

**REPORT ON THE IMPLEMENTATION OF THE
ACQUIS UNDER THE TREATY ESTABLISHING
THE ENERGY COMMUNITY**

ENERGY COMMUNITY SECRETARIAT

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1 BACKGROUND AND SCOPE

In accordance with Article 67 (b) of the Treaty establishing the Energy Community, the Energy Community Secretariat (hereinafter ECS or the Secretariat) shall review the proper implementation by the Contracting Parties of their obligations under the Treaty, and submit yearly progress reports to the Ministerial Council of the Energy Community.

The Report focuses on the main achievements and outstanding problems in the implementation of the Treaty during the year 2009. It also indicates the key open issues that need to be addressed in 2010 and beyond. The leading criteria in this assessment is the consistency with the principles and the requirements of the *acquis communautaire* as in the Treaty and following the relevant decisions of the Ministerial Council of the Energy Community.

However, the report also notes in summary the work in other areas, which are currently not backed up by concrete *acquis*, due for implementation.

The report has been prepared by ECS on the ground of Secretariat's analysis, on the information provided by the Contracting Parties, as well as data collected by third parties, and reflects the situation as of November 2009.

2 KEY FOCUS OF ACQUIS RELATED ACTIVITIES AND RESULTS - REGIONAL DIMENSION

2009 marked the expansion of the process of reforms in the Contracting Parties in line with the Treaty requirements. Details for each of the Contracting Parties are provided further below.

As a key summary conclusion, it will be fair to state that the differences between the Contracting Parties in the process of implementation of the different *acquis* elements tend to widen. On political level, following the discussions and conclusions at the Ministerial Council of the Energy Community, the process benefits of unanimous support. Thus, the major differences appear to be rather in the process of operational implementation.

Another conclusion of principle nature is that overall the reforms in the electricity sector continue to be more advanced. However, it has to be noted that infrastructural preconditions for gas and electricity markets are not equal – all 7 Contracting Parties have electricity networks, which is the case just for 4 Contracting Parties regard gas infrastructure.

Therefore, the efforts of the Secretariat, related to the implementation of the *acquis* within the period, were mostly targeting the work with the relevant experts and authorities on national level in addition to common – mostly training format – work with all Contracting Parties. Another major conclusion is linked to the fact that the work on the primary legislation in the Contracting Parties is well advanced –however, the practical implementation is still an issue. Therefore, the focus is on primary and secondary legislation and on other acts and measures, which are explicitly linked to specific aspects in the development of the market - e.g. rulebooks, methodologies, codes programs etc. - was expanded. Nevertheless, the primary energy legislation was and still is under extensive revision.

Further to the development of the legislative framework, substantial attention was paid throughout year 2009 on some other issues of particular importance, explicitly concerning the market development:

- **ELECTRICITY**

In the area of electricity, several regional initiatives were developed.

The regional electricity market is permanently in the focus. Several studies are completed providing set of analysis on applied tariffs and tariff methodologies, monitoring of the electricity market, options for opening of the wholesale market in the South East Europe, regional planning of the investments in the transmission network, etc.

Current **trading regulations** which impose diverse criteria and selective requests on the trading community are approached with an attempt to develop a coherent trading platform, transparent and compatible with the EU internal electricity market.

Another process in this respect is establishment of a common platform for **trading of balancing energy** (BETSEE). The project has entered its second phase aimed for testing the applicability of the developed tool.

Concrete work of legal and organizational nature was undertaken towards the development of **the South East Europe Coordinated Auction Office** (CAO) for cross-border transmission capacity allocation. The CAO Steering Committee (including representatives of the Transmission System Operators) was de facto established. It met several times, gradually reaching agreements of outstanding importance for the process of development of the CAO. Thus e.g. in September 2009 in Vienna TSOs from Albania, Bosnia and Herzegovina, Former Yugoslav Republic of Macedonia, Greece, Hungary, Montenegro, Romania, Slovenia and Kosovo¹ discussed the approach for setting up the project team to deal with the operational work.

