



**Knocking on the EU's Door through
the Energy Community: Integration
of Western Balkans into the
Pan-European Energy Market**

**Energy Community Secretariat
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Introduction

For over a decade, the Energy Community has acted as a facilitator and accelerator of EU-inspired energy reforms in the Western Balkans, delivering direct benefits to citizens and business alike. The Energy Community is designed as an instrument for market liberalization and regional integration, but also for steering the countries of the Western Balkans towards clean, sustainable development of their energy sectors.

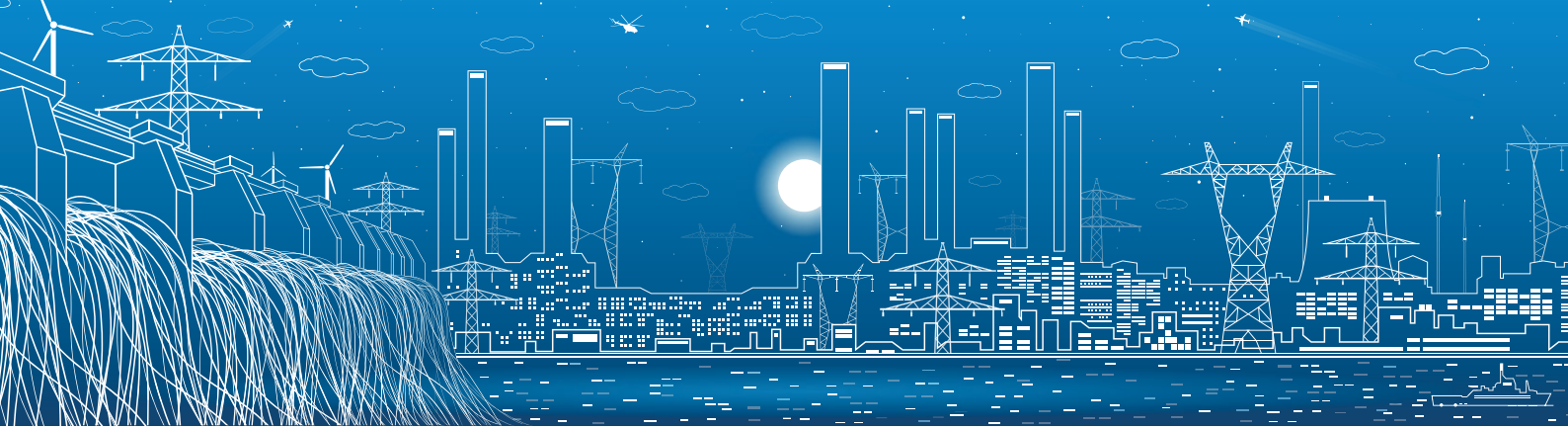
There are stark differences in the energy reform progress of the Western Balkan countries under the Energy Community umbrella, which is to some extent linked to their EU accession tracks. Montenegro is the frontrunner in terms of compliance with obligations under the Energy Community Treaty. Serbia is performing well on the books but is slow in real implementation of the *acquis* in wording and spirit. The two countries have started EU accession talks. They are followed by Albania and former Yugoslav Republic of Macedonia, both having obtained EU candidate country status and currently at a crossroads between accelerating and stagnating with energy sector reforms. Kosovo*¹ has a good track record in transposition under difficult external circumstances but must do more to get its market structure and environmental performance right. Finally, Bosnia and Herzegovina, as aspiring potential candidate for EU membership, lags behind the others.

Whilst the immediate goal of the Energy Community is to implement EU energy law and principles in the countries on the EU's doorstep, the long-term objective is to create an integrated regional energy market, starting with the Balkan countries and then being fully integrated into the European Union's internal energy market. This has ultimately proved the hardest to achieve, as false beliefs in energy autarchy and resistance against transparency and new market entrants are still common.

Beyond the significant benefits brought to the citizens of the Western Balkans such as fostering economic development, improving energy infrastructure, promoting policies stimulating energy efficient solutions and use of energy from renewable sources, better energy services at fair prices, cleaner air, etc., the Community also directly benefits the European Union. Not only did the Energy Community's existence help to create stability in the EU's direct neighbourhood after the turbulence caused by the Balkan conflict, it also created a common institution for tackling joint energy challenges effectively, such as security of energy supply and climate change.

At a time when EU accession of the Western Balkans returns to the agenda, this report provides a snapshot of the progress made by the countries of the Western Balkans towards integration with the European Union in the areas covered by the Energy Community Treaty. The report presents the latest information on how Energy Community members are progressing with respect to transposition and implementation of EU energy law and strives to provide recommendations on future engagement and cooperation in the energy area towards pan-European energy market integration.

¹ Throughout the report, this designation is without prejudice to positions on status, and is in line with UNSCR 1244 and the ICJ Opinion on the Kosovo declaration of independence.



