, fixed-term contracts and on a day ahead basis (DAM) is envisaged. Common rules are to be developed for capacity allocation at interconnectors, based on the principles of priority for supply of domestic customers, as well as rules for non-discriminatory access to national transmission grids. The Concept also includes the requirement that tariffs for EAEU-wide long-distance transmission shall not exceed those at national level.

Even though such requirements resemble some of the elements from the *acquis*, the EAEU common electricity market is also based on certain principles that are not in line with the European and Energy Community energy market rules. Namely, the fact that priority shall be granted for satisfying demand at national level before trading cross-border between EAEU members is in contrast with the EU principles. That is, however, understandable having in mind that despite the common electricity market of the EAEU being modelled on the EU's electricity market for continental Europe (bilateral market as well as DAM), the trade of electricity at the EAEU common market will only concern the excess electricity. An electricity exchange would be a new element for cross-border electricity trading in the EAEU, in addition to bilateral trading that is in place already. While in the EU, the end-customers were in the centre of the liberalisation and electricity sector reforms, where the eligibility is to be ensured, only a wholesale regional DAM is envisaged in the EAEU. No retail market opening and retail market competition is planned. The abundance of transmission capacities within the EAEU in principle allows for unrestricted trade (namely the capacity of the cross-border transmission lines would permit trading of about 30 GWh annually), just 6.5 GWh were actually traded in 2014¹⁵.

2. Common Gas Market of the EAEU

Among the three envisaged common markets, the one in natural gas seems to pose the biggest hurdle. The concept for the Eurasian gas market was approved at the same time as the one for the oil sector (spring 2016). However, the programme for the natural gas market was approved by the Eurasian Economic Commission's Advisory Committee on Petroleum and Gas only on 24 April 2017. Unlike the programme for the common oil market, which provides for common tariffs and mechanisms for oil transit and export to third countries, the programme for the common gas market solely refers to natural gas extraction, trading, transport, storage and processing exclusively within the territory of the Eurasian Economic Union¹⁶.

of interconnectors regulation; information exchange rules and other acts regulating the Common Electric Power Market of the Union. See Programme, Chapter VIII.

¹⁴ Agreement on Establishment of Common Electricity Market of the CIS 2007.

¹⁵ Pastukhova, M., and Westphal, K. *A common Energy market in the Eurasian Economic Union: Implications for the European Union and Energy Relations with Russia*, SWP Comments, No.9, February 2016.

¹⁶ M. Pastukhova & K. Westphal, "Die Eurasische Wirtschaftsunion schafft einen Energiemarkt – die EU steht abseits", SWP-Aktuell 4, January 2018.

According to the programme, in addition to the harmonization of rules and standards in the common gas market, control mechanisms are also to be developed, which aim to prevent the resale of gas bought within the EAEU for domestic consumption to third countries at a later stage. Therefore, the EAEU will continue with implementation of destination clauses, which are anti-competitive and abolished in Europe. Gas trading volumes within the EAEU stand at 33.5 bcm per year whereas gas exports to third countries amount to 177.4 bcm¹⁷.

Belarus, as member of the EAEU, expressed its commitments to participate in activities to create an EAEU common gas market. There is an approved concept of the EAEU on the common gas market with the main principles and goals to be followed by the member states. According to the Treaty on the establishment of the EAEU, the member states shall conclude an international treaty within the EAEU on the establishment of the common gas market and develop a set of documents, including the common rules on access to gas transportation systems located on the territories of the member states. The deadline for the creation of the EAEU common gas market is 1 January 2025¹⁸. Another relevant document in place is the Annex to the Treaty: Protocol on the Rules of Access to Services of Natural Monopoly Entities in the Sphere of Gas Transportations Using Gas Transportation Systems, including Fundamental Pricing and Tariff Policy, which will be valid until new rules are developed by the EAEU.

The main aims of the formation of a common gas market as identified in Section 3 of the Concept are the following:

- Increase energy security of the EAEU states;
- Increase security, availability and quality of gas supply to the consumers in the territories of the EAEU states; and
- Increase economic efficiency from utilisation of gas transportation systems.

The Eurasian Economic Commission, the executive body of the EAEU, issued a document titled “White Paper of 2017, Barriers, Derogations and Restrictions in the EAEU” (the White Paper), which identified thirteen obstacles in the energy sector to the creation of common energy markets, out of which there were eleven restrictions and two derogations. The White Paper determined the following restrictions related to the gas sector:

- Absence of unified and transparent approaches to the definition of technical capabilities, free capacities of gas transmission systems located on the territories of member states;
- Lack of unified rules for access to gas transmission systems located on the territories of member states;
- Lack of regulation in the legislation of the member states regarding a mechanism to maintain market prices that ensure commercial profitability of gas sales on the territories of member states; and
- Restriction in the provision of equal access to gas transmission systems of member states to gas producers that are not owners of gas transmission systems.

The White Paper identified derogations such as:

- The EAEU Treaty does not regulate the access to monopoly services in the sphere of gas transportation in relation to gas originating from the territories of third countries as well as to gas transportation outside the EAEU and beyond (which also affect the loading of gas pipelines and availability of free capacities).
- The Russian Federation has an exclusive right to export gas to EAEU members.

¹⁷ *Ibid.*

¹⁸ Treaty on the EAEU, (Article 104, Treaty, para 5)

According to Russian legislation and the Agreement between Russia and Belarus, Gazprom and its subsidiaries are the only exporter of natural gas from Russia. The creation of a common gas market would force Gazprom to lose its monopoly in external gas supply.

In the EAEU, there are two countries producing and exporting gas in substantial volumes: Russia and Kazakhstan. Currently, Belarus imports gas only from Russian Gazprom at the tariffs set by a contract. The creation of the common EAEU gas market will allow gas transit from Kazakhstan to Belarus (through the territory of Russia). This process will induce competition between two suppliers (Russia and Kazakhstan) and trigger market forces. Theoretically, the creation of the common EAEU gas market will lead to several customer benefits, such as the possibility to choose supplier.

3. EAEU Common Market on Oil and Petroleum Products

Belarus expressed its commitments to create a common market for oil and petroleum products of the Eurasian Economic Union. The concept for the formation for the common markets was approved in 2016, and the programme for their creation should be approved in 2018, providing a timeframe for the implementation of the programme until 1 January 2024.

Upon completion of the programme for their creation, the member states shall conclude an international treaty within the EAEU and ensure its entry into force no later than 1 January 2025.

Russia and Belarus agreed on an indicative balance of oil supplies for the year 2018. As expected, Russia will supply Belarus with 24 million tons of oil. It is assumed that annual oil supplies will remain at the same level until 2024.

The basic principles of the common EAEU oil and petroleum product markets are the following:

- Non-application in mutual trade of quantitative restrictions and export custom duties (other equivalent duties, taxes and fees). The payment procedure for export custom duties on oil and petroleum products exported outside the customs territory of EAEU shall be governed by treaties, including bilateral treaties, between the member states;
- Ensuring supply and demand of the member states in oil and petroleum products;
- Unification of norms and standards of the member states regarding oil and petroleum products;
- Ensuring environmental safety; and
- Information support of common EAEU markets of oil and petroleum products¹⁹.

c. Energy Sector Overview

Belarus does not have sufficient primary energy sources and is heavily dependent on oil and gas imports for thermal generation, mainly from the Russian Federation. Imports of fuel and energy are around 85% of the total consumption of primary energy resources²⁰.

The installed electricity generation capacities in Belarus are sufficient for meeting domestic demand. A relatively small part of electricity is imported due to cost-effectiveness and energy security²¹. The

¹⁹ Protocol on Organisation, Management, Functioning and Development of the Common Markets of Oil and Petroleum Products

²⁰ http://www.belstat.gov.by/ofitsialnaya-statistika/realny-sector-ekonomiki/energeticheskaya-statistika/operativnye-dannye_3/istochniki-formirovaniya-toplivno-energeticheskikh-resursov/

²¹ http://www.energycharter.org/fileadmin/DocumentsMedia/IDEER/IDEER-Belarus_2013_en.pdf

electricity sector is a vertically integrated monopoly represented by the state-owned undertaking State Production Association (SPA) Belenergo.

The gas market in Belarus is dominated by monopolies operating at the wholesale and retail level. Belarus is fully dependent on gas supply carried out by exclusive importer Gazprom Transgaz Belarus.

Belarus does not have an independent energy regulatory authority. There is a state institution (Ministry of Antimonopoly and Trade) which carries out some monitoring and regulating functions in the energy sector.

Regarding energy efficiency, it should be noted that energy intensity and consumption per capita has been gradually decreasing in recent years. However, the values remain high compared to the Energy Community and EU average, suggesting that stronger energy efficiency measures should be implemented in all sectors.

Belarus has significant potential to produce energy from renewable resources like biomass, wind and hydro due to its geographical and climate conditions. However, the policy and legislation currently in place do not create sufficiently favourable conditions for the development of this sector and are not fully compatible with the EU *acquis* on renewables.

d. Institutional Framework of the Energy Sector of Belarus

The President of the Republic of Belarus determines the state policy and carries out state regulation in the energy sector. The President adopts decrees, directives²² and other legal acts as well as signs laws in the energy field.

The Council of Ministers of the Republic of Belarus adopts strategies for the development of the energy sector, state programmes, ensures implementation of the unified state policies, takes measures and adopts resolutions. It regulates the end-user electricity prices for households (upon approval by the President)²³. The Ministry of Energy is the government body tasked with the implementation of the country's energy policy and is subordinate to the Council of Ministers. The Ministry of Energy is responsible for the fuel and energy sector of the country. It exercises state regulation of the electricity, gas and heat sectors and steers the development of the main energy policy guidelines and their implementation, as well as proposals for improving the energy security of Belarus.²⁴

The Ministry of Economy used to exercise powers related to regulating prices in the energy sector, however, in 2016 the department of price policy of the Ministry of Economy²⁵ was transferred to a new authority, the Ministry of Anti-Monopoly Regulation and Trade.²⁶ The Ministry of Anti-Monopoly Regulation and Trade (MART) is a state administrative body reporting also to the Council of Ministers. Its tasks are related to implementation of the state policy in the area of counteraction to monopolistic activities and competition development, regulation of natural monopolies, pricing, trade, consumer

²² In accordance with the Article 2 of the Law on Normative legal acts of the Republic of Belarus from 2000, "*The Directive of the President of the Republic of Belarus is a decree of a program nature issued by the Head of State with a view to systematically solving issues of priority political, social and economic significance.*"

²³ In line with the Annex 1 of the Presidents Decree N72, the Council of Ministers regulates the electricity prices for households upon agreement of the President).

²⁴ http://minenergo.gov.by/en/about_ministry_rb/.

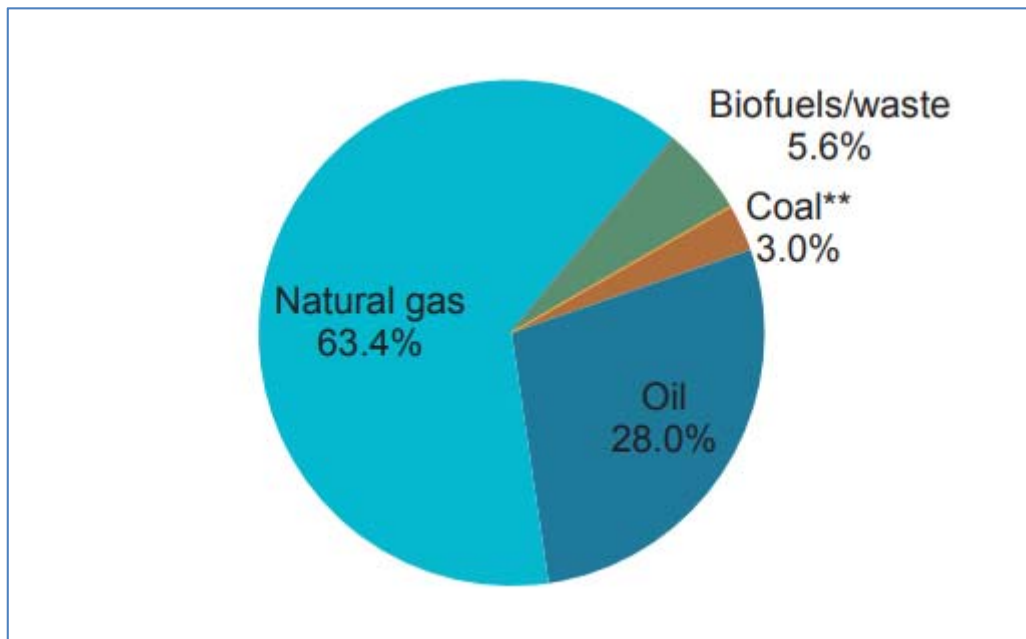
²⁵ As well as the antimonopoly and price policy department of the regional executive committees and the Minsk City Executive Committee.