Further, following a proposal by the Steering Committee chairman (Montenegro), the establishment of a project company was agreed. The Steering Committee discussed the rules for cooperation, the members list, the next steps regarding nomination of Project Team members and the meeting calendar for 2010. It is important to note that the International Financial Institutions confirmed their willingness to provide financial support to the project and announced to finance 70 percent of the assumed project costs of 1.1 Million EUR according to concretely agreed split.

Energy statistics is introduced in the Energy Community through an initiative to harmonize the collection, processing, formatting and disclosure of energy data mostly following the methodologies of IEA and EUROSTAT. The process is aimed to provide reliable and standardized data used both for strategic planning of the supply and setting the policy priorities, and for risk assessment in implementation of the investment projects. Further to the initial workshop organized in the second half of 2009 the activities are targeting coherent and regular display of basic energy information for South East Europe.

- **GAS**

In the area of gas, the focus of work from the perspective of its regional approach found also concrete outcomes.

¹ As UNMIK is the Contracting Party to the Treaty establishing the Energy Community, in the Energy Community context any references to Kosovo should be understood only as references to the territory in accordance with UN Security Council Resolution 1244.

Thus, on one side, further **work along the lines of the EU coordination policy took place**. Such example of a concrete regional approach format throughout year 2009 is the established practice of presenting information on the state of play in the Contracting Parties to the EU Gas Coordination Group. Besides, the Energy Community Security of Supply Coordination Group has been established and had its first meeting within the Gas Forum (September 2009).

Another aspect of work on regional level is the gradual involvement of the Energy Community in the activities within the so called **Caspian Development Corporation**.

A third important format of the regional gas related dimension of work is the **gradual clarification of the major gas projects**, which shall be part of initial attention in more concrete terms. One of the first activities in that direction was the PHLG decision (12th PHLG meeting, March 2009) on establishing the Energy Community Gas Ring Group, which replaces the Joint Gas Working Group. In that way, the scope of the work has been streamlined on gas infrastructure investments. Following guidance from the European Commission and with the envisaged active involvement of the Donors' Community, the coordinated efforts of all Parties to the Treaty shall aim at promoting these projects in concrete terms as quickly as possible.

The forth aspect of the work along EU policy is the involvement of all Contracting Parties – including the ones which do not have a gas market at present - in the preparation of the GTE+ Ten Years Network Development Plan. Coordinated by the Energy Community Secretariat, all Contracting Parties, have contributed to the work of GTE+, thus contributing to the possible further gasification of SEE in due time.

• ENVIRONMENT

Based on the information provided and otherwise obtained, the implementation of the environmental *acquis* has been respectively assessed. This concerns in particular the implementation of:

- Directive on the assessment of the effects of certain public and private projects on the environment (EIA),
- Directive on the limitation of emissions of certain pollutants into the air from large combustion plants as well as Directive concerning integrated pollution prevention and control (IPPC), and
- Article 4(2) of the Directive on the conservation of wild birds.

In summary, implementation is only partially achieved by Albania, Bosnia and Herzegovina, the Former Yugoslav Republic of Macedonia, Montenegro and UNMIK, while Croatia and Serbia approach full implementation at a legislative level.

Secondary legislation is still necessary in most Contracting Parties before legislative transposition of the *acquis* can be noted as to be complete. While a basis for *acquis* implementation now exists within the national legislations of each Contracting Party, the issue of overall duration of an environmental impact assessment procedure still requires further attention in all Contracting Parties. Albania, Bosnia and Herzegovina, the Former Yugoslav Republic of Macedonia, Montenegro and Serbia adopted a joint Climate Change Framework Action Plan in late 2008.

The Secretariat supported the implementation of the environmental *acquis* by two workshops - on Environmental Impact Assessment in 2008 and on the Large Combustion Plant and IPPC Directives in 2009. Concrete support in form of a study visit was further provided to environmental authorities in one Contracting Party with respect to the permit procedure for a coal-fired power plant. Furthermore, the Secretariat is currently commissioning a study on the potential for climate change combating in power generation in the Energy Community.