Presenting the Energy Community

The Energy Community, established by an international treaty in 2006 between the European Union² and nine so-called “Contracting Parties”³, created an advanced governance for drawing the Balkan region closer to the European Union in the energy area and beyond. By signing the Energy Community Treaty, the countries committed to implementing key EU energy legislation within a fixed timeframe. Membership of the Energy Community is linked to the EU accession process as countries’ progress in terms of implementation and enforcement of the relevant Energy Community *acquis communautaire* (‘*acquis*’) is a key consideration in the negotiations for accession to the European Union.

The mission of the Energy Community is to:

- Establish a stable regulatory and market framework capable of attracting investment in power generation and networks;
- Create an integrated energy market allowing for cross-border energy trade and integration with the EU market;
- Enhance the security of supply to ensure stable and continuous energy supply that is essential for economic development and social stability;
- Improve the environmental situation in relation with energy supply in the region and foster the use of renewable energy and energy efficiency; and
- Develop competition at regional level and exploit economies of scale.

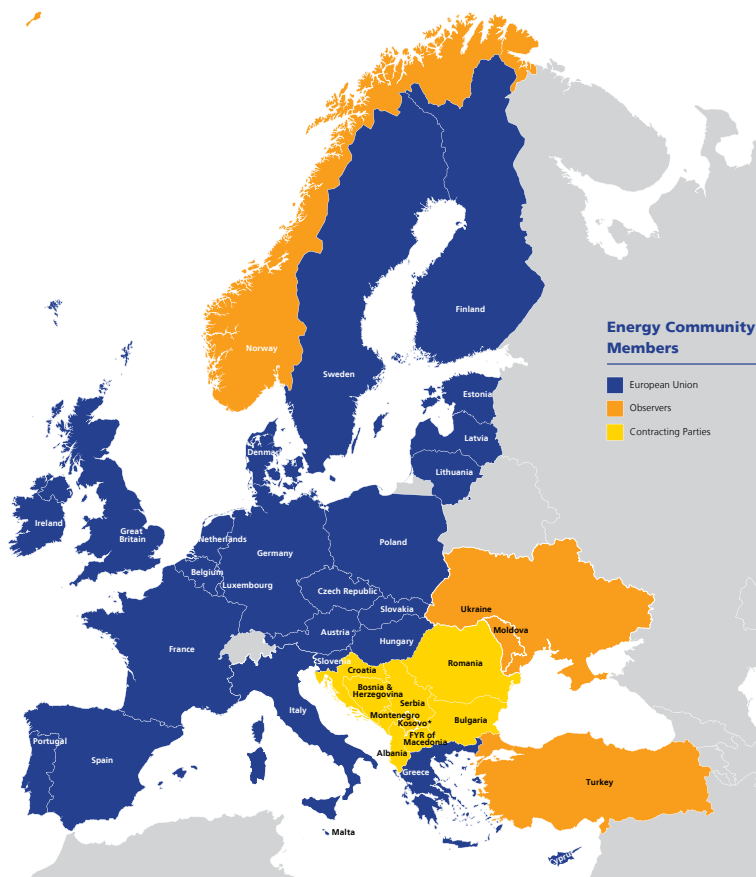


Figure 1 Energy Community map 2006

Source: Energy Community Secretariat

² Signed originally by the European Community, succeeded in the meantime by the European Union.

³ 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.