²⁶ Decree of the President of the Republic of Belarus No. 188 of 3 June 2016.

services, consumer protection, advertising, public procurement of goods (works, services). MART defines the indexation formula for tariffs for electricity sold by power supply organizations that are part of Belenergo to legal entities and individual entrepreneurs²⁷. MART takes measures to counter monopolistic activities and unfair competition and to detect and prevent violations of law and promotion of fair competition. This ministry also has responsibilities related to customer issues as well as implementation of trade policy based on official statistical information, custom statistics on foreign trade of Belarus, bilateral trade statistics of Belarus with the members of the Eurasian Economic Union, Belarus Trade Register and Belarus Consumer Services Register information.

Besides the ministries, two other institutions are relevant for the energy sector: the Department of Energy Efficiency of the State Standardisation Committee and the National Statistical Committee. The first one is responsible for the development and implementation of national energy efficiency and renewable energy policies. It also monitors and ensures state control over rational use of fuel, electricity and heat. The second institution is responsible for administering the laws on national data services. It collects, processes and publishes national statistics, including energy data. The Statistical Committee is responsible for preparation of energy balances, in close cooperation with the Ministry of Energy and the energy undertakings in the country.

Share of Total Primary Energy Supply* in 2015



Source: IEA²⁸

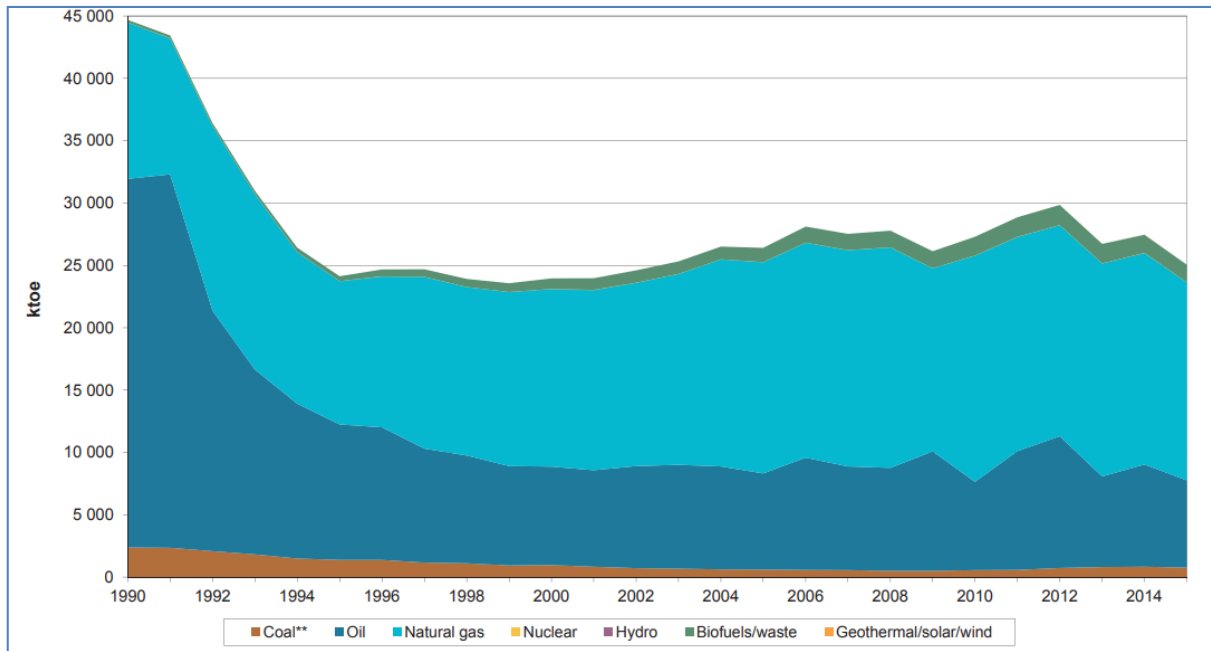
* Share of TPES excludes electricity trade

** Peat and oil shale are aggregated with coal

²⁷ See: MART Resolution No.26 of May 2017, on the basis of Presidential decree from 22 December 2010 No. 670 "On some issues of payment for natural gas, electric and thermal energy"
http://pravo.by/upload/docs/op/W21732152_1498251600.pdf.

²⁸ <https://www.iea.org/stats/WebGraphs/BELARUS4.pdf>.

Total Primary Energy Supply 2015



Source: IEA²⁹



²⁹ <https://www.iea.org/stats/WebGraphs/BELARUS5.pdf>.

2. Electricity

a. Sector Overview

The producer of almost all the electricity and about half of the heat is Belenergo SPA. According to data published on Belenergo's website, the total installed capacity of the Belarusian energy system is 9 847.8 MW, including 9,020.7 MW operated by Belenergo, out of which 42 power plants are thermal (with capacity of 8,985.1 MW) and 23 are hydro power plants (with an installed capacity of 26.6 MW), in addition to Novogrudok wind power station with a capacity of 9 MW. Nearly all electricity, 96%, is produced based on natural gas, followed by oil (2.6%), biofuels and waste (0.4%), hydro (0.2%) and peat (0.1%).

The total installed capacity of other energy sources that are not part of Belenergo is 827.1 MW. These are 255 block stations in synchronous operation with the power system³⁰.

In 2016, the level of electricity generation was over 33 TWh. Belarus imported about 8,2% of its electricity demand³¹. Total electricity consumption was 36.5 TWh.



³⁰ <http://www.energo.by/okon/p21.htm>.

³¹ National Statistical Committee http://www.belstat.gov.by/ofitsialnaya-statistika/realny-sector-ekonomiki/energeticheskaya-statistika/operativnyye-dannye_3/balans-elektricheskoi-energii/.

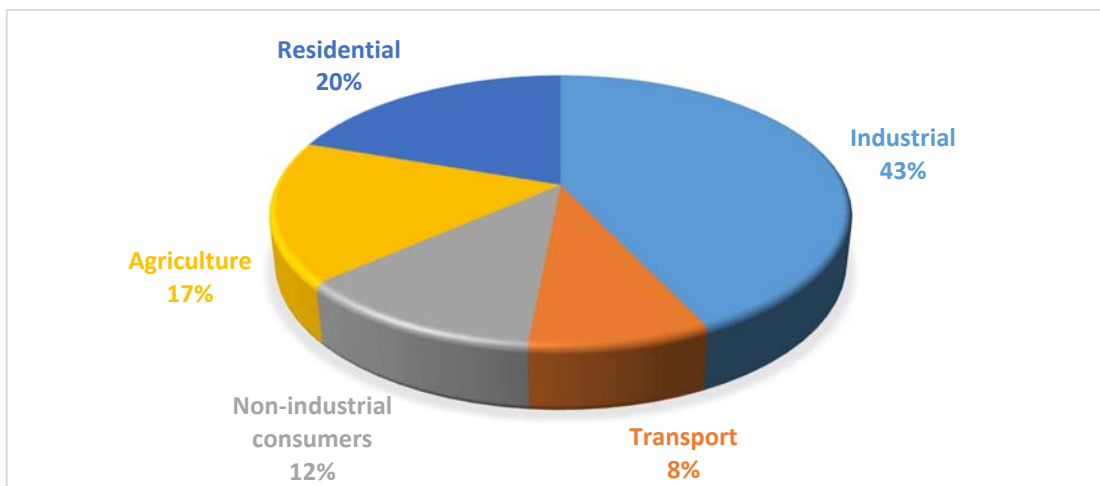
Electricity Facts and Figures

MAIN INDICATORS OF BELENERGO		
Installed capacity as of 1 January 2017	9 020.7	MW
Generation of electricity by Belenergo sources	30,040	billion kWh
Import of electricity	3.181	billion kWh
Electricity generation by block stations	3,278	billion kWh
Export of electricity	0.160	billion kWh
Domestic electricity consumption	36,339	billion kWh
Transmission and distribution losses:	8.92	%
The length of power lines on 1 January 2017		
Total	277,263	thousand km
Transmission lines with voltage 35-750 kV:	35,849	thousand km
transmission lines 220-750 kV	6,952	thousand km
transmission lines 110 kV	17,094	thousand km
transmission lines 35 kV	11,803	thousand km
Transmission lines with a voltage of 0.4-10 kV	203,006	thousand km
Cable power lines	38,408	thousand km
Number of transformer substations 35-750 kV / transformers		
Total	1348/2392	units
750 kV substation	1/11	units
330 kV substation	31/90	units
220 kV substation	11/39	units
110 kV substation	721/1280	units
35 kV substation	584/972	units
Number of transformer substations TP 6-10 / 0.4 kV	74033	units

Source: Belenergo website

Belarus experienced no substantial changes in total electricity consumption in the period 2005-2016. The consumption of the residential sector has increased from 4416 mil kWh in 2005 to 6689 mil kWh in 2016, whereas the consumption of the non-residential sector has remained almost the same, amounting to 24 662 mil kWh in 2005 and to 24 960 mil kWh in 2016³².

Structure of Electricity Consumption in 2016

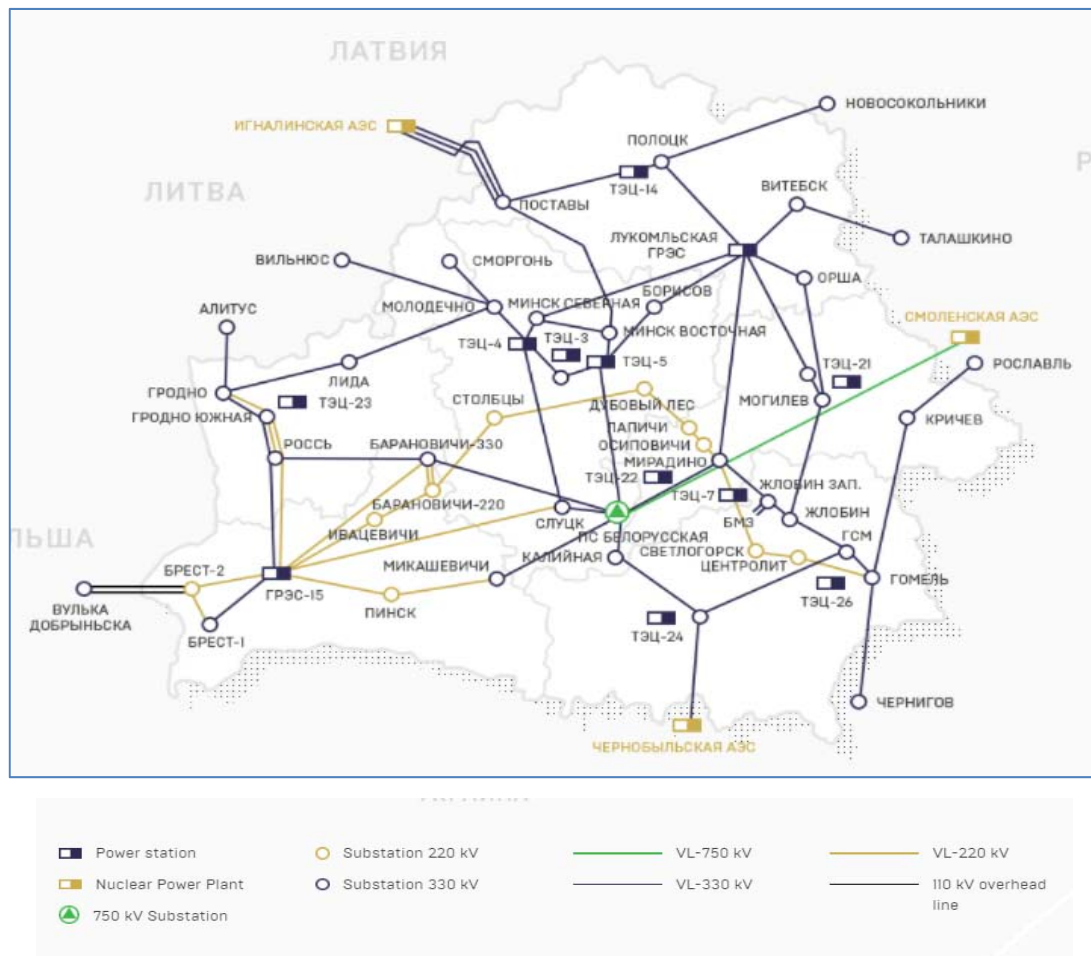


Source: Energy Community Secretariat

The infrastructure for transporting electricity is developed. The electricity system of Belarus is connected to its Baltic neighbours as well as to the electricity systems of Ukraine, Poland and Russia.

³² <http://www.belstat.gov.by/ofitsialnaya-statistika/realny-sector-ekonomiki/energeticheskaya-statistika/graficheskiy-material-grafiki-diagrammy/dinamika-potrebleniya-elektricheskoi-energii/>.