- **RENEWABLES**

The requirement regarding renewables, within Title II of the Treaty, was fulfilled by timely submission of the Action plans for the Implementation of the Directives 2001/77/EC and 2003/30/EC. The Action Plans were prepared by the Contracting Parties and adopted by the Ministerial Council in June 2007. Accordingly, the ECS has monitored the achievements of the Action Plans and it has to be noted that progress is not equal among Contracting Parties.

Further, the implementation of the Directive 2001/77/EC on promotion of the electricity produced from renewable energy sources in the internal electricity market generally is in more advanced phase than the implementation of the Directive 2003/30/EC on the promotion of the use of biofuels or other renewable fuels for transport.

In many of the Contracting Parties a ministry responsible for energy does not have any jurisdiction over biofuels; biofuels go together with transport or environment, which is not a problem as such. However, often biofuels are not included in an overall energy strategy and in most of the cases the term “renewables” includes only electricity from renewable sources. Several Contracting Parties so far set up the targets for the share of biofuels in the overall consumption of fuels in transport. And just few of them have established the proper legislative framework and functional support schemes.

The European Parliament adopted the new Renewable Energy Directive 2009/28/EC by the end of 2008. In EU the new Directive will repeal the Directives on promotion of renewable energy sources (2001/77/EC and 2003/30/EC) – both for electricity production and use of biofuels in transport, with effect from 1 January 2012. In the Energy Community, The Ministerial Council in December 2008 decided to establish a Task Force to assess the modalities for implementation of the new Renewable Directive in the Energy Community. The Task Force had its kick-off meeting in October 2009 and identified its priorities and mode of operation. Current priority is completion of the RES Study, aimed among else to provide the required data and assessment of the potential national targets for each Contracting Party in South East Europe region.

- **COMPETITION**

With respect to antitrust issues (Articles 81 and 82 EC), the Contracting Parties in general reached a relatively high degree of transposition of the *acquis*, while the effectiveness of implementation/enforcement and the competition culture in general is still at rather different levels. Major milestones in 2009 include the new competition acts in Croatia and Serbia. Some competition authorities, in particular in Albania and Croatia, but also Bosnia and Herzegovina, have a considerable track record in the energy sectors.

With regard to State aid, the situation differs, as even the level of transposition is not yet satisfactory. As of today, two Contracting Parties (Bosnia and Herzegovina and UNMIK) still do not have any State aid legislation at all. Serbia, however, moved a big step forward in 2009 by adopting its first law on State aid. With respect to implementation/enforcement of the rules, it needs to be borne in mind that State support to economic sectors determined by public service concerns and State intervention is a particularly sensitive issue. A study currently commissioned by the Secretariat will provide more insight in this respect.

In March 2009, the Secretariat devoted a high-level workshop to the interface between competition and sector-specific regulation in energy. The workshop revealed the need to further and more intensely support the alignment of the two approaches. In any case, the potential of competition law for reforming the energy sectors is and remains high.

• SECURITY OF SUPPLY

Natural gas is an essential component in the energy supply of those Contracting Parties which do have a more or less mature gas market at present. Having in mind the intended further gasification of SEE and the decreasing domestic production – if any – and the reliance on one single route respectively one source by 100% (except Croatia which has a significant domestic production) there is a clear need to address security of supply aspects. The security of gas supply perspective has to be even more emphasized when taking the link between gas and electricity – which was evident in particular during the gas crisis in January 2009 - into consideration.

Having said this, the Secretariat attends as an observer on a regular basis the meetings of the Gas Coordination Group of the EU-MS and provides information about the ongoing activities to the PHLG.

During the above mentioned gas crisis those Contracting Parties which do have gas market at present attended the Gas Coordination Group meetings themselves as observer.

At the Gas Coordination Group meeting which took place 15th October 2009 the Secretariat presented the Winter Preparedness of the Contracting Parties for the winter 2009/2010 to the Gas Coordination Group – taking normal weather conditions and severe weather conditions into account. The results and the clear structure was appreciated by the Gas Coordination Group. For the next Gas Coordination Group meeting, which took place on 18th November, the Contracting Parties were asked by EC, to provide – in line with the questionnaire sent to the EU-MS – additional information. The Secretariat was asked to coordinate and support the Contracting Parties if needed and to present respectively explain the results at the meeting. The next meeting of the Gas Coordination Group is scheduled for 14th December 2009, and the ECS was asked by the EC to continue with coordination and support the Contracting Parties.