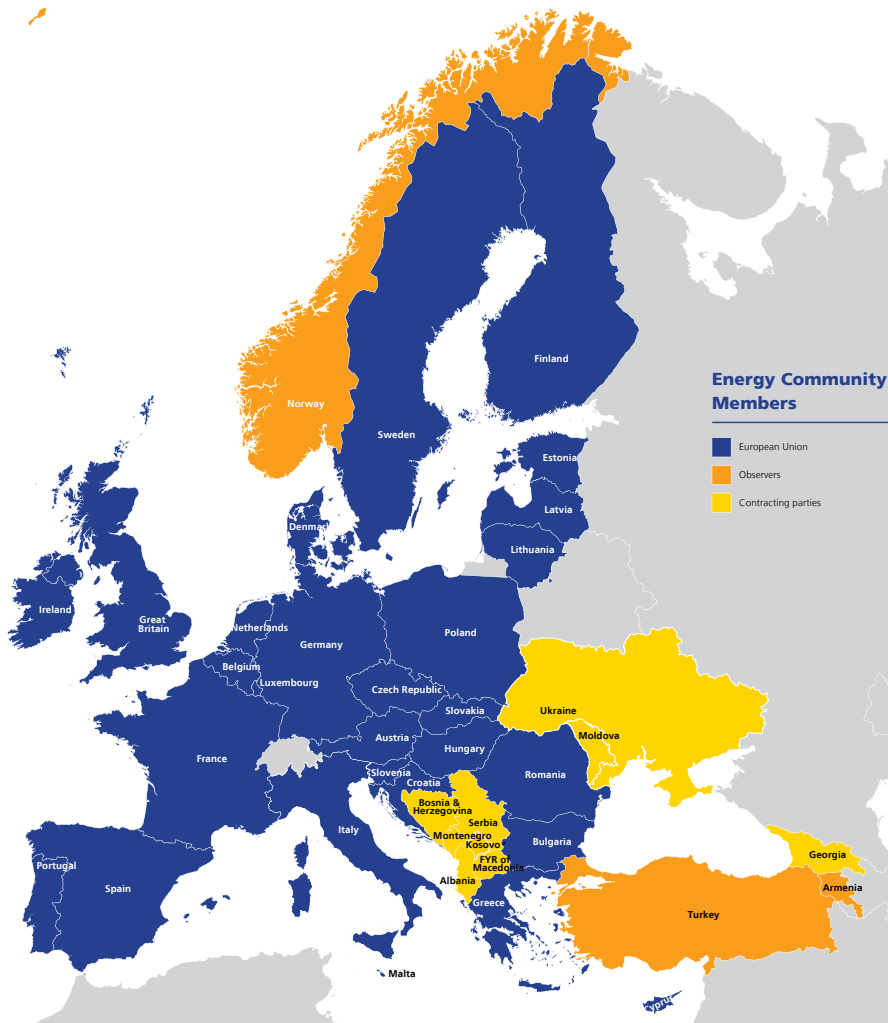


Figure 2 Energy Community map 2016

Source: Energy Community Secretariat

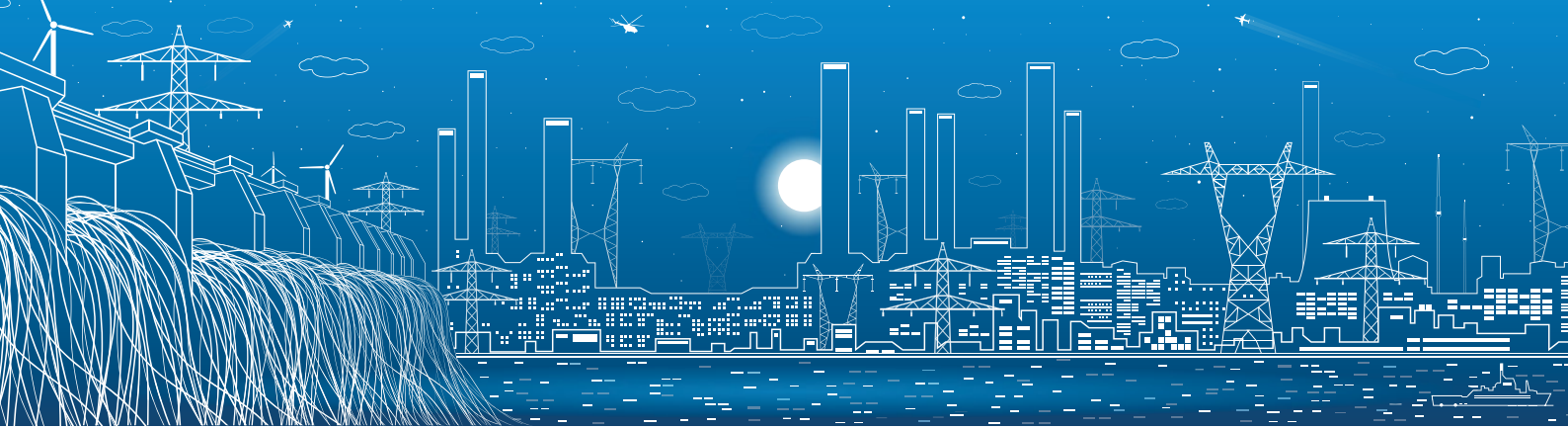
The Energy Community has its own institutional framework. The highest decision-making body is the Ministerial Council, which meets once a year to establish key priorities and adopt new legislation.

Since 2006, the Energy Community acquis has significantly evolved to incorporate new directives and regulations⁴. 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. Two substantial recommendations on climate action are also in place, and the activities in this respect have taken centre stage in the Energy Community in anticipation of the so-called Clean Energy Package.

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. The Secretariat's assessment is fed into the annual progress reports of the European Commission, which take stock of the situation in EU candidate and potential candidate countries.

The Energy Community Treaty provides for a dispute settlement procedure, which is meant to ensure the enforcement of the Treaty. If a country persistently fails to comply with its obligations, the Ministerial Council may suspend certain rights derived from the application of the Treaty, including voting rights and exclusion from meetings or mechanisms provided for in the Treaty.

⁴ See Annex I



Transposition and Implementation of EU Energy Law in the Western Balkans: Where Do We Stand?⁵

Progress with respect to the transposition and implementation of the EU's flagship energy market legislation – the Third Energy Package aimed at liberalization of the gas and electricity markets and empowering energy consumers - is varied. Four of the six Western Balkan countries – Albania, Kosovo*, Montenegro and Serbia - have transposed the Third Energy Package to a sufficient degree. After years of standing still, it appears former Yugoslav Republic of Macedonia, under its new government, is preparing to adopt the required legislation in the course of 2018. Progress in Bosnia and Herzegovina, on the other hand, is not in sight due to the ongoing political deadlock over the division of state and sub-state competences. The country's lack of progress continues to hinder gas and electricity infrastructure and market development and security of gas supply at the expense of energy consumers.