Electricity Transmission Grid Map of Belarus³³



Source: Belenergo website

b. Energy Regulatory Authority

Belarus does not have a single (independent) energy regulatory authority. The MART is responsible for the regulation of electricity and heat tariffs for industrial customers, independent suppliers and all categories other than residential. The residential energy tariffs are regulated by the Council of Ministers.

As part of the energy sector reform, the Council of Ministers intends to issue a set of laws, including adoption of an Electricity Market Law governing the ownership structure of the electricity and heat industry, the state involvement in electricity and heat tariff setting and the basic principles of the wholesale electricity market. There is no plan, however, for the establishment of a national regulatory authority as an independent institution in a manner governed by the EU legal framework.

Based on the concept proposed in the draft Law on Electricity Market provided by the Ministry of Energy, MART may become a “Regulatory Antimonopoly Committee”, which may to a certain extent

³³ <http://www.energo.by/content/devatelnost-obedineniya/osnovnye-pokazateli/>.

have the competences of a national regulatory authority. Therefore, instead of proposing the establishment of a new institution as a national energy regulator, the Energy Community Secretariat, in the framework of technical assistance to support drafting a new Electricity Market Law, proposed that MART is reorganized to take over the tasks and competences of both a Regulatory Antimonopoly Committee and a national energy regulator. Provided that this new Committee is truly independent and not part of any ministerial or other public body's structure, such a combined approach is not in conflict with the national regulatory authority acting as an independent institution in a manner governed by the EU. Such a solution is not uncommon in the EU. The authority could in the future perform both the tasks of an antimonopoly (competition) authority and the activities related to the regulation of industries. At the outset, the regulatory authority could be responsible for electricity only, with its competences being extended to gas and oil in the future.

The tasks and competences of this institution have to be adapted to the initial phase of electricity sector restructuring in Belarus. Namely, it shall be empowered to issue (modify, revoke and terminate) licenses for energy activities, issue methodologies on regulation of tariffs and conditions for connection and access to (use of) the distribution and transmission networks and adopt tariffs, monitor performance of electricity activities and act as a dispute settlement body between energy market participants and the electricity undertakings and customers.

c. Electricity Sector Governance

Belenergo is subordinate to the Ministry of Energy³⁴. The ministry manages and directly controls the vertically integrated state-owned electricity undertaking Belenergo. The Ministry of Energy approves the composition of the members of the Council of the Association (the main permanent managing body of Belenergo) on the basis of proposals of the Director of Belenergo³⁵.

The Belarusian electricity sector is a vertically integrated monopoly run by the state-owned undertaking Belenergo. Belenergo is a complex enterprise, made up of a large number of subsidiaries and divisions, which control the entire electricity chain. Its main areas of activity include the operation of the Belarusian electricity system, generation, transmission, distribution and sale of electricity (and heat), operational dispatch, management, maintenance of power plants, power (and heat) networks and organisation of activities for the purposes of energy system development.

As presented above, Belenergo dominates the electricity generation market. Unlike the electricity network (transmission and distribution) that is required to be entirely state-owned by law, foreign investment in generation capacity is not formally restricted³⁶.

Transmission and dispatch through the Unified Electricity System of Belarus is performed by the Republican Unitary Enterprise Operation and Dispatching Administration, which is part of Belenergo.

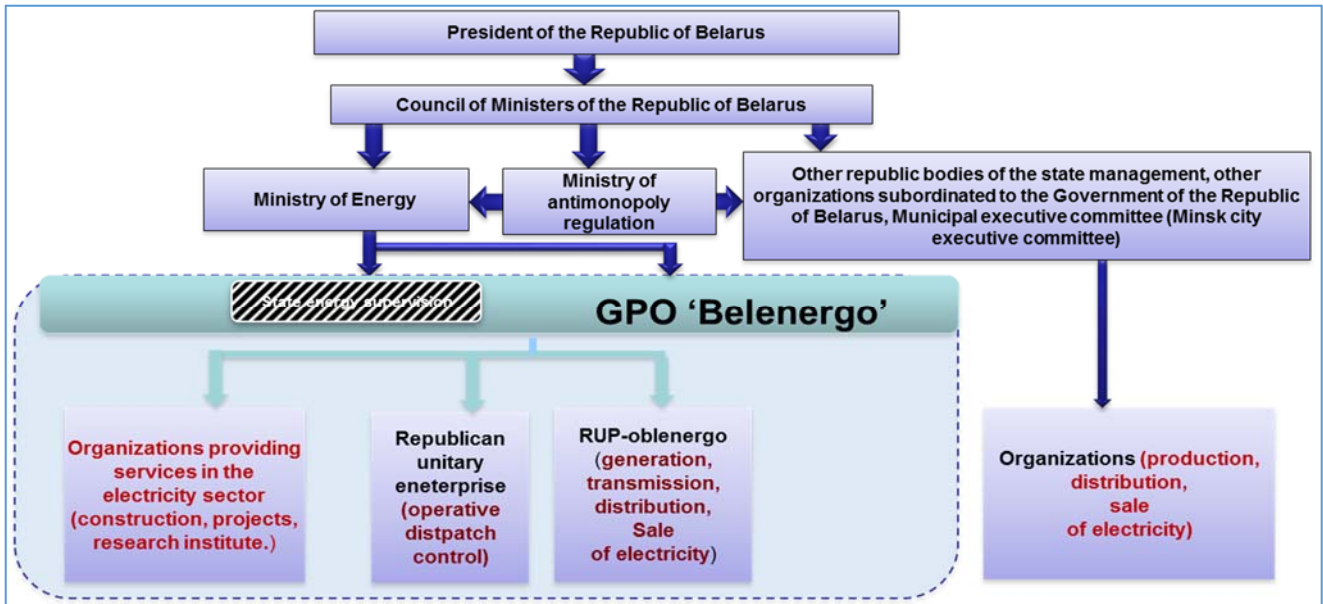
At regional level, generation, transmission, distribution and supply are carried out by six vertically integrated undertakings, "Oblenergos", which are part of Belenergo. These are: Minskenergo, Brestenergo, Vitebskenergo, Gomelenergo, Grodmoenergo and Mogilevenergo. There is no separation of competitive and non-competitive activities, and there is no separation of transmission (or distribution) system operators as separate entities.

³⁴ The resolution of Council of Ministers from 31.10.2001 № 1595 http://minenergo.gov.by/o_ministerstve/pologenie/.

³⁵ Regulations on the Association Council approved by the order of Belenergo, No. 323, 19.12.2014. <http://www.energo.by/content/about/sovet-gpo-belenergo/>.

³⁶ Country profile Belarus, EBRD <http://www.ebrd.com/downloads/legal/irc/countries/belarus.pdf>.

Scheme 1: Current Electricity Sector Scheme



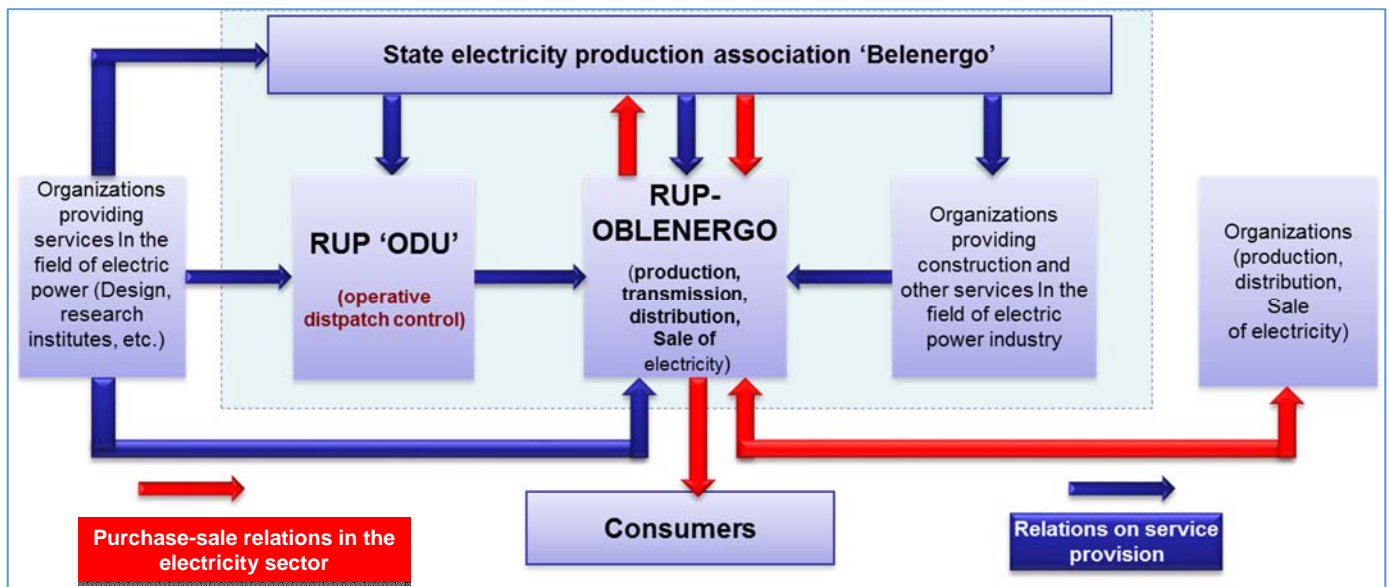
Source: Ministry of Energy³⁷

Belenergo monitors the medium and long-term supply and demand balance, and submits fuel and electricity forecasts to the Ministry of Energy. With respect to future demand, Belenergo prepares plans for the development of generating facilities and networks and supervises the execution of those plans. Maintenance and monitoring of the networks is performed by the regional electricity companies, all subsidiaries of Belenergo, which are also responsible for the quality of service. Belenergo reports to the Ministry of Energy at least annually and it may also be required to report to the Parliament³⁸.

³⁷ From Power Point of the Ministry of Energy of the Republic of Belarus, Concept project on the Law of the Republic of Belarus 'On Electricity'.

³⁸ Country profile Belarus, EBRD <http://www.ebrd.com/downloads/legal/irc/countries/belarus.pdf>.

Scheme 2: Existing contractual relation in the electricity market



Source: Ministry of Energy³⁹

d. Legal and Policy Framework

The legislative framework governing the electricity sector in the Republic of Belarus consists of numerous acts adopted by the President of Belarus and resolutions of the Council of Ministers, normative legal acts of the Ministry of Energy as well as several other legislative acts.

The policy framework in the energy sector consists of several documents adopted by the Council of Ministers. The Concept on Energy Security⁴⁰ sets forth the long-term energy policy guidelines and identifies the key priorities such as: diversification of energy resource suppliers in the energy mix; improving energy efficiency of energy production; improving reliability of the energy system; integrating into the world energy system; development of international cooperation with the EAEU and the EU; improving the management system; creating a wholesale national electricity market; and developing the Law "On Electric Power Industry"⁴¹. The Programme of the electricity sector for 2016-2020⁴² is a mechanism for implementing the provisions of the Energy Security Concept and other strategic policy documents with indicators and targets. A comprehensive plan for the development of

³⁹ From Power Point of the Ministry of Energy of the Republic of Belarus, Concept project on the Law of the Republic of Belarus 'On Electricity'.

⁴⁰ The Concept of Energy Security of the Republic of Belarus approved by the Decree of the Council of Ministers 2015 No.1084.

⁴¹ The Concept of Energy Security of the Republic of Belarus.

⁴² The Program of the electricity sector for 2016-2020 (approved by the Decree of the Ministry of Energy of the Republic of Belarus No. 8 of March 31, 2016) and The State Program "Energy Saving" for 2016-2020.

the electric power industry until 2025⁴³ contains specific activities and timeframes for their implementation, such as removal of cross subsidies in electricity tariffs (by 2020); unbundling (until 2025) and creation of the wholesale and retail market of electricity.

There is no separate electricity sector law or electricity market law currently in place. The sector is governed by several legislative acts both electricity sector specific and horizontal. Those include: the Civil Code, which governs energy supply contracts⁴⁴; the Code of the Republic of Belarus on Administrative Offenses, which establishes administrative liability for certain offenses related to inefficient use of electricity, non-compliance with requirements for environmental safety, work safety, and other requirements established by the legislation⁴⁵; the Tax Code that establishes tax assessment procedures in respect of land expropriation for the purposes of expanding rights-of-way for overhead electricity transmission lines, as well as tax rates for suppliers of electricity and stamp duty reliefs in connection with cases tried in courts⁴⁶; the Housing Code, which provides the legal framework for housing and public utility services⁴⁷. The Law on Pricing, dating back to 1999, establishes the legal framework for government policy on pricing, the limits for free and regulated pricing, and the rights, duties and responsibility of entities that make pricing decisions.

Three other laws, mainly implemented by MART, are applicable to the electricity sector: the Laws on Natural Monopolies of 2002, on Facilities Owned Exclusively by the State and Activities Covered by the Exclusive Right of the State of 2010; and on Counteraction to Monopolistic Activities and Promotion of Competition of 2013.