In parallel, the Contracting Parties will provide – based on the task discussed in the framework of the 1st Security of Supply Coordination Group meeting, which took place on 10th September 2009 – back to back with the Gas Forum in Ljubljana – indicative results of an initial assessment of possible impacts of the appliance of the draft proposed Regulation concerning measures to safeguard security of gas supply and repealing Directive 2004/67/EC. The initial analyses will focus on the Preventive Action Plan, including the n-1 rule and the requested risk assessment.

These results are scheduled to be presented to the PHLG at the next meeting which is scheduled for 17th December 2009.

Security of electricity supply has been mainly considered along the lines of obligation for implementation of the Directive 2005/89/EC in each of the Contracting Parties. In 2009 the cross-border regime for use of interconnection capacity was improved on several borders between the Contracting Parties. Transmission capacity insufficiencies and suboptimal management practices are observed in some cases threatening to undermine the security of operation of the transmission network in the region. Several investment projects in the network are under way or in final stage of preparation (between Albania and Montenegro, Kosovo² and Albania, Serbia and Former Yugoslav Republic of Macedonia) targeting priority interconnection links.

² As UNMIK is the Contracting Party to the Treaty establishing the Energy Community, in the Energy Community context any references to Kosovo should be understood only as references to the territory in accordance with UN Security Council Resolution 1244.

- **OTHERS**

ECRB RELATED ACTIVITIES

The work, done by the ECRB³, concerning the development of the regional energy market, has different dimensions. However, as an issue of quick practical importance, the start of the concrete discussions on the **mutual recognition of licenses** should be explicitly underlined.

GENERALLY APPLICABLE STANDARDS

Some progress has been achieved in the implementation of the Generally Applicable Standards in the electricity sector as well as in the gas sector. Some Contracting Parties have implemented the list of standards – at least most of the listed standards - although in the English version. Since the local, regional as well as international operating consultants are capable of dealing with the English version this approach may be regarded as a starting point, providing a good platform for translation in the language of the regarding Contracting Party, depending of the available resources in each of the Contracting Parties. According to a study, launched by DIN (German Institute for Standardisation) and carried out by the famous Fraunhofer Institute the benefits which can be gained because of standardisation are very high and should be realised as soon as possible but at least in the mid and long term.

³ Subject to a separate report.

3 WORK ON OTHER ACTIVITIES (LINKED TO POTENTIAL IMPLEMENTATION OF EU ACQUIS)

- **ENERGY EFFICIENCY**

A key step in the area of Energy Efficiency was made by the PHLG – a draft decision for extension of the acquis has been discussed in September 2009. The draft Decision concerns the implementation of energy efficiency legislation (Directive 2006/32/EC on energy end-use efficiency and energy services, Directive 2002/91/EC on the energy performance of buildings and Directive 92/75/EEC and the implementing Directives on the indication by labeling and standard product information of the consumption of energy and other resources by household appliances).

Indicating the complexity of the issue, the Contracting Parties agreed to provide to the Secretariat by November 2009 written statements on the open issues they need to consider in the context of adequate implementation. On this ground, the Ministerial Council in December 2009 might eventually consider taking a principle decision on the implementation of the three mentioned Directives, with another decision on the details of adaptation to be taken at a later stage (e.g. by correspondence procedure).

The work of the PHLG in this area was strongly backed up by the work of the Energy Efficiency Task Force, whose mandate was extended by the end of 2010. The new mandate is backed up by a 4 Task Work Programme that focuses on implementation of the new Energy Efficiency Acquis, expected to be adopted in December 2009. In order to facilitate the work of the PHLG, the Contracting Parties members of the Task Force will prepare a Road Map for the adoption of the energy efficiency Acquis by 15 April 2010.

The Secretariat will also make best efforts to attract more Donors' technical assistance in the area of energy efficiency, including for the implementation of the Acquis.

Practical issues, concerning investment in energy efficiency and renewables, shall be targeted at a special investment conference (spring 2010) – in this relation, there is already principle agreement that this event shall be organized by the Energy Community in cooperation with EBRD.