Implementation of certain Third Energy Package provisions remains a challenge even for those countries that have already transposed the *acquis*. With respect to the requirements to unbundle electricity and gas transmission system operators, Albania is the only Western Balkan country that has successfully completed this task. In Montenegro and Kosovo* and, to a lesser extent, in former Yugoslav Republic of Macedonia, the process is ongoing, whilst there is no progress in Bosnia and Herzegovina and Serbia. In many cases, vested interests of national players pose barriers to the opening of the market. For instance, Serbia, which has transposed the Third Energy Package in the gas sector almost to the letter, continues to refuse real unbundling, which prevent consumers from reaping the true benefits of gas market reforms (see box 2). Albania and Bosnia and Herzegovina are yet to initiate the process of unbundling of their national distribution system operators in the electricity sector. Neglecting this constitutes a major obstacle to market opening.

The Western Balkan countries are obliged to apply EU competition rules with respect to the energy sectors. On a national level, enforcement of competition law and in particular State aid law by the national authorities is rather low. Yet, the Energy Community rules have proved to be an effective instrument of market liberalization and dismantling energy monopolies in a number of high-profile cases. The recent amendment of the 2012 Intergovernmental Agreement between the Russian Federation and Serbia on the supply of natural gas testifies to this (see box 3).

Montenegro and Serbia lead the group of Western Balkan countries in the transposition of the “sustainability *acquis*” comprising energy efficiency, renewables, environment and climate legislation. Yet, here again, one must consider the implementation factor. For example, only modest progress was achieved across

Box 1 Consumer benefits under the Third Energy Package

The Third Energy Package extended the same rights and benefits to Western Balkan energy consumers as enjoyed in the EU. This includes the right to choose or change energy supplier by all customers within three weeks free of charge. Consumers can select the best offer available for their individual consumption needs and receive comprehensive information on their energy consumption, thus allowing them to adapt their energy use to an efficient and cost-saving pattern. Other consumer benefits relate to increased standards of service and security of supply. Yet in many instances, the market structures as well as excessive regulation prevent customers from exercising that right and new entrants to offer their services.

Box 2 Implementation of Third Energy Package in gas sector remains weak in Serbia

Serbia has failed to unbundle its two transmission system operators for natural gas, Srbijagas and Yugorosgas Transport, in line with the Third Package. The Secretariat has initiated a dispute settlement case against Serbia in 2013, but so far to no avail. A binding action plan on the restructuring of Srbijagas adopted by the Government of Serbia remains unimplemented. Serbia's gas market remains highly concentrated and foreclosed with Srbijagas accounting for roughly 87% of total natural gas sales in 2016. Yugorosgas Transport, a company owned by Russian Gazprom, has been certified by the regulatory authority in breach of the unbundling rules.

⁵ For a comprehensive assessment, please refer to the Secretariat's Annual Implementation Report 2017, https://www.energy-community.org/dam/jcr:b03950a0-9367-4618-961b-3efad53b79fd/EnC_IR2017.pdf.



all the Western Balkan countries with respect to the implementation of the Renewable Energy Directive, which is reflected in the limited increase of renewable energy capacities. According to 2015 data, four Western Balkan countries (Albania, Kosovo*, former Yugoslav Republic of Macedonia and Serbia) remain below their indicative trajectory to meet the 2020 targets. Bosnia and Herzegovina and Montenegro have met their respective targets, yet this is due to the revision of biomass data rather than the uptake of additional renewable energy.

In the area of energy efficiency, the Western Balkan countries have transposed the relevant acquis to a satisfactory level, with the exception of Albania and Bosnia and Herzegovina. Work on transposition of the Energy Efficiency Directive, due by October 2017, is still ongoing in all Contracting Parties, with notable results so far only in Montenegro and Serbia. Despite a downward trend of energy intensity in most Contracting Parties (see figure 3), the values of this indicator remain high compared to the EU average. Stronger energy efficiency measures must be implemented across sectors to reach the 20% headline target on energy efficiency in the Energy Community in 2020.

Box 3 Unlawful destination clause in Serbia-Russia intergovernmental agreement dropped

Following the opening of an Energy Community infringement case by the Secretariat, the Presidents of Serbia and Russia have agreed to exclude a so-called destination clause from the 2012 Intergovernmental Agreement on the supply of natural gas to Serbia. Such clauses breach the EU competition acquis as applicable under the Energy Community Treaty.

Box 4 Energy efficient street lighting projects in Serbia

The adoption of secondary legislation on model contracts for services for energy efficiency improvements in the public sector, stemming from obligations under the Energy Community energy efficiency acquis, has made it possible for Serbia to move towards contracting private companies to invest in energy efficiency improvements in the public sector. The realization of seven street lighting projects financed under this model will result in CO₂ reductions of up to 10,800 tonnes per annum, financial savings from unused energy and lower maintenance costs of up to 520,000 EUR per annum and electricity savings of up to 7,000 MWh per annum⁶.