In addition, there are separate Laws on Protection of Environment of 1992, on Protection of Rights of Consumers of the Housing and Public Utility Services of 2008; on Renewable Energy Sources of 2010; on Energy Savings of 2015 as well as on Industrial Safety of 2016, which are also relevant for the electricity sector.

Finally, there are numerous directives and decrees of the President related to energy security, renewables, payment issues and connections, while individual issues related to the electricity industry are regulated by resolutions of the Council of Ministers. Some of these will be referred to in the assessment section below.

e. Draft Electricity Market Law of the Republic of Belarus

Based on the obligations of Belarus under the EAEU Treaty, an Electricity Market Law shall be adopted in 2018 in order to provide a legal basis for restructuring the electricity sector and defining competitive and non-competitive electricity activities and their separation. It shall allow for improvement of governmental control in the electricity sector; regulation of the relations between government bodies and electricity sector entities; development of the wholesale and retail electricity markets; and govern the relations between electricity sector entities and electricity consumers. The new electricity market law shall primarily aim at harmonising its national legislation with the EAEU requirements. According to the EAEU Concept, the rights and responsibilities of electricity market participants shall be established by national legislation in addition to the acts of the EAEU.

⁴³ Comprehensive plan for the development of the electric power industry until 2025 approved by the Decree of the Council of Ministers of the Republic of Belarus of 01.03.2016 No. 169.

⁴⁴ Articles 510 – 518.

⁴⁵ Articles 15.1, 15.2, 20.1, 20.3, 20.10, 20.12, 21.10, 23.61.

⁴⁶ Articles 194; 198; 207; 257(1).

⁴⁷ Articles 26, 29 – 33, 50, 54, 55, 66, 86, 155, 166, 199.

The Ministry of Energy has developed a Concept for a new Electricity Market Law based on the Plan of Preparing Draft Laws in 2012, as approved by a Decree of the President of the Republic of Belarus⁴⁸. The ministry's draft Law was submitted to the Council of Ministers in autumn 2017, after being published on the ministry's website for public consultation⁴⁹. The draft Law has not yet been submitted to the Parliament.

Some of the concepts of the Law will be assessed against the requirements of Energy Community and EU energy *acquis* in the section below. In the course of 2017, the Secretariat extensively reviewed the draft Law prepared by the Ministry, and proposed amendments to align it with the *acquis*. These proposals will be further referred to in the policy recommendations.

f. Assessment of Electricity Sector Governance against the Energy Community *Acquis*

1. Unbundling

Currently, the Belarusian electricity sector is operated by the state-owned undertaking Belenergo, which controls the entire electricity chain. There are six regional vertically integrated undertakings, performing generation, transmission, distribution and supply activities. All of them are subsidiaries of Belenergo. No unbundling has taken place so far.

According to the EAEU Concept, Belarus, still in the first half of 2018, shall comply with the commitment to step-by-step restructure the national vertically integrated companies in the electricity sector with a view to identifying competitive and monopolistic activities. The EAEU acts do not pose any requirements or specific rules for unbundling and separation of transmission from distribution and supply activities, neither do they contain specific requirements on transmission system operator (TSO) independence.

In its review, the Energy Community Secretariat has proposed separation of the TSO as a first step, followed by separation of distribution from supply activities at a later stage. Such a national requirement is not in conflict with the EAEU Treaty.

2. Connection to the Electricity Networks

The legislation currently in force permits foreign investors to build and own new power plants and guarantees connection of independent power producers to the state electricity networks as well as purchase of their output. In recent years, the number of independent electricity producers (mini-CHP and small and mini-HPPs) has been increasing, but still represents a negligible share of total electricity supply.

The area is governed by a Decree of the President of 2014⁵⁰ as well as a Council of Ministers Decree entrusting Belenergo with providing a connection service⁵¹. The later document requires completion of the connection within 100 calendar days. A separate Regulation, adopted by the Ministry of Economy, governs the procedure for the payment for connection to the electricity networks. At the

⁴⁸ No.21 of 9 January 2012.

⁴⁹ <http://minenergo.gov.by/zakonodatelstvo/proekti/>.

⁵⁰ Decree of the President, No. 397 "On technological connection of electrical installations", 06.08.2014.

⁵¹ Council of Ministers of the Republic of Belarus of 31.10.2014, No. 1031 "On Measures for the Implementation of the Decree of the President of the Republic of Belarus of 6 August 2014 No. 397".

same time, the Ministry of Economy is empowered to establish the maximum and (or) fixed values of rates for payment for connection⁵².

3. Third Party Access

The legislation currently in force does not provide for non-discriminatory third party access based on network tariffs regulated in advance.

However, a type of non-discriminatory access to transmission electricity networks is one of the main principles of the EAEU common electricity market, and an international treaty is envisaged to be signed between the EAEU members ensuring such access not later than 1 July 2019. Nevertheless, the EAEU Concept and Programme envisage that access to transmission networks of another member state of the EAEU will be granted only to wholesale market participants (i.e. producers, suppliers, and transmission and distribution undertakings) and there is no requirement for ensuring third party access at national level, or for all system users (of other EAEU members). Moreover, priority is envisaged for ensuring domestic electricity needs⁵³.

Those requirements are not in line with the EU energy *acquis*, which requires non-discriminatory third party access for all system users and non-discrimination of transactions and customers (domestic and cross-border).

The EAEU also includes a requirement that tariffs for access to the transmission networks shall be based on national legislation; however, tariffs for access to cross-border transmission networks shall not be different than tariffs for access to national networks.

4. Eligibility and Market Opening

The legislation in force does not define eligibility of customers, and currently no customer has a choice of supplier.

Neither a wholesale nor a retail market is in place. Retail market opening is not envisaged in the framework for the establishment of a common EAEU electricity market or in the draft Electricity Law prepared by the ministry.

The understanding of wholesale and retail markets envisaged by the draft Electricity Market Law is not in line with the *acquis*. The plan is to establish both wholesale and retail markets in the country and both generators and customers shall be market participants in both markets. However, the difference between the two is to be based on the size of the generation companies. It is envisaged that generation companies with an installed capacity of less than 50 MW shall participate in the retail market, whereas those with an installed capacity of more than 50 MW shall participate in the wholesale market. Customers with consumption of 1-2 billion kW per year will be eligible for participating in the wholesale electricity market together with the suppliers, whereas the remaining customers (with lower consumption) will be considered retail market consumers allowed to buy from small generators participating in the retail market.

In its proposals for improving the draft law and reforming the electricity sector, the Energy Community Secretariat proposed a definition of the wholesale and retail electricity market distinguishing between

⁵² Decree of the Ministry of Economy of the Republic of Belarus of 28 November 2014 No. 84 "On setting fixed rates for fees for performing work on technological connection of electrical installations to electrical networks".

⁵³ Access to cross-border transmission networks will be ensured based on announcement of planned volumes of electricity and their inclusion in the national balance, as well as conclusion of agreements between the market participants from the different countries based on calculations of the planned cost.

the two by stipulating that all sales by suppliers to end-customers take place on the retail market, whereas the sale of electricity for resale (trade) between generators, traders and suppliers takes place on the wholesale electricity market. No participation of end-user customers at the wholesale market was proposed for the first phase, but such a possibility is not excluded at a later stage, once a balancing mechanism is put in place so that (large) customers can be balance responsible and register as market participants.

5. Tariffs and Pricing

A Presidential Decree of 2011⁵⁴ stipulates that prices (tariffs) for electricity supply to households shall be regulated by the Council of Ministers and for electricity supplied to all other customers except households by the Ministry of Antimonopoly Regulation and Trade. The latter covers electricity supply by Belenergo as well as electricity generated in Belarus by legal entities not included in this association and by individual entrepreneurs that sell the electricity they produce to suppliers. There is also a separate Presidential Decree from 2013⁵⁵ that deals specifically with prices for households that are subsidized by the State, providing that such prices shall be established in accordance with the law on pricing before the beginning of the next successive fiscal year, taking into account the income growth of households, as well as the cost-recovery determined annually by the law on the state budget for the next succeeding fiscal year. That Decree also determines the indexation procedure in respect of prices (tariffs) subsidized by the State, which are established by the Council of Ministers and other legislative acts. The cost-recovery of electricity supply to households is governed by another Decree of the President of 2015⁵⁶. Finally, a Regulation adopted by the Council of Ministers of 2014⁵⁷ determines the procedure for setting prices, which are subject to government regulation.

The Government intends to reduce cross-subsidies in electricity tariffs and heat sold by the distribution companies of Belenergo through the elimination of preferential energy tariffs for certain legal entities and individual entrepreneurs as well as a gradual increase in the share of supply costs of households.

There is a single all-inclusive end-user electricity price. Separate network (distribution and transmission) tariffs and generation price regulation is not in place. The methodology for price setting is not published, but end-user prices are published. The residential electricity tariffs are differentiated by consumption bands and peak and off-peak time periods. Other consumer categories have the choice of a single or a differentiated price.

When it comes to cross-border trade, the tariffs for the export and transit of electricity are subject to negotiations between the undertakings and are established by bilateral contracts. According to Article 8 of the CIS agreement on parallel operation of electric power systems of the CIS, there are no

⁵⁴ Decree of the President of the Republic of Belarus No. 72 of 25 February 2011, On Certain Issues Concerning Regulation of Prices (Tariffs) in the Republic of Belarus.

⁵⁵ Decree of the President of the Republic of Belarus No. 550 of 5 December 2013, On Certain Issues Concerning Regulation of Prices (Tariffs) for Housing and Public Utility Services and on Introducing Amendments and Additions into Some Decrees of the President of the Republic of Belarus.

⁵⁶ Decree of the President of the Republic of Belarus No. 535 of 31 December 2015, On Provision of Housing and Public Utility Services.

⁵⁷ The Regulation on the Procedure of Setting Prices (Tariffs) for Natural and Liquefied Gas, Electricity and Heat, approved by Resolution of the Council of Ministers of the Republic of Belarus No. 222 of 17 March 2014.

customs duties on imports and exports of electricity between the Parties to that agreement, and in emergency situations on cross-border electricity lines⁵⁸.

Pursuant to the EAEU Concept, the pricing mechanisms are to take into account the existing pricing mechanism for electricity and the capacity of the EAEU member countries and the stages of establishment of a common electricity market. The prices included in bilateral contracts between undertakings of different countries of the EAEU are determined between the parties to the contracts, whereas the prices in transactions that will be a result of centralized trade (including at the DAM) will be defined in accordance with the algorithm agreed upon by the member states on the basis of EAEU acts. The main principle of the EAEU related to pricing network use envisages that pricing (tariff setting) for the services of natural monopolies shall continue to be carried out in accordance with the legislation of the member states, but such tariffs shall not exceed similar domestic tariffs for the participants in the domestic electricity markets⁵⁹.

6. Balancing

There is no national market-based balancing mechanism. A draft Law prepared by the ministry, based on the wholesale/retail market distinction, envisages that the generators will take over balancing responsibility. Namely, when a generator sells to a supplier, the supplier shall be a balancing responsible party (BRP), i.e. the supplier will pay to the TSO, but will then be compensated by the generator. If the generator sells directly to end-customers, the contract for balancing responsibility will be signed directly by the generators.

According to the EAEU Concept, one of the functions of the common EAEU electricity market is ensuring balance of supply and demand of electricity based on competitive pricing. A system for adjusting hourly deviations of actual net electricity flows from target values shall be established, according to which settlement shall be carried out on the basis of contracts between the market participants of the EAEU member states in accordance with the acts regulating the common electricity market of the EAEU⁶⁰.

The system operators shall be authorized to implement the daily hourly schedule of net flows between the electricity systems of the member states and wholesale market participants shall be authorized for financial adjustment of hourly deviations of actual net electricity flows from target values, based on rules for mutual electricity trade⁶¹.

7. Interconnections and Cross-border Trade in Electricity

The high-voltage electricity network of the Belarusian electricity system is interconnected with Russia, Lithuania, Ukraine and Poland.

Several agreements govern this area among the CIS countries. However, the EAEU Concept and Programme envisage development of additional common rules in this area. A common methodology for using the cross-border transmission networks, including transmission calculation and pricing methods, based on the principle that the services of natural monopolies for using cross-border networks should not exceed similar domestic tariffs for the domestic market participants, is yet to be

⁵⁸ <http://energo-cis.ru/wyswyg/file/Petrova/%D0%9D%D0%9F%D0%94-%D0%A7%D0%B0%D1%81%D1%82%D1%8C-1-%D0%BE%D0%B1%D1%89.pdf> .

⁵⁹ Concept, Section 9.

⁶⁰ Concept, Section 5.

⁶¹ Programme, Section 5.

developed. The EAEU Programme also envisages common regulation for the development of interconnectors.

Transmission capacity shall specifically be used to ensure electricity trade between the participants of the common EAEU electricity market, cross-border electricity transmission, as well as to ensure steady operation of the electricity markets of the member states. As noted above, there is sufficient transmission capacity throughout the territories of the EAEU member countries for undisturbed and uncongested electricity trade.