- **RENEWABLES**

New initiatives in the promotion of renewable energy in the Energy Community have been fostered by the adoption of the new Renewable Energy Directive by the European Parliament at the end of 2008.

Based on the conclusions of the Ministerial Council in December 2008, the Energy Community Secretariat:

- Launched a study to assess the modalities for the Implementation of the new EU Renewable Energy Directive in the Energy Community in March 2009;
- Submitted the proposal for the establishment of the Renewable Energy Task Force that have been adopted by the Ministerial Council in June 2009;

- Organised the renewable energy workshop “Greening the Energy Community” in cooperation with USAID and Hellenic Aid, at the end of April 2009.

The objective of the study is to analyze the conditions and modalities for the development of renewable energy resources in the context of the implementation of the New EU Renewable Directive in the Contracting Parties of the Treaty establishing the Energy Community. The Republic of Moldova, Ukraine and Turkey, as candidates to the accession to the Energy Community, are also included in the scope of the study.

The consultant commissioned to working on the “*Study on the Implementation of the new Renewable Energy Directive in the Energy Community*” has submitted the Inception and the Interim Reports following the envisaged time frame in the contractual provisions. The Final Report of the study, which shall be the basis of further work of the Renewable Energy Task Force, is expected to be submitted by the end of 2009.

The first meeting of the newly established Renewable Energy Task Force (June 2009) took place on 8 October 2009 in Vienna. More than 30 renewable energy experts from Contracting Parties, Observer Countries, Participants, Donor Community and organisations active in the renewable energy were present to discuss the envisaged steps towards the implementation of the new EU Renewable Energy Directive 2009/28/EC.

Renewable energy related activities transposed in the Work Programme followed the mandate of the Renewable Energy Task Force as outlined by the Ministerial Council of the Energy Community and have been adopted on the occasion of its 1st meeting.

The 1st RE TF meeting concluded that intensified efforts in assessing the modalities for implementation of the Directive 2009/28/EC have to be made in the upcoming period. Cooperation of every Renewable Energy Task Force member with the consultant for data collection and validation is crucial for the key outcomes as the 2020 energy consumption forecast and calculation of 2020 renewable targets depend extensively on the inputs from Contracting Parties and candidate Contracting Parties.

• OIL

Oil dimension accounts for the most recent policy development in the context of the Energy Community process. In December 2008, the Energy Community Ministerial Council decided to include oil as part of its definition on “network energy” and to establish Oil Forum as a new, pan–regional consultation platform. It also suggested examining the possible implementation of the EU Council Directive 2006/67/EC on strategic oil stocks in the Energy Community.

The first Oil Forum of the Energy Community took place in Belgrade on 24-25 September 2009. The forum was co-organized with the International Energy Agency. Target performance analyses of the oil stocks in South East Europe constituted the starting point of the Forum.

Based on the first analyses by the Secretariat; it was concluded that emergency stock maintenance and management practices in the seven Contracting Parties and in the Observers⁴ of the Energy Community necessitate considerable further development steps. The respective primary legislation is partially lacking. The tasks and competencies of regulating state authorities must be streamlined. To this end, the most established institutional setting appears to prevail in Croatia and in Albania.

⁴ Excluding Norway.

It was discussed that the lack of apt infrastructure poses another bottleneck. Thus, to tackle the challenge, the Forum took stock of the planned oil pipeline projects in the region.

- **SOCIAL ISSUES**

The Memorandum of Understanding on Social Issues in the context of the Energy Community stipulated that the Contracting Parties prepare Social Action Plans to deal with the four areas mentioned in the MoU:

- I. Public Service Obligations
- II. Social Dialogue: Promoting the social dialogue with the Social Partners
- III. Management of Change: Promoting the development of specific employment, training and support services
- IV. Social Dimension: Focusing attention on the following key areas:
 - Workers' fundamental rights
 - Improved working conditions and standards of living;
 - Improved working environment concerning the health and safety of workers;
 - Equal opportunities.