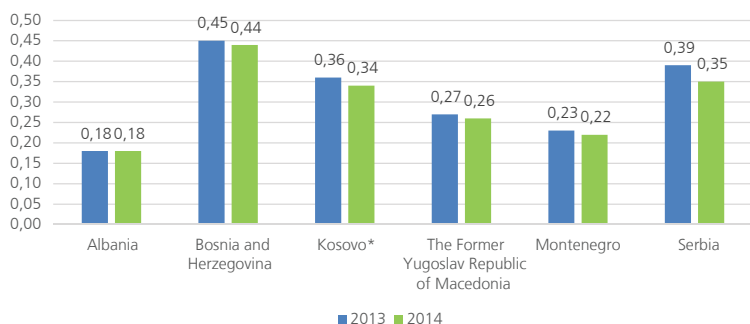


Figure 3 Energy intensity in Western Balkans: Total primary energy supply (TPES) / GDP (toe per thousand 2010 USD)

Source: International Energy Agency, compiled by the Energy Community Secretariat

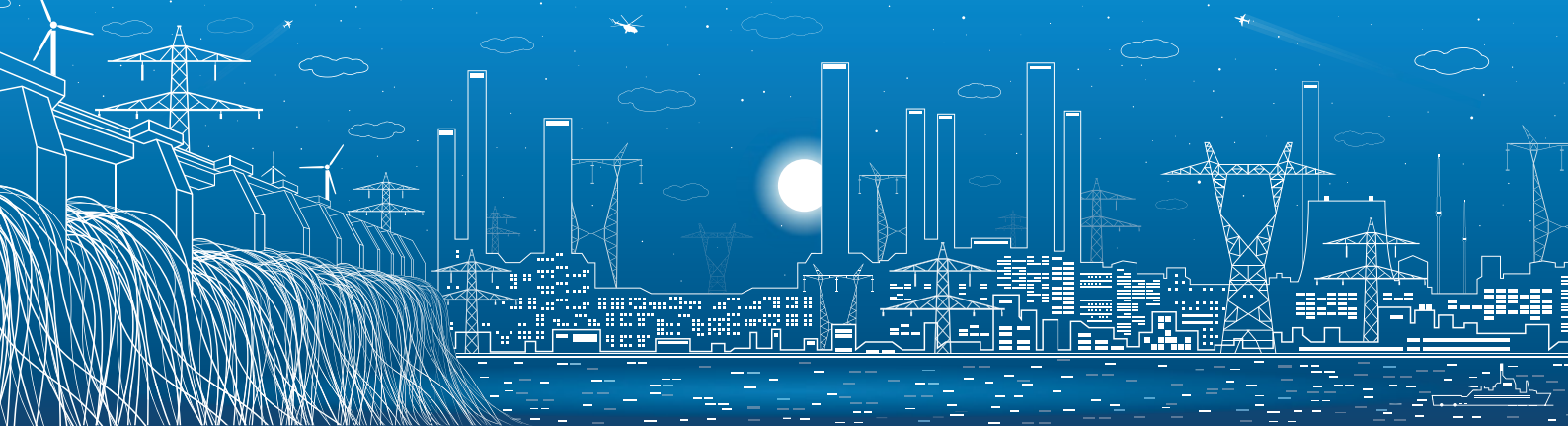
With regard to the transposition of the environmental acquis, most critical are Bosnia and Herzegovina's failure to respect the Environmental Impact Assessment Directive and the Sulphur in Fuels Directive and the failure of Serbia to comply with the latter. This year, the countries have begun implementing the Directive on the limitation of emissions of certain pollutants into the air from large consumption plants. While Albania does not need to take any additional measures⁷, Serbia and Montenegro have apparently started to implement the provisions of the Directive. Serbia has announced that it will shut down eight coal-fired power plant units of public power utility Elektroprivreda Srbije, which do not comply with the requirements of the Large Combustion Plants Directive by 2024⁸. The implementation of this Directive alone will result in significant positive impacts on human health and the environment, but will also require an answer to the most burning question in the region: what comes after coal?

With respect to climate action, Albania, Serbia and Montenegro are advancing in the drafting of climate change laws. Activities to align with the so-called MMR (Regulation on monitoring and reporting greenhouse gas emissions) have started. They

6 EBRD Fact Sheet, Western Balkans Regional Energy Efficiency Programme (REEP), 2013

7 Albania's only thermal power plant "Vlora" is currently not in operation.

8 Electricity generation from these power plants will be compensated by the construction of seven new wind farms and two natural gas and coal-fired power plants meeting the higher standards of the Industrial Emissions Directive 2010/75/EU.



now need to be translated into concrete activities. In this respect, the Secretariat was happy to receive the commitment by the Prime Minister of Albania to jointly work on an integrated energy and climate plan, an exercise that many EU Member States are also performing right now.

An area where there has been no tangible progress is cross-border cooperation. With the exception of a common platform for coordinated allocation of electricity cross-border capacities, SEE CAO, regional cooperation must be fostered significantly. The poor results stand in stark contrast to the fact that the countries' infrastructure in the electricity sector is well interconnected and that many regional initiatives devote efforts to this.