8. Customers Protection and Protection of Vulnerable Customers

There is no specific mechanism enshrined in law to protect vulnerable customers, and such a framework does not exist. However, the country does have customer protection legislation that is not energy sector specific. The consumer protection law of Belarus, which dates back to 2008⁶², stipulates that the supply of electricity shall be included in the category of housing and public utility services and shall be carried out on the basis of electricity supply contracts. State protection of consumer rights is carried out within the limits of the competence of authorized state bodies, such as the Ministry of Trade of Belarus and local executive and administrative bodies in the field of consumer rights protection and national courts. The draft Electricity Market Law, with the input of the Energy Community Secretariat, includes certain provisions on customer protection based on EU principles.

One of the goals of creating the common EAEU electricity market as defined in the Concept is to meet consumer electricity demand⁶³. Priority supply of electricity to domestic consumers (satisfying national demand before trading electricity across borders) is one of the EAEU principles⁶⁴.

9. Transparency

Currently no information related to interconnector capacity or capacity allocation is published since the only market participant is Belenerego.

The EAEU acts envisage an information exchange system, providing for interaction of EAEU market participants. Step-by-step harmonization of the legislation of the member states, with regard to the disclosure of information by the participants of the common electricity market, is also planned. The members of the EAEU together with the Eurasian Economic Commission should have prepared and submitted to the Eurasian Intergovernmental Council for review until 1 January 2018 proposals regarding the possibility to use an integrated information system of the Eurasian Economic Union and/or other (including existing) mechanisms to establish an information exchange system between market participants on the common electricity market as well proposals regarding its financing⁶⁵. The proposals are not yet available.

e. Policy Recommendations

Energy legislation in Belarus is weak, even though steps for its improvement have been initiated. There is no law specifically governing the electricity sector of Belarus. The country's regulatory and legal acts, which govern relations in the electricity sector, do not meet fully the requirements set forth by international treaties, in particular the EAEU Treaty, and are not in line with the Energy Community

⁶² Law on Protection of Rights of Consumers of the Housing and Public Utility Services, 2008.

⁶³ Concept II Goals and Objectives.

⁶⁴ Concept. I General provisions.

⁶⁵ Program, section 2, part 1.

and EU energy law. The draft Electricity Market Law, as proposed by the ministry, is not able to fully overcome the areas of incompliance. Therefore, the Energy Community Secretariat proposes that the Government should provide for the adoption of market-oriented principles and a regulatory framework based on international experience when developing electricity sector legislation.

For Belarus, as a member to the EAEU and a potential Observer to the Energy Community looking towards increased trade of electricity with the Energy Community Parties (including EU Member States), it is very important that national reforms are complemented by reforms for implementing cross-border trade harmonized with EU rules. In order to increase the trade potential, criteria and conditions for performing export and import should be simplified substantially, and Belarus should not aim at establishing a managing company as a “national champion”, even more in the light of the sufficient transmission capacity that allows for unrestricted trade.

Having a harmonised market model and introducing gradually compatible rules for governing the electricity sector would also complement the country’s obligations undertaken within the Eurasian Economic Union, under which Belarus has committed to establish a wholesale electricity market by mid-2019.

The Energy Community Secretariat thus proposes the following:

- **Establishment of a national regulatory authority**

Based on the concept of the draft Law provided by the Ministry of Energy, the Ministry of Antimonopoly Regulation is expected to become a Regulatory Antimonopoly Committee. Instead of proposing establishment of a new national regulator, the Energy Community Secretariat proposes that MART is reorganized to take over the tasks and competences of a national energy regulator, which is not uncommon among European countries. Such an authority could in the future perform both the tasks of the antimonopoly (competition) authority as well as the tasks of the authority for regulated industries (electricity for now and potentially gas at a later stage) provided the new Committee is truly independent and not part of any ministerial or other public body’s structure. The tasks and competences of such a regulatory authority would be adapted to the initial phase of electricity sector restructuring in Belarus.

- **Defining and separating the competitive and non-competitive activities, and restructuring of Belenergo**

The Secretariat proposes that a managing company, which is conceived by the Ministry of Energy to act as both a single buyer and a market operator, is not to be established. Such a solution will be very difficult to change in the future and the tasks of a wholesale and retail single buyer are not compatible with non-discriminatory activities of a market operator. Finally, there is no need for establishing retail market operators. Instead, the Secretariat proposes establishing a holding company out of the existing vertically integrated company and separating the different activities within it by establishing separate legal entities. Such a holding company, if established, would (after separation from all other activities) eventually perform only electricity trade.

- The first to be separated is the transmission system operator, which would initially also perform the tasks of a market operator. Subsequently, the market operator could be separated as a separate legal entity (could even be owned by the transmission system operator). The market operator could operate the national wholesale (including the organized day-ahead) market, but could also act as a counterpart for (Eurasian and other) regional electricity markets.

- Other separate entities should be the distribution companies that, in a first phase, would also provide wholesale (trade) and retail (supply) sale of electricity. In the future, those activities should be separated (unbundled) and the distribution system operator should be separated from the sale of electricity.

- **Establishing third party access**

Clear rules on regulated third party access to the transmission and distribution networks applicable to all system users should be developed. This principle shall also be applicable to access to interconnectors. Separate network (transmission and distribution) tariffs are also to be established. An Inter-TSO Compensation mechanism should be developed at a later stage.

Rules for access to interconnection capacities transposing the principles of Regulation (EC) 714/2009 should be developed. Namely, a market-based cross-border allocation procedure as well as congestion methods should be in place and applied for allocating capacities at the interconnectors.

- **Establishing both wholesale and retail electricity markets**

A new market model, without a single buyer during the initial stage, with defined timeframes should be developed and a national market operator should be established. There is no need of having both wholesale and retail market operators. Wholesale and retail electricity markets, as proposed by the Ministry of Energy, are to be established, including bilateral wholesale but also day-ahead markets, as that is the concept and aim of the EAEU as well. At national level, however, there is no need to establish a separate DAM. What is important is to ensure that the wholesale market does not include end-customers and producers do not sell at the retail market, as opposed to the concept proposed by the Ministry of Energy.

- Trade shall be understood as sale at the wholesale level (not to end-customers), whereas supply is sale of electricity to end-customers. Producers are (for now) not to be given a possibility to sell to end-customers, irrespective of their size (which differs from the ministry's proposal to separate wholesale and retail markets based on the size of generators).
- Supply of electricity to end-customers should also include two new concepts, universal service supply and supply of last resort, provided that Belarus decides to introduce (even national) retail market opening. The universal service supply is the supply of electricity at regulated conditions to household and small non-household customers. The supply of last resort is a method of protecting customers (other than households and small non-household customers) that have chosen a supplier and that supplier has terminated supply for reasons not depending on the customer (bankruptcy, license withdrawal, etc.).

- **Introducing gradual liberalization by allowing eligibility**

If Belarus so decides, a new concept of eligibility, i.e. giving a right also to end-customers to choose their supplier, within and outside of Belarus, shall be introduced. This is the main element of the EU model of electricity market liberalization. It differs from the ministry's proposal to allow only incumbent electricity undertakings to participate in the (regional) market without any liberalization at national level.

- Liberalisation, starting from large industry and grounded on predefined criteria based on voltage level or consumption, should be introduced very gradually.

- Opening the market should entail defining balancing responsibility on market-based principles.
- A certain level of customer protection is introduced, including the new (EU) concept of vulnerable customers which has to be defined as those customers who necessitate special protection the most (disconnection is not permitted).
- The Government should continue with planned activities on energy pricing reform to achieve the level of prices that reflects the cost of production. The Government should consistently pursue the policy of restructuring energy prices (tariffs) to remove cross-subsidies.

- **Providing legal basis for participation to regional electricity markets**

More advanced provisions on cooperation at regional level (between transmission system operators, including for capacity allocation at interconnectors, national energy regulators and other market participants) are also proposed, in order to enable Belarus to participate in both Eurasian as well as European regional markets.



3. Gas

a. Sector Overview

The natural gas sector of Belarus is dominated by market incumbents with exclusive rights to market operations at the wholesale and retail levels. Due to established monopolies and concentration of gas activities, neither regulatory nor practical preconditions for competition in the gas market or for its opening are in place. Due to the very marginal domestic production, which in 2016 amounted to 0,272 Bcm, gas supplies in Belarus are fully dependent on imports from the Russian Federation. In 2016, 98% of annual consumption was covered by Gazprom, which amounted to 16,442 Bcm.

Gas Facts and Figures

Main Indicators	
Natural gas production [Bcm]	0,272
Import [Bcm]	16,442
Export [Bcm]	0
Stock exchange [Bcm]	0,130
Total supply [Bcm]	16,844
Consumption in energy sector [Bcm]	11,638
Available for final consumption of natural gas [Bcm]	5,206
Interconnection capacity [mcm/day] ⁶⁶	154,339
Storage working capacity [Bcm]	1,562
Length of transmission network [km]	7900
Final consumption of natural gas per sector [Bcm]	5,206
industry	1,124
non-energy use / petrochemical	1,719
transport	0,479

⁶⁶ Only towards EU (Lithuania, Poland), as published at ENTSOG transparency platform, towards Ukraine and Russia not included in this number

agriculture	0,121
commercial and public services	0,040
residential	1,723

Source: National Statistical Committee of Belarus⁶⁷

The gas transmission system of Belarus operated by Gazprom Transgaz Belarus includes more than 7.9 thousand km of gas pipelines, 13 compressor stations, 3 underground gas storage facilities, 226 gas distribution stations and 7 gas measuring stations on interconnection points⁶⁸.

The gas transmission system operated by Gazprom Transgaz Belarus is connected with the transmission systems of neighbouring European countries, which allows for cross-border supply of gas to Ukraine, Poland and Lithuania directly and, indirectly to Germany (via Poland) as well as to the Kaliningrad region of the Russian Federation. Latvia (via Lithuania) can also be reached. However, Russia-Belarus contractual arrangements do not allow for reverse flow possibilities from the EU, which would enable Belarus to diversify its gas market with competing external supplies primarily from Poland and Lithuania, including LNG. Additionally, the Agreement between Russia and Belarus⁶⁹ stipulates that the natural gas supplied from the territory of the Russian Federation to Belarus intended for consumption on the Belarusian domestic market is not subject to export outside of Belarus. The Agreement declares the exclusive right of Gazprom Transgaz Belarus to purchase natural gas exported from the territory of Russia and intended for consumers in Belarus.

The transit of natural gas from the Russian Federation through the territory of Belarus is provided through the following gas pipelines, with total length of more than 2500 km:

- The three-way main gas pipeline Torzhok - Minsk - Ivatsevichi with a diameter of 1220 mm;
- The Ivatsevichi-Dolyna two-line main gas pipeline with a diameter of 1220 mm;
- The main gas pipeline "Kobrin-Brest-State Border" with a diameter of 1020 mm;
- The main gas pipeline Minsk-Vilnius with a diameter of 1220 mm;
- The main gas pipeline Torzhok-Dolina with a diameter of 1,420 mm; and
- The gas pipeline "Volkovysk - State border" with a diameter of 273 mm.⁷⁰

In addition, Gazprom Transgaz Belarus performs operator functions for the main Yamal–Europe gas pipeline, with a diameter of 1,420 mm and 575 km in length, owned by Gazprom.

⁶⁷ <http://www.belstat.gov.by/ofitsialnaya-statistika/realny-sector-ekonomiki/energeticheskaya-statistika/>.

⁶⁸ <http://belarus-tr.gazprom.ru/>.

⁶⁹ Agreement between the Government of the Russian Federation and the Government of the Republic of Belarus on the terms of the sale and purchase of shares and further activities of the open joint stock company Beltransgaz, with amendments from 2017.

⁷⁰ <http://belarus-tr.gazprom.ru/about/activities/>.

Gas Pipelines in Belarus⁷¹



Source: Gazprom

Gas Storages in Belarus⁷²

Facility/Location	Status	Start-up year	Type	Working gas (technical) TWh	Withdrawal technical GWh/day
Osipovichskoye	operational	1976	Aquifer	3.3090	44.1
Pribugskoye	operational	2000	Depleted field	6.6180	52.9
Mozyrskoye	operational	2008	Salt cavern	5.5150	220.6
Mozyrskoye	under construction	2020	Salt cavern	5.5150	0.0

Source: Gas Infrastructure Europe

Note: No data available on "Injection technical GWh/day"

⁷¹ http://www.gazprom.com/f/posts/30/306702/map_belaruss_tranzit_eng.jpg.

⁷² www.gie.eu/index.php/maps-data/gse-storage-map.

b. Gas Sector Governance

The major players in the gas sector of Belarus are “Gazprom Transgaz Belarus” and “Beltopgaz”, while the production association “Belorusneft” is the only main entity which produces gas in the country.