Three Contracting Parties finalized their plans: Former Yugoslav Republic of Macedonia, Serbia and UNMIK; the rest are in an advance stage with the expectation to finalise these by the end of 2009. Although, none of the Social Acquis is mandatory under the Treaty, many Contracting Parties have selected a significant number of Directives that will be included in the national legal framework entirely or partially, on a voluntary basis.

The preparation and implementation of the Social Action Plan represents an important move forward in the area of social issues in the context of the energy sector reforms, especially that this requires a very broad stakeholder consultation and cooperation. More technical assistance is needed for this area of work and the Secretariat put this topic on the Agenda of the next Donors' Coordination meeting on 17 December 2009.

4 CONCLUSIONS AND NEXT STEPS

There is no doubt that substantial and concrete progress has been achieved by each of the Contracting Parties.

However, the implementation of Security of Supply Directives 2004/67/EC and 2005/89/EC, formally due by the end of 2009, is a matter of concern.

In addition, continuous efforts are still required as to:

- Improve the transposition of the *aquis' communautaire* principles included in the energy, renewable energy and security of supply Directives in the Energy Laws and advance with the proper implementation;
- Enhance Regulators powers to comply with the requirements of the renewable energy and security of supply Directives;
- Adopt cost-reflective regulated tariffs for household customers and implement social measures to protect the vulnerable customers;
- Adopt non-discriminatory and cost-reflective distribution network tariffs based on unbundled activities accounts to allow access to the networks and to support customer switching;
- Remove the regulated energy tariffs for the eligible customers and further develop universal service definition and enforcement;

- Implement measures for wholesale market opening;
- Foster the investments programs in generation, transmission and distribution to increase the security of supply in every Contracting Party and in the region;
- Develop a complete and coherent legislative and regulatory framework for the promotion of renewable energy to diversify energy sources enhancing the security of supply, attract investments and contribute to the creation of new jobs;

These issues, among others, shall continue to be the focus of support, but also of intensive monitoring by the Secretariat, along to the Energy Community Work Programme activities.

5 SUMMARY INFORMATION ON IMPLEMENTATION OF TITLE II OF THE TREATY

Within the period January 2009 – November 2009, the following key steps are to be noted in each of the Contracting Parties:

5.1 ALBANIA

Legislative framework

Primary legislation includes the Power Sector Law, revised in 2008, Law on Energy Efficiency, Law on Preservation of Heat in Buildings, as well as laws on procurement and concessions. Following changes and amendments in the power sector legislation, secondary legislation was further upgraded in 2008 and 2009.

The transposition and implementation of the Security of Electricity Supply Directive 2005/89/EC remained to be the target for the upcoming period.

Electricity

Albania registered significant progress in the implementation of its privatization program. 76% of the State's stake in the distribution company OSSH was sold to CEZ Company. Negotiation with this investor included Regulatory statement issued in March 2009, as a guarantee for the investor of stable and transparent regulatory framework for its operation.

The Distribution Company has started a program to increase the collection rate and the first results are promising. Also, the installation of meters in the distribution network has advanced as it represents the precondition for real market opening and customer switching.

Tariff schedule defined in the Statement envisaged that tariff review for 2009 would have been conducted in 2009, based on the application of the distribution and retail public supplier (CEZ). The tariffs for distribution use of system and regulated retail tariffs will be adopted by ERE until 15 December 2009. Regarding the implementation of the tariff methodology, the new tariffs are expected to become cost-reflective and to treat appropriately the network losses and bad debts mainly related to the distribution activity.

Other recent progress in Albania can be noted primarily in transparency and availability of certain information related to energy sector. This is perceived in public availability of rules and decision of Regulatory agency – ERE. ERE has made available on its web page transmission and distribution tariffs, along with production and wholesale supplier tariffs and tariffs for small HPPs. Regulated retail tariffs had been published before. However, all these tariffs have not been reviewed to be in compliance with methodologies⁵ adopted in 2008.