For example, all Western Balkan countries are still lagging behind in establishing organised market places (power exchanges) as a precondition for efficient electricity trading. Only Serbia has established one so far, which is not very liquid yet. Cross-border electricity trade is below the region's potential, reflecting the high level of market fragmentation. As the Western Balkan countries do not have the critical size to develop liquid markets in isolation, cross-border cooperation is essential for achieving important cost savings for energy consumers through increased competition and more effective use of existing generation and transmission infrastructure in the region. A regional approach would also attract more investments, which is especially critical for the less developed gas markets of the region.

Cross-border cooperation between Energy Community Contracting Parties and EU Member States is also very dissatisfactory. At present, it is primarily based on voluntary arrangements. The network codes, which aim to implement the Third Energy Package by establishing common technical rules to ensure secure system operation, market integration and market functioning, are not mandatory on the border between EU Member States and Energy Community Contracting Parties. In order to ensure a fully-functioning and secure pan-European energy market, it is important that common rules apply to energy flows, infrastructure and cross-border cooperation in EU Member States and Contracting Parties as well as on the borders in-between.

The Western Balkan 6 Initiative has given electricity market integration in the region a new breath of life. Regional electricity projects on cross-border balancing and market coupling, including also with neighbouring EU Member States, are being launched in 2017/2018. Their success hinges on sufficient political will.

The Central and South-Eastern European Gas Connectivity (CESEC) initiative, which brings together Energy Community Contracting Parties and their EU neighbours in Central and South-Eastern Europe, has also helped to generate political support and boost regional cooperation on common challenges faced most notably in the gas sector. The CESEC could also be a platform for achieving concrete and normative results for regional benefit, such as harmonisation of licenses for trade and supply of electricity and gas – a long-standing barrier to establishing liquid and competitive markets, as complex administrative procedures continue to deter companies from entering new markets.

Box 5 Benefits of balancing market integration

The integration of Western Balkan national electricity balancing markets in an efficient manner can provide security of supply at the lowest cost as well as significantly enhance technical performance and competition. An Energy Community study⁹ revealed annual savings in the high double-digit millions of Euros. For example, the annual saving potentials of 45 million Euros for the control block comprising Serbia, Kosovo*, Montenegro and former Yugoslav Republic of Macedonia would be attained.

Box 6 Western Balkan 6 Process Initiative

Launched in 2014, the Western Balkan 6 "WB6" Initiative (also known as the Berlin Process) aims to support the Western Balkan countries in strengthening regional cooperation and driving sustainable growth and jobs. Under this platform, the Western Balkan countries, at leaders and ministerial level, committed to reinvigorate the electricity market integration process starting with market coupling of national organised day-ahead markets with at least one neighbouring Western Balkan country or EU Member State by July 2018 and the development of cross-border balancing cooperation among the Western Balkan countries by December 2018. The implementation of these projects is supported by technical assistance, which is funded by the European Commission and implemented by the Energy Community Secretariat.

⁹ Final Report of SEE Regional Balancing Integration Study, 2014, https://www.energy-community.org/dam/jcr:045cc52d-27f6-4bb4-8e05-905890254ae1/EKC_2014_EL_Regional_Balancing.pdf.



The Main Challenges

One of the main challenges in the Western Balkan countries is linked to the lack of implementation of the *acquis* and the gap between transposition of EU rules and implementation in practice. This is partially linked to systemic failures, including weakness of enforcement, corruption, lack of rule of law, political governance, etc. A key challenge remains the strengthening of national authorities – energy regulators, energy agencies, competition and State aid authorities, which lack the strength and independence to act as effective and proactive guardians of the transposed *acquis*. Public administration capacities also remain low, especially in sectors like energy efficiency and climate, which are still unfortunately considered second-class priorities in the Balkans.

A number of regional conflicts continues to hamper progress in the energy sector, in particular the ongoing dispute between Serbia and Kosovo*. The lack of progress in the normalization of relations between Serbia and Kosovo* does not only affect energy trade in the region, but arguably constitutes the single biggest obstacle to regional energy market integration in the Western Balkans. Due to the dispute, a signed connection agreement between the transmission system operator of Kosovo* and the European Network of Transmission System Operators for Electricity (ENTSO-E) is still not in force. Consequently, a newly constructed electricity transmission line between Albania and Kosovo* is not able to be put into operation. The German Government has recently called upon both parties to agree to a mediation in the framework of the Energy Community's Dispute Resolution Centre.

The Energy Community dispute settlement procedure has been successful in non-controversial cases, such as the lack of transposition of energy efficiency legislation. However, the sanctions envisioned under the Treaty have failed to serve as a sufficiently dissuasive mechanism when political or commercial issues are at stake. The ongoing case against Bosnia and Herzegovina, when sanctions were adopted against the country in 2015 but to no avail, is a case in point (see box 8).