The open joint-stock company Gazprom Transgaz Belarus carries out the function of gas imports from Russia as well as gas transportation, including domestic transmission and transit operations, and storage. Gazprom Transgaz Belarus (previously Beltransgaz⁷³) is currently wholly-owned by Gazprom. Russian gas suppliers, i.e. Gazprom or its subsidiaries, sell gas to Gazprom Transgaz Belarus, which in turn sells gas to Beltopgaz. Volumes, terms, prices and other conditions for gas supply and its transmission and transit through Belarus to third countries are determined by the contracts between Russian Gazprom and Gazprom Transgaz Belarus. The procedure for calculating the price of natural gas is determined by intergovernmental agreements between the two countries.

The State Production Association (SPA) “Beltopgaz”, is a single gas supply entity in Belarus, owned by the Ministry of Energy, which also operates the gas distribution network as a distribution system operator. Beltopgaz provides gas supply to end-users (enterprises and consumers)⁷⁴.

c. Legal and Policy Framework

The main national legislative act currently governing the gas sector of Belarus is the Law on Gas Supply (2003). The Law regulates relations in the field of gas supply, including with respect to residential consumers, as well as the design, construction, repair and reconstruction, commissioning and operation, decommissioning, conservation and liquidation of gas supply facilities.

The Law defines the state organs that on behalf of Belarus perform gas supply. The Law defines the scope of state regulation and institutions in charge. It includes articles on organizational aspects and maintenance, industrial, ecological and other security issues and defines the responsibilities of the parties involved.

The agreement between Russia and Belarus on Gazprom Transgaz Belarus defines a general framework for its operation (e.g. prohibition of gas extraction during transmission and obligation to pay transit fees) and makes references to other contacts between Gazprom Transgaz Belarus and Gazprom for defining the conditions of transit, supply, etc.

Gas transportation through trunk and distribution pipelines is legally recognized as a natural monopoly and thus falls under the scope of the Law on Natural Monopolies from 2002. The Law defines the rights and obligations of natural monopolies and specifies the scope of state regulation of their activities and related issues.

Other issues regulating the gas sector are defined by international agreements in the framework of regional integration processes.

In addition to the main functions of the respective state organs in the energy sector as described above, the Ministry of Energy monitors the work of Beltopgaz in order to ensure the energy needs of the national economy and the population are met.

The main responsibilities of the Council of Ministers in the gas sector as defined by the Law on Gas Supply are as follows: determination of the procedure for compensation of losses incurred by gas supply organizations to gas consumers; determination of the order of restriction of gas supply to gas

⁷³ In 2011, Gazprom bought an additional 50% of shares of Beltransgaz, thus now being the sole owner.

⁷⁴ <http://www.topgas.by/>.

consumers and the order of priority disconnection from the gas supply system in case of a violation of the technological mode of operation of gas supply systems due to accidents and changes in gas consumption regimes; organization of state supervision; and control over the use of gas.

As with electricity, there is no special independent energy regulatory authority for the gas sector. MART and the Council of Ministers are the main state institutions regulating the pricing and tariff policy in gas sector⁷⁵. MART issues legal acts and carries out its monitoring functions relating to the gas sector. It also regulates the prices for categories other than residential.

d. Assessment of Gas Sector Governance against the Energy Community *Acquis*

1. Unbundling

The Law on Gas Supply does not require the unbundling of transmission or distribution operators. According to the Law, gas supply organizations carry out, inter alia, the following functions: control the operation of the gas distribution system; provide gas supply to gas consumers; and carry out centralized dispatch control of objects connected to the gas distribution system⁷⁶.

In practice, Gazprom Transgaz Belarus carries out both gas transportation activities, including domestic transmission and transit, and at the same time acts as the sole importer and trader of Russian natural gas. According to the Agreement on Gazprom Transgaz Belarus⁷⁷, it carries out the functions of gas supply to the territory of Belarus; transportation of natural gas; and construction and development of gas pipelines and associated facilities as well as underground gas storage facilities. Beltopgaz SPA is engaged in the operation of gas distribution networks and supplies gas to domestic end-users. This results in a situation where both transmission and distribution companies are directly involved in gas supply activities and, furthermore, they hold an absolute monopoly of these activities in the country.

2. Third Party Access

Currently, Belarusian legislation does not stipulate an obligation to ensure third party access to the gas transmission and distribution networks on a non-discriminatory basis.

⁷⁵ Note: MART is a state administrative body reporting also to the Council of Ministers Belarus. Its tasks are related to implementation of the state policy in the area of counteraction to monopolistic activities and competition development, regulation of natural monopolies, pricing, trade, public catering, consumer services, consumer protection, advertising and public procurement of goods (works, services).

⁷⁶Note: Art. 13 Functions of a Gas Supply Organization: provides design, erection, repair and reconstruction, commissioning and operation, decommissioning, conservation and (or) liquidation of gas distribution system facilities; controls the operation of the gas distribution system; ensures the use of energy-saving equipment and advanced technologies at the facilities of the gas distribution system, as well as equipment that reduces the harmful impact on the environment; carries out activities aimed at ensuring fire, industrial and environmental safety of gas distribution system facilities, environmental protection; carries out activities aimed at the prevention of accidents and disasters, the elimination of their effects on the objects of the gas distribution system; provides gas supply to gas consumers; performs centrally dispatching management of objects connected to the gas distribution system, regardless of whose property they are located in; and performs other functions in accordance with the legislation of the Republic of Belarus.

⁷⁷ Agreement between the Government of the Russian Federation and the Government of the Republic of Belarus on the terms of the sale and purchase of shares and further activities of the open joint stock company Beltransgaz, with amendments from 2017.

Belarusian legislation⁷⁸ defines the tariff for gas transportation services through the system of gas distribution pipelines of gas supply organizations that are part of Beltopgaz.

Belarus, as member of the Eurasian Economic Union, has to create the necessary conditions to ensure that the other members have access to its gas transportation system. Particularly, Belarus has to take respective measures to ensure access to services of natural monopolies on the basis of the following main principles:

- Non-application of import and export customs duties (and other equivalent duties, taxes and fees);
- Priority supply to meet domestic gas demand of the member states;
- Prices and tariffs for gas transportation services for supply of the domestic demand of the EAEU member states set in accordance with their legislation;
- An information exchange system for data on domestic gas consumption;
- Establishment of mechanisms for preparation of indicative (projected) gas balances;
- Unification of gas-related norms and standards; and
- Maintaining market prices, ensuring commercial viability of gas sales.⁷⁹

Upon the completion of the set of measures specified above by all the EAEU members, they shall, within the existing technical capabilities and available capacities of gas transportation systems, taking into account the agreed indicative (projected) gas balance of the EAEU and on the basis of civil law contracts of economic entities, ensure access of economic entities of other EAEU members (Art. 7), under certain rules. These include granting access to the gas transportation system of another EAEU state on equal terms (including with regard to tariffs) with gas producers that are not owners of the gas transmission system of the EAEU state on the territory of which the transportation is carried out. The prices and tariffs, as well as commercial and other terms of gas transportation via gas transmission systems, shall be regulated by civil law contracts⁸⁰.

The EAEU legislation requires non-discriminatory third party access of the EAEU states to the transportation system of the EAEU states. While the general principle is in compliance with EU energy law, the third party access in this case is limited only to the members of the EAEU.

3. Tariffs and Pricing

Gas prices are regulated by the Government for the residential sector and by MART for all other categories of consumers. More specifically, the Council of Ministers defines the prices at which Beltopgaz and its subsidiaries sell gas to residential consumers⁸¹. MART⁸² differentiates and regulates prices for the gas supply entities; legal entities depending on their activities and gas consumption volume; institutions funded by the state budget; legal entities affiliated with state

⁷⁸ Resolution of the Ministry of Antimonopoly Regulation and Trade (MART) No. 31 from 2016 "On the regulation for the service tariff for transportation of natural gas through distribution system".

⁷⁹ Protocol on the Rules of Access to Services of Natural Monopoly Entities in the Sphere of Gas Transportations Using Gas Transportation Systems, including Fundamental Pricing and Tariff Policy, Art. 5.

⁸⁰ Protocol on the Rules of Access to Services of Natural Monopoly Entities in the Sphere of Gas Transportations Using Gas Transportation Systems, including Fundamental Pricing and Tariff Policy, Art. 7.

⁸¹ <http://www.topgas.by/content/produktsiya/tseny-i-tarify.php>. Please see the Resolution of Council of Ministers with the prices for residential consumers for 2018.

⁸² Decree of the President, No. 72 "On some issues of regulation of prices (tariffs) in the Republic of Belarus" 2011 defines MART as the organ responsible for price regulation for gas (except the area regulated by the Council of Ministers).

institutions, etc⁸³. MART sets sale prices for natural gas (without VAT) to gas supply organizations that are part of Beltopgaz. A Regulation of the Council of Ministers defines the tariffs for end-customers, differentiating between them depending on the season and the presence of equipment calculating energy consumption.

Before the entry into force of the EAEU Agreement on the common gas market, the gas pricing for Belarus and tariffs on gas transportation through Belarus are defined by the intergovernmental agreement between two countries⁸⁴. Particularly, there is an agreement defining the gas prices for Belarus: "On the procedure for the formation of prices (tariffs) for the supply of natural gas to the Republic of Belarus and its transportation through gas pipelines located on the territory of the Republic of Belarus" from 2011 and the protocol on amendments to this agreement from 2017.

The Protocol defines that in case the common gas market is not established by 1 January 2025, the Parties will determine the order of pricing for gas for Belarus, based on the programme proposals agreed by the Parties⁸⁵.

4. Market Opening

The existing gas market of Belarus is represented by the exclusive monopoly of Gazprom Transgaz Belarus, which is the only importer of gas; whereas domestic gas supplies are provided only by state-owned Beltopgaz and its subsidiaries. Thus, the current structure is not compatible with market principles.

The common EAEU gas market is to be implemented by 2025. This could induce competition between market participants and, notably, trigger a shift to market pricing mechanisms and cross-border trade⁸⁶.

5. Customer Protection

In practice, customers in Belarus have only one gas supplier, thus they do not have the right to choose or switch their supplier. The prices for end-customers are regulated by the Council of Ministers and made publicly available.

A gas supply entity is obliged to ensure the uninterrupted supply of gas; comply with the requirements of technical, industrial, fire and security regulations in the field of gas supply; and provide technical maintenance services (the charging rules are defined), within the timeframe established in technical acts. Additionally, gas supply entities must provide information on their activities⁸⁷.

Protection of vulnerable customers is defined in the Law on Gas Supply. According to the Law, "benefits for gas payment to certain categories of gas consumers are provided in accordance with the legislation of Belarus. In order to provide economic support to low-income citizens, there is a

⁸³ <http://www.pravo.by/document/?guid=12551&p0=W21832738&p1=1>.

⁸⁴ Agreement "On the procedure for the formation of prices (tariffs) for the supply of natural gas to the Republic of Belarus and its transportation through gas pipelines located on the territory of the Republic of Belarus" (Art. 2).

⁸⁵ http://pravo.by/upload/docs/op/171700021_1513285200.pdf.

⁸⁶ Concept on formation of the common gas market of the EAEU. Section III: Aims, principles and objectives of the common gas market.

⁸⁷ Resolution of the Council of Ministers No. 1136, from 2013.

possibility for compensation for the costs for this group of population for the purchase of gas in accordance with the legislation of the Republic of Belarus”⁸⁸.

Other legal acts also refer to vulnerable customers. Particularly, the President issued Decree No. 322 in 2016 "On the provision of non-cash housing subsidies", which introduced a system of state support for pensioners and socially vulnerable categories of the population⁸⁹. Subsidies are provided if the monthly amount of payment for housing and utility services exceeds 20% of the average total monthly income of the person/family residing in the city and 15% for those in rural areas⁹⁰.

6. Security of Supply

An emergency prevention and management plan is in place, which defines the procedure for coordination of the relevant departments⁹¹. The heads of the technical units of the gas supply entities are responsible for developing such plans.

The Council of Ministers adopted a Regulation that determines the order of restriction of gas supply to gas consumers and their order of priority disconnection from the gas supply system in case of accidents and changes in gas consumption regimes (at the first stage the entities with storages facilities for emergency reserves should be shut down). The Law on Gas Supply determines that in order to ensure industrial and environmental safety in the field of gas supply, the owner of the gas supply facilities must monitor the technical condition of these facilities; develop measures to prevent and eliminate possible accidents, fires and other emergencies, as well as contingency plans; and secure financial funds for these purposes.

Underground storages, operated by Gazprom Transgaz, serve as long-term gas reserves in case of force majeure during gas transportation. Gazprom Transgaz Belarus operates two underground gas storage (UGS) facilities created in aquifers - Osipovichsky and Pribugskoye, and Mozyrskoye UGS in saline sediments. The development of Mozyr UGS will be continued in the period 2011-2020 to reach the maximum volume of 1 Bcm.

e. Policy Recommendations

The existing gas market in Belarus is dominated by monopolies operating at the wholesale and retail level. The exclusive right of Gazprom to import gas to Belarus has potentially detrimental effects on the country's gas market. The full dependency on a dominant external supplier allows the monopolistic entity to influence pricing and dictate other terms. Consequently, the gas market in Belarus lacks any competition, and results in a situation that gas customers cannot choose their supplier. The development of the gas market based on EU and Energy Community *acquis* requires policy and legal reforms and structural and operational changes.

Legislation and regulatory framework based on international best practice should be developed, whilst respecting the EAEU Treaty. It is highly recommended that the monopoly entities in the gas sector are unbundled, separating supply and network activities.

The following specific recommendations and issues should be taken into account:

- Unbundling of gas transmission and storages from supply at wholesale level;

⁸⁸ Law on Gas supply of the republic of Belarus 2003, Art. 5.

⁸⁹ Also Resolution of the Council of Ministers No. 789 from 2016 regulating factual and normative aspects of provision of subsidies.

⁹⁰ Notably, in 2017, subsidies were provided to 14,950 households in the amount equal to Br 744,000.

⁹¹ Approved by the resolution of the Council of Ministers No. 495.

- Introduction of regional DSOs and retail suppliers;
- Establishment of a national regulatory authority fully independent from private and public interests and free from parliamentary or judicial supervision (or having MART take over the tasks and competences of a national energy regulator) as key for ensuring that grid tariffs are non-discriminatory and cost-reflective and helping markets function properly; and
- Redefining the state ownership of Beltopgaz and encouraging opportunities for private sector involvement in the gas sector.



4. Oil

a. Sector Overview

Belarusian oil reserves are estimated at 50 million tonnes. The majority of the proven oil reserves are difficult to recover. The majority of the oil and gas is produced from the largest fields such as Rechitskoye, Ostashkovichskoye, Vishanskoye and Yuzhno-Ostashkovichskoye.

Maximum annual oil production was achieved in 1975 and amounted to almost 8 million tonnes (153 kbpod). In 1976, oil production in the country decreased dramatically due to high recovery rates and reserve deterioration (major fields entered the final stage of development) and by 1997 oil production dropped to 1.9 million tonnes (36 kbpod). In 2013, annual production stabilized at 1,645 thousand tonnes of oil. In 2017, 1,645 thousand tonnes of oil was produced. Belarus currently extracts around 1.65 million tonnes of oil on its territory annually. This amount is insignificant compared to world oil production front-runners. Stabilization of oil production is in place since 2013 due to the use of modern methods of well development, extraction of hard-to-recover oil reserves and introduction of new equipment and technologies.

Crude Oil Production of Belarus

Extraction thousand tons	2007	2008	2009	2010	2011	2012	2013	2014	2015
Crude Oil and byproducts	1 760	1 740	1 720	1 700	1 681	1 660	1 645	1 645	1 645

Source: Information from National Statistical Committee, Belarus, 2015⁹²

Projected Oil Production Increase

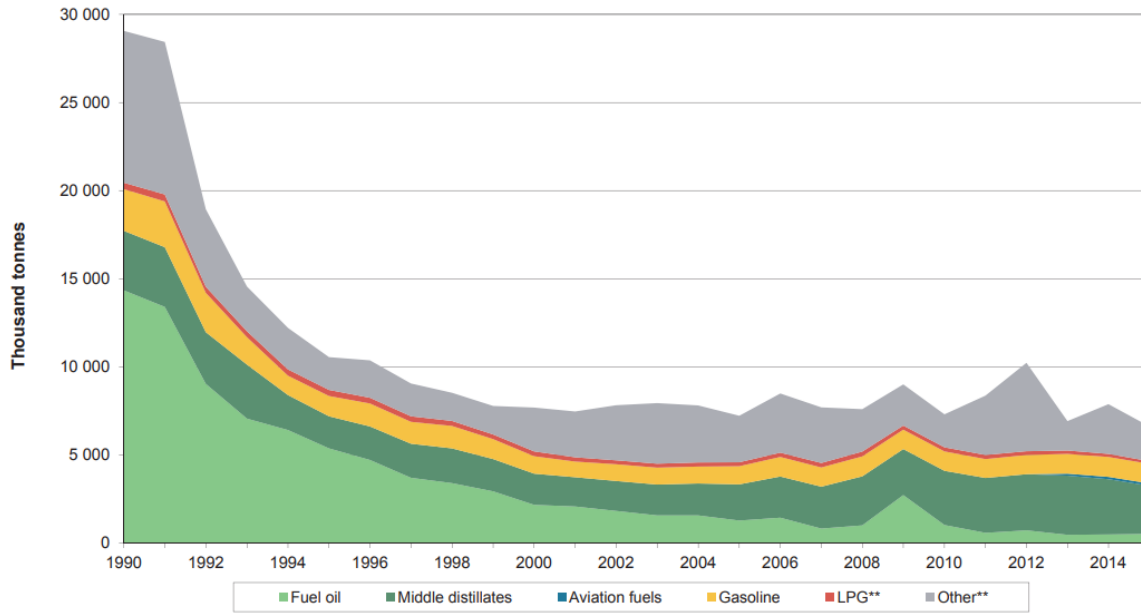
Increase targets thousand tons	Data for years		
	2018	2019	2020
Crude Oil	0,6	0,6	0,6

Source: State Programme "Environmental Protection and Sustainable Use of Natural Resources for 2016-2020"

⁹² http://www.belstat.gov.by/ofitsialnaya-statistika/realny-sector-ekonomiki/energeticheskaya-statistika/operativnyedannye_3/proizvodstvo-dobycha-prirodnih-vidov-toplivno-energeticheskikh-resursov/.

The total oil product consumption in the country is around 172.000 bbl/day, where currently the middle distillates⁹³ represent the largest consumption.

Consumption of Oil Products 2015



* Consumption includes international bunkers. ** LPG includes LPG, NGL, ethane and naphtha. Other also includes direct use of crude oil and other hydrocarbons.

Source: IEA⁹⁴

The oil pipeline system of Belarus includes the transit route for Russian oil. The Druzhba pipeline runs to Mozyr in southern Belarus, where it splits into a northern and southern branch. The northern branch crosses the remainder of Belarus across Poland and Germany. The southern branch runs south through Ukraine.

⁹³ Middle distillate is a range of petroleum products that are placed between the lighter fractions like gasoline or LPG and heavier products like fuel oils. Generally heating kerosene, jet fuels and diesel oils are included in this group.

⁹⁴ <https://www.iea.org/stats/WebGraphs/BELARUS1.pdf>.

Oil Pipeline System of Belarus



The oil storage capacity of BelNeftekhim, the state-owned petrochemicals entity, is 1.4 mcm. The construction of additional oil storage capacity at the Joint Stock Company (JSC) Naftan, a large oil refinery and petrochemical complex, and at Gmeltransoil Druzhba will increase the overall capacity to 1.7 mcm by 2020.

b. Legal and Policy Framework

The Concept of Energy Security of the Republic of Belarus up to 2035 (new edition) identifies the depletion of oil deposits as one of the main threats to energy security in the area of extraction in the country. The decline in the competitiveness of Belarusian petroleum products due to the increasing volume and depth of oil refining in neighbouring states is identified as a main threat⁹⁵.

The long-term goal of diversifying the import of fuel energy resources is to achieve a level that allows uninterrupted operation with guaranteed deliveries by the dominant supplier for each of the types of fuel. In order to achieve this goal, the concept defines the necessity to participate in the development of oil and gas resources of foreign states and to organize their supplies to Belarus.

In relation to the reliability of deliveries and reserves, it is prescribed to establish and maintain the reserves in volumes sufficient for the operation of oil refinery plants for ten days and reserves of oil products in quantities sufficient to ensure the needs of the oil industry and the population for 30 days (with the prospect to increase by 2035 to 45 days), including organizations of the Belarusian State Concern for Oil and Chemistry - within 15 days.

⁹⁵ Chapter 3, <http://www.government.by/upload/docs/file5a034ca617dc35eb.PDF>.

A 1992 law on the protection of the environment sets out requirements in the field of environmental protection for the placement, design, construction, reconstruction, commissioning, operation and liquidation of oil production, processing, transportation, storage and sale facilities for oil, gas and their by-products. A state programme on "Environmental Protection and Sustainable Use of Natural Resources for 2016-2020", covering the oil sector, was approved by a Resolution of the Council of Ministers of the Republic of Belarus on 17 March 2016.

c. Assessment of Oil Sector Governance against the Energy Community *Acquis*

The Ministry of Emergency Situations is responsible for emergency preparedness and response mechanisms. The legislation of Belarus presently does not foresee mandatory requirements with regard to emergency oil stocks and Belarus currently has no emergency oil stockholding. Therefore, a legal framework comparable to the EU Oil Stocks Directive 2009/119/EC, which obliges countries to maintain emergency stocks of crude oil and/or petroleum products equal to at least 90 days of net imports or 61 days of consumption, whichever is higher, is not in place.

d. Policy Recommendations

Belarus currently has no emergency oil stockholding. In order to remove the energy security concerns, it is recommended to develop mechanisms to gradually introduce the requirements for maintaining minimum stocks of crude oil and petroleum products. Implementation of such requirements will ensure that in case of an oil product disruption in the country, Belarus will be able to satisfy its domestic demand for petroleum products until alternative sources of supply are available.

The secure supply of petroleum products to Belarus in the event of supply disruptions and establishment and management of emergency oil stocks should be based on the following principles:

- Accountability, competence, objectivity, transparency, non-discrimination and impartiality;
- Efficient and economic use of existing oil infrastructure on the territory of Belarus;
- Maximum use of existing resources in the ownership of Belarus;
- Technological advancement of oil infrastructure, especially in seaports;
- Financing mechanism to be independent of the budget of Belarus and without impact on the public debt;
- Encouraging private sector participation;
- Development of oil storage activities;
- Applying the highest standards of quality and quality control of petroleum products;
- Applying best engineering practices in the field of storage of petroleum products; and
- Environmental protection.

As a first step, it is recommended to collect all the necessary information for determining the emergency stockholding model into one single point within the ministry in charge of energy. This information would include making initial calculations of the stockholding needs. Based on this information, it is recommended to develop the primary legislation on emergency oil stockholding, which should explicitly define who would be responsible for the establishment of the stocks and how the stockholding would be financed.

5. Renewable Energy

a. Legal and Policy Framework

Belarus has taken gradual steps towards developing its renewable energy sector. Due to its geographical and climate conditions, the country has significant potential to produce energy from renewable sources like biomass, wind and hydro.

The policy and legal framework for regulating the renewable energy sector consists of:

- The Law on Renewable Energy Resources adopted in 2010;
- The Energy Saving Programme 2016-2020;
- The Presidential Decree 209/2015 and Presidential Directive 3/2015; and
- Resolutions of the Ministry of Antimonopoly and Trade No. 41/2017 and the Council of Ministers 662/2015⁹⁶.

The Ministry of Energy, the Ministry of Natural Resources and Environmental Protection and the Energy Efficiency Department of the State Standardisation Committee are responsible for the development and implementation of renewable energy policies. They also carry out several other functions in addition to policymaking. The Ministry of Energy takes measures to ensure guaranteed connection of renewable energy installations to the state energy networks and assigns energy suppliers a certain share of energy from renewable sources in their supply portfolio. The Ministry of Natural Resources and Environmental Protection is in charge of identification of suitable locations for renewable energy projects, maintains the state register of renewable energy installations and issues certificates confirming the origin of the energy. The Energy Efficiency Department of the State Standardization Committee is responsible for the development of programmatic documents and ensures their implementation within its areas of competence. Furthermore, the President and the Council of Ministers issue legislation on regulating the renewable energy sector.

According to the Energy Saving Programme, the share of energy from renewable sources in the total energy supply of Belarus shall reach 6% in 2020.

The Presidential Directive 3/2015 sets a target of 7% of new renewable energy capacities in total installed capacities in 2020, which will translate into a target of 2,3% share of electricity generated by 2020.

⁹⁶ Note: See also: Concept on the energy security from 2015; Resolution of the Council of Ministers of 2015, No. 662 "On the establishment and distribution of quotas for the establishment of facilities for the use of RES"; Resolution of the Ministry of Antimonopoly Regulation and Trade. No. 41, 2017 (as amended by the Resolution of the MART of 18 August 2017 No.. 43) "On tariffs for electric energy produced from renewable energy sources in the territory of the Republic of Belarus by individual entrepreneurs and legal entities, which are part of the state industrial association of electric power industry Belenergo"; Resolution of the Council of Ministers No. 1394 of 2011 "On Approval of the Power Supply Rules"; Decree of the President of 2015. No. 209 "On the use of renewable sources energy"; Directive of the President of 2015 No. 3 (amended by the Decree of the President of the Republic of Belarus No. 26).