Box 7 Long-standing dispute between electricity transmission system operators of Serbia and Kosovo*

A dispute between electricity transmission system operators of Serbia and Kosovo* is also subject to a dispute settlement procedure within the Energy Community. In 2016, the Ministerial Council ruled against Serbia in a case for failure to comply with rules on conditions for access to the network for cross-border exchange in electricity. Technical agreements between the electricity transmission system operators of Serbia and Kosovo* were agreed and signed under the mediation of the Secretariat in 2014, but have not been implemented.

Box 8 Bosnia and Herzegovina's non-implementation of the gas *acquis*

Beyond failing to transpose the Third Energy Package, Bosnia and Herzegovina continues to seriously and persistently fail to comply with even the Second Energy Package in the area of gas. Besides initiating a dispute settlement case in 2011, which culminated in the adoption of sanctions by the Ministerial Council against Bosnia and Herzegovina in 2015, the Secretariat has made great efforts in bringing together all the relevant stakeholders and presenting a number of possible solutions which would comply with the gas *acquis*, but without any tangible results.

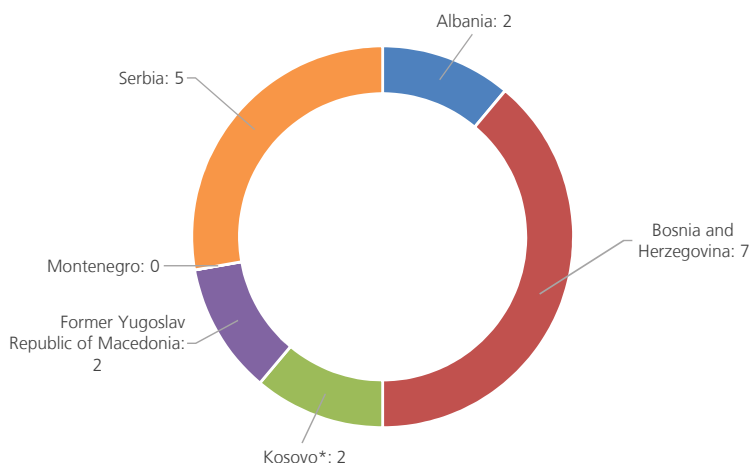
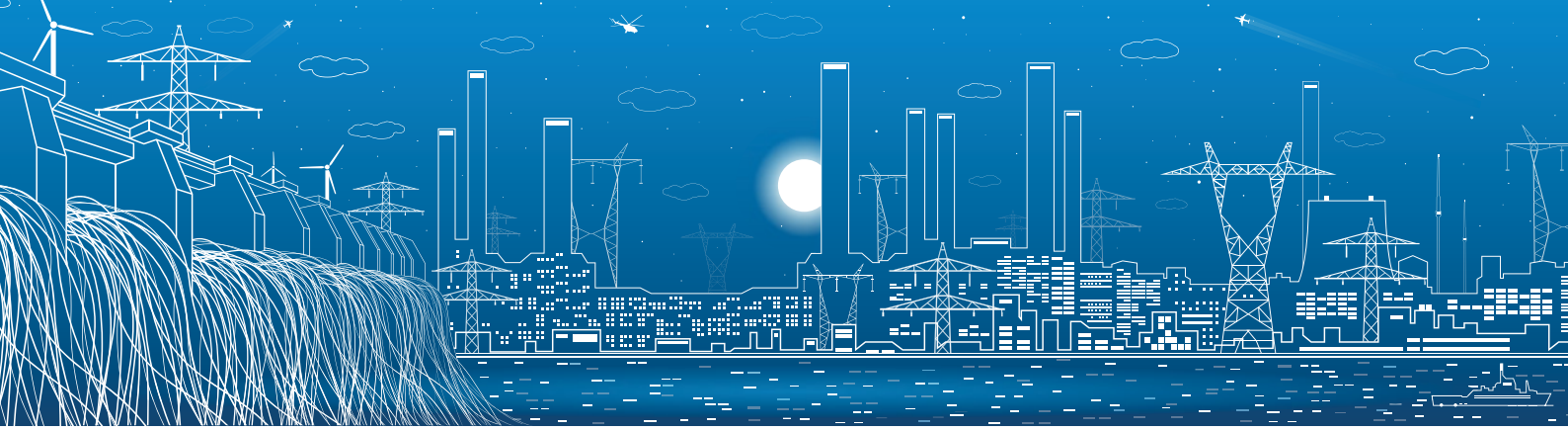


Figure 4 Overview of open Energy Community dispute settlement cases by Contracting Party

Source: Energy Community Secretariat



While the aspiration of the Western Balkan countries to join the European Union is undoubtable, the Energy Community also sees evidence that other players with different interests, notably China, Russia and Turkey, have strong interests in the region, especially when it comes to energy. While a comprehensive assessment of these impacts goes beyond the scope of this report, these countries are profoundly affecting the energy landscape of the Western Balkans. In the last decade, China has supported investments in new energy generation capacities, including coal-fired power plants that are unthinkable in the vast majority of EU countries today. Turkey's investment in the region's energy sector is expanding. Russia continues to dominate the gas market in such a way that would be unacceptable in the EU. The integration of the Western Balkan countries into the EU's internal energy market via the Energy Community, even with its flaws, remains the most effective tool to counteract these influences.