Both objectives are set at a lower level of ambition compared with EU Member States⁹⁷.

b. Assessment of Renewable Energy Sector Governance against the Energy Community *Acquis*

While the national legislation transposes several elements of the relevant EU legislation on renewable energy, the legal and regulatory framework is not in compliance with the main requirements of the EU Renewable Energy Directive 2009/28/EC.

The 2010 Law on Renewable Energy Sources regulates relationships in the area of renewable energy for the promotion of the use of energy from renewable sources as well as manufacturing of equipment for the production of energy from renewable sources⁹⁸. The Law guarantees connection to the state electricity grids in a non-discriminatory manner⁹⁹.

The Law determines state support for renewable energy development, such as through:

- A pricing policy aimed at encouraging the use of renewable energy and energy generated from renewable energy sources;
- Encouraging investment activities, including providing for favourable conditions for national and foreign investors based on:
 - Tax concessions in accordance with the legislation;
 - Exemption from customs duties for imported technological equipment intended for production, consumption, conversion, storage, transmission of electricity from renewable energy sources that may be provided under international treaties of Belarus; and
- Promotion of efficient technologies and renewable energy installations.

The National Energy Saving Programme for 2016-2020 defines the current status of renewable energy in the country, sets the overall target and defines financial sources for carrying out the planned measures. It notes possible risks and barriers to implementation of the programme (financial risk, change of tariffs for fuels, climate change), identifies monitoring and evaluation measures such as annual reporting on the progress and the indicators for measuring progress (considering the target value and the achieved value).

The Energy Saving Programme, its Subprogram and Annex 7 share certain similarities with the National Renewable Energy Action Plan to achieve the 2020 targets under the EU Renewable Energy Directive. However, the document is primarily focused on energy saving and does not have a concrete list of measures to be implemented in order to achieve the 6% target in the manner of the EU/Energy Community National Renewable Energy Action Plans. Nevertheless, it contains a list of state companies and institutions with their renewable energy target to be achieved in a certain year¹⁰⁰.

The Energy Saving Programme gives priority to the expansion of production and use of biomass, improvement of infrastructure, increase of efficiency and boost of production of electrical and thermal energy by using hydro, wind and solar energy resources. The document also refers to increasing the

⁹⁷ EU Renewable Energy Directive 2009/28/EC set a binding renewable energy target of 20% at European Union for 2020. At EU Member States level, the 2020 renewable energy targets varies from 10% in Malta to 49% in Sweden, accounting for the different share of energy from renewable sources in their energy mix in the baseline year 2005.

⁹⁸ http://www.windpower.by/files/files/Policy_%20in_the_field_of_energy_efficiency.pdf.

⁹⁹ Law on Renewables of the Republic of Belarus, articles 20, 21.

¹⁰⁰ Note: e.g. for the Ministry of Interior Affairs, the share of local energy resources for 2017 is set at 70%, and the share of renewables at 49,9%. The document contains information on the manner of calculating the data.

consumption of biodiesel in the transport sector, however, without mentioning any specific targets. This comes short of the binding objectives of the EAEU and Energy Community to ensure that 10% of transport fuels come from renewable sources by 2020.

Regarding sectoral targets defined in the Energy Saving Programme, it is planned to make operational 135 power plants using renewable resources by 2020. It is envisaged that the production of electrical and thermal energy using hydropower, wind and solar energy will be provided by:

- The construction of new hydro power stations with total capacity of about 80 MW;
- New solar PV plants with total electric power of at least 250 MW and several solar PV modules for isolated consumers;
- Increasing the use of solar water heaters used in agriculture for the processes of drying products and heating water for household purposes; and
- Commissioning of several wind power plants with a total electric capacity of at least 200 MW.

The cost of promotion of renewable energy is financed via the regulated electricity tariff, under which Belenergo is supplying to final consumers. According to information from the Ministry of Energy, the cost of subsidizing the electricity produced from renewable sources amounted to 22.5 million USD in 2015.

The Government is taking steps towards creating favourable conditions for investors. Notably, in accordance with the Tax Code of the Republic of Belarus, the installations for the use of renewable energy sources are exempted from VAT when imported into Belarus and the facilities and installations for the use of renewable energy sources are exempted from land tax¹⁰¹.

There are two instruments for regulation of renewables: feed-in-tariffs and capacity quotas for renewable energy technologies. In accordance with the President's Decree 209/2015, the creation of new, modernization or reconstruction of existing installations for the use of renewable energy sources is carried out within the established quotas applied to various renewable energy technologies.

The electricity generated by private renewable energy producers is purchased by Belenergo at a tariff with different coefficients for each renewable energy technology provided that the deadlines for commissioning the facilities declared by the applicants are not exceeding the quota. The adoption of the feed-in-tariffs are included in the Resolution of the Ministry of Antimonopoly Regulation and Trade 41/2017, representing the maximum tariffs that a developer can obtain based on a capacity quota, while quotas are adopted by the Resolution of the Council of Ministers 662/2015.

Recently, the number of criteria for the selection of applicants for the right to develop facilities for the use of renewable energy sources has been reduced. Annex 4 to the Resolution 305/2017 defines only three criteria:

- The amount of the proposed coefficient to the tariffs for the purchase of electricity produced from renewable sources;
- Equipment service life at the time of putting the plant into operation; and
- Nomination of the daily schedules¹⁰².

In accordance with Decree 209/2015, the Interdepartmental Commission has been established with the main responsibility to set objectives for the development of renewable energy. In May 2017, the Commission adopted the objective of 5.025 MW for solar power, 2.72 MW for biogas and 2.5 MW for wind power until 2020.

¹⁰¹ Tax Code of the Republic of Belarus, Art. 96 and 194.

¹⁰² Annex 4 to the Resolution No. 305 <http://www.government.by/upload/docs/file8d6d9c8c465c63df.PDF>.

According to the 2010 Law on Renewable Sources, the confirmation of the origin of energy produced from renewable sources is fulfilled with the issuing of a certificate confirming the origin of energy.

A certificate confirming the origin of energy is necessary for the conclusion and extension of energy purchase contracts and the application of support tariffs provided by the Law. The certificate must contain information on the location of the installation for the use of renewables, its capacity and date of commissioning; the name and location of the energy producer of renewables; the types of renewables; and the maximum amount of energy produced. A certificate of confirmation of the origin of energy is issued for a period of ten years by the Ministry of Natural Resources and Environmental Protection. However, the certificate does not fulfil the main requirements of the EU Renewable Energy Directive 2009/28/EC, according to which a guarantee of origin is an electronic document with the sole function of proving to a final customer that a given share or quantity of energy was produced from renewable sources, and can be issued, transferred and cancelled.

Achievements of renewable energy objectives to 2020 might be affected by the plans of commissioning a nuclear power plant by 2020.

c. Policy Recommendations

To effectively implement the adopted Law on Renewable Energy Sources, it is recommended to accelerate the development of secondary legislation in line with the EU Renewable Energy Directive.

Particularly, it is suggested to develop the National Renewable Energy Action Plan, a policy document describing the measures to achieve the renewable energy targets in compliance with the EU template. The Energy Saving Programme of Belarus defines certain targets for renewable energy until 2020, however, it is proposed to include a corresponding list of measures to be implemented to achieve the targets as well as a monitoring and reporting mechanism.

It is recommended to transpose the legal requirements and to adopt a target for renewable energy in transport fuels in line with the EU Renewable Energy Directive.

Furthermore, to ensure a cost-effective deployment of renewable energy with the lowest impact on end-user energy prices, it is suitable to introduce competition in granting the support, therefore creating a competitive market that provides transparency and creates a level playing field. Belarus could consider the implementation of technology neutral auctions building on the recommendations issued in the Policy Guidelines on Competitive Selection and Support for Renewable Energy¹⁰³.

The draft electricity Law contemplates the possibility of introducing priority purchase of energy produced from nuclear power stations, a support which is not compatible with the European *acquis*. Although nuclear energy could contribute to the climate objectives, the measure could hinder the achievement of renewable energy objectives or create undue burden on end-customers in the future.

¹⁰³ EBRD, Energy Community and IRENA Policy Guidelines on Competitive Selection for Support on Renewable Energy, <https://www.energy-community.org/dam/jcr:4ab03f8c-de3d-4783-931d-4766f643fe7b/EBRD-EnCS-IRENA%20RE%20Auction%20Guidelines%202018%20-%20FINAL.PDF>.

Existing and Planned Renewable Energy Capacities to 2020

Type of renewable energy	Existing as of 01/01/2017 (MW)	With investment contracts, before Decree No. 209/2015 (MW)	Planned 2016-2020 (MW)	Total (MW)
Biomass	73,6	9,9	19,4	103
Biogas	26,8	11,1	53,9	92
HPPs	33,6	61,7	60,3	156
Solar	50,5	291,6	20,0	362
Wind	68,4	151,7	62,0	282
Total	253	526	216	994

Electricity generated in 2016 ¹⁰⁴	TWh
In thermal power stations	33 321
Renewable energy, out of which	245
- Hydro	142
- Wind	75
- Solar	28
Total	33.566

Renewable energy connected to Belenergo grids	MW		GWh	
	2015	2016	2015	2016
Solar	13,0	50,9	11,4	30,2
Wind	46,6	62,0	43,6	62,9
Hydro	6,9	7,3	22,8	27,0
Wood	1,3	2,9	2,3	4,6
Biogas	20,9	24,4	96,8	106,3
Biomass	3,7	3,7	4,9	2,9
Total	92,4	151,3	181,9	234,0

¹⁰⁴ http://www.belstat.gov.by/ofitsialnaya-statistika/realny-sector-ekonomiki/energeticheskaya-statistika/operativnye-dannye_3/balans-elektricheskoi-energii/.

7. Competition

a. Legal and Policy Framework

In Belarus, competition law is mainly regulated by the "Law on Counteraction to Monopolistic Activities and Promotion of Competition" of 1992, as amended in 2010 and 2013, which is based on the model law "On Protection of Competition" of the CIS. The Law establishes the organisational and legal framework to prevent, restrict and suppress monopolistic activity and provide conditions for the development of fair competition, efficient commodity markets and protection of consumer rights. The Law covers anti-competitive agreements, abuse of dominance, unfair competition (not covered by Energy Community *acquis*) and merger control.

The authority responsible for enforcing the Law is the Ministry of Antimonopoly Regulation and Trade. MART has been centralised only in 2016. The antimonopoly authority is responsible for investigating and taking measures against anti-competitive conduct by undertakings and the State as well as for the promotion of fair competition. It has strong enforcement powers and acts as investigator and prosecutor of anti-competitive conduct. It is competent to appeal to the court. It is responsible for drafting secondary legislation in its field of activities.

b. Assessment of Competition Governance of the Republic of Belarus against the Energy Community *Acquis*

1. Abuse of Dominance

Article 12 of the Law enshrines the prohibition of abuse of a dominant position. An undertaking is deemed to be in a dominant position if it can influence trade in a particular commodity or restrict other undertakings from entering the market. The definition of a dominant position provides for different market share thresholds depending on the number of competitors on the market. Each undertaking in a dominant position shall be included in the State Registry for dominant undertakings in the commodity markets. The provision also contains a non-comprehensive list of behaviours, which are considered to be abusive.

2. Anti-competitive Agreements and Concerted Actions

Article 13 of the Law contains a broad prohibition of anti-competitive agreements and concerted practices; however, it is exclusively based on the anti-competitive effects of such agreements and lists examples, thereby potentially limiting the application of this prohibition to hard-core infringements. Article 14 also provides for an exemption to the cartel prohibition, which is modelled after Article 101(3) of the Treaty on the Functioning of the European Union (TFEU). Undertakings planning to conclude such agreements may notify MART, who may issue an exemption decision. Finally, Article 15 partially transposes Article 106 TFEU by prohibiting anti-competitive conduct induced by the State itself.

3. Merger Control

Chapter 4 of the Law sets up a mandatory merger control system, defining the transactions which need to be notified to MART and require its approval. Such clearance shall be denied if the transaction leads to the emergence or strengthening of a dominant position and/or prevents, restricts or eliminates competition. However, MART may impose conditions in order to remove such anti-competitive concerns.

4. State Aid

Article 15 of the Law lists the granting of “state preferences”, i.e. the provision by the State of an economic advantage, e.g. more favourable operating conditions, transferring state property or other rights or support measures, as prohibited practices by state bodies. However, detailed provisions covering State aid are lacking.

c. Policy Recommendations

Considering the current legal framework, the Energy Community Secretariat recommend to further align the provisions with the EU/Energy Community competition *acquis*, in particular the definition of dominant position and abuse as well as the definition and list of anti-competitive conduct. A detailed regime for State aid should be developed in order to permit the efficient allocation of State resources. Finally, MART should establish a strong enforcement practice and dispose of sufficient resources and independence for this task.