Conclusions

More than twelve years after its existence, the Energy Community continues to be a powerful reform instrument for those Western Balkan countries closest to the EU's doorstep and the ones further afield. It has achieved tangible results in bringing the countries of the Western Balkans closer to the EU in the energy sphere and allowing citizens to reap the benefits of EU-inspired energy reforms prior to membership of the European Union.

Given that even the Western Balkan frontrunners are unlikely to enter the EU before 2025 and those second in line potentially still years after that, it is worth to invest efforts to further strengthen the Energy Community in terms of its effectiveness (also) as a pre-accession tool for the Western Balkan countries and instrument for the creation of a pan-European energy market.

The experience of the Energy Community in terms of relatively high transposition records as compared to implementation should serve as a message to the European Union that further attention needs to be given to creating an appropriate governance and supporting the implementation capacities in the Western Balkan countries. The Energy Community is well placed to channel the required assistance.

Another instrument to improve the track record of the Contracting Parties in implementing the Energy Community acquis is strengthening the existing enforcement mechanism. While changing the political governance culture of a country is a long-term process, reforming the current weak sanction regime under the Energy Community Treaty, which has proved insufficient when dealing with matters where energy reforms collide with political interests, is a relatively low hanging fruit.

Another area where we need to push is regional integration, including with EU Member States. In this regard, it is imperative that the European Union via the Energy Community and other regional platforms continues to engage the political leadership and maintain energy at the top of the agenda.

Continuous alignment of the Energy Community legal framework with legislative developments on EU level is a pre-condition for Pan-European market integration and efficient cross-border trade.

Most importantly, it is vital that the region does not get left behind in the clean energy transition currently under way in the EU (most notably the Clean Energy Package of 2016). Missing this bandwagon could have expensive, long-term repercussions on the Western Balkans. What is more, the region's citizens should not have to wait for better-quality energy services and improved health and living conditions.





Annex 1

Energy Community Acquis Communautaire



Acquis on Electricity

Directive 2009/72/EC concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC

Regulation (EU) 543/2013 on submission and publication of data in electricity markets and amending Annex I to Regulation (EC) 714/2009



Acquis on Gas

Directive 2009/73/EC concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC

Regulation (EC) 715/2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) 1775/2005



Acquis on Security of Supply

Directive 2005/89/EC concerning measures to safeguard security of electricity supply and infrastructure investment

Directive 2004/67/EC concerning measures to safeguard security of natural gas supply



Acquis on Infrastructure

Regulation (EU) 347/2013 on guidelines for trans-European energy infrastructure



Acquis on Environment

Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment, as amended by Directive 2014/52/EU

Directive (EU) 2016/802 relating to a reduction in the sulphur content of certain liquid fuels

Commission Implementing Decision (EU) 2015/253 laying down the rules concerning the sampling and reporting under Council Directive 1999/32/EC as regards the sulphur content of marine fuels

Directive 2001/80/EC on the limitation of emissions of certain pollutants into the air from large combustion plants

Directive 2010/75/EU of 24 November 2010 on industrial emissions (integrated pollution prevention and control)

Article 4(2) of Directive 79/409/EEC on the conservation of wild birds

Directive 2004/35/EC on environmental liability with regard to the prevention and remedying of environmental damage, as amended by Directive 2006/21/EC, Directive 2003/31/EC and Directive 2013/30/EU

Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment



Acquis on Renewable Energy

Directive 2009/28/EC on the promotion of the use of energy from renewable sources



Acquis on Energy Efficiency

Directive 2012/27/EU on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC

Directive 2006/32/EC on energy end-use efficiency and energy services and repealing Council Directive 93/76/EEC

Directive 2010/30/EU on the indication by labelling and standard product information of the consumption of energy and other resources by energy-related products

Directive 2010/31/EU on the energy performance of buildings



Acquis on Oil

Council Directive 2009/119/EC imposing an obligation on Member States to maintain minimum stocks of crude oil and/or petroleum products



Acquis on Statistics

Regulation (EC) 1099/2008 on energy statistics

Regulation (EU) 2016/1952 on European statistics on natural gas and electricity prices and repealing Directive 2008/92/EC



Acquis on Climate

Recommendation on preparing for the development of integrated national energy and climate plans by the Contracting Parties of the Energy Community

Recommendation on preparing for the implementation of Regulation (EU) 525/2013 on a mechanism for monitoring and reporting greenhouse gas emissions



Acquis on Competition

The acquis on competition (Articles 18 and 19 of the Energy Community Treaty) rests on three pillars:

1. The prohibition of anticompetitive agreements established by Article 101 of the Treaty on the Functioning of the European Union (TFEU);
2. The prohibition of abuse of a dominant position provided for in Article 102 of the TFEU; and
3. The prohibition of State aid granted in violation of Article 107 of the TFEU.





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