As regards transparency, OST as a transmission system operator has made operational its website, however publication of information as requested in Article 5 of the Regulation 1228/2003 and point 5 of the Annex, it is not yet provided. In addition, published ERE documents do not provide evidence of TSO's compliance with requirements from point 1.10 of Annex to the Regulation (EC) 1228/2003 or even monitoring of the compliance. It

⁵ ERE adopted and published the methodologies for transmission, for distribution, for production, for wholesale supply and for retail supply in 2008. These methodologies are posted on its web page.

has to be emphasized again that transparency of information has to be ensured by TSO and monitored by Regulator.

Market operator is to be established within TSO-OST. ERE approved Market rules, while the market model was approved by the Government in 2008. Market design with wholesale public supplier is envisaged to ensure that public service obligation is consistently applied. It is yet to be seen how it would work in practice with gradual opening of the retail market. Switching rules transposing the standards defined in the energy acquis are not developed yet.

Regarding security of supply, Albania has been moving towards its target identified in the road map and in updated Security of Supply Statement. New infrastructure projects are in advanced stages ensuring additional generation and transmission capacities.

Currently there are 12 generation infrastructure projects approved by ERE for construction. New transmission infrastructure, including work in progress on interconnection line Podgorica – Tirana and planned interconnections projects to Italy and to Pristina should significantly relieved security of supply issue in Albania. In addition, privatization of distribution company includes certain commitments from both parties that would lead to reduction of losses in distribution network and thus contribute to better planning and providing more security of supply of electricity.

Current level of import dependency and dependency on hydrological conditions presents serious threat to long term planning and improving quality of service for end users.

However, lack of compliance with Regulation (EC) 1228/2003 and transparency of TSO operation, from publication of allocation rules, allocated capacity, use of congestion income, plan of maintenance and plan of investments are still open issues impeding proper dealing with the cross-border trade and to some extent with the security of supply.

Gas

Despite the lack of a gas market, Albania has made valid efforts to set up the legislative basis for its future development. Albania passed on 30th June 2008 the gas act which contains beside the requirements of the Directive 2003/55/EC also key provisions related to the Regulation 1775/2005 and a sound basis for a well function security of supply respectively crisis mechanism. In order to avoid an amendment of the gas act, in particular having in mind the very good quality of the substance, the approach is to provide the missing issues in more “comprehensive” market rules as well as in technical rules. Here in particular:

Ad Directive 2003/55/EC:

- Art. 12: The responsibilities of the regulatory authority shall be extended by the monitoring etc. requirements of the Treaty establishing the Energy Community
- Art. 19 (5): The deviation of balancing tariffs has to be defined more precisely
- Art. 21: Missing details of the unbundling requirements shall be elaborated
- Art. 41: Rules related to the capacity allocation and congestion management mechanism which should take into consideration the provision of economic signals for the efficient and maximum use of the available technical capacity and be compatible with the market mechanism have to be developed.

Ad Regulation 1775/2005:

- Details on TPA services are missing
- Details on trading of capacity rights are needed
- Details on transparency Requirements should be elaborated

- Penalties provisions have to be developed
- Principles of balancing rules are missing
- Capacity and congestion management rules are needed

Ad Directive 2004/67/EC:

- The role and the functioning of the Security of Supply Coordination Group has to be specified

There are some small other issues which should/could be amended in order to have covered all of the provisions included in the legislation.

Next steps related to legislative issues:

A draft/preliminary approach on the market rules and the technical rules is intended to be available in December 2009. The finalization of the market rules and the technical rules is foreseen for the end of the first quarter of 2010 or at the beginning of the second quarter in 2010. This slight delay (compared to the intention to finalize the documents by the end of 2009) is caused by the time consuming public procurement process and the goal to provide a sound basis for investments, based on proper market-/technical rules - fine tuned beforehand with the Secretariat.

Ad Ten Years Network Development Statement:

.Albania committed themselves to continue with the provision of data – as it has done so far – to GTE+ for the development of the Ten Year Network Development Plan in order to provide a sound basis for the assessment of further gasification of SEE.

Ad Security of Supply Statement:

Albania has provided a Security of Supply statement which included most of the required issues also in the gas sector although there is not gas market in Albania currently. The missing items are more of minor nature and could be provide for the sake of fulfilling all of the requirements resulting from the Treaty establishing the Energy Community.

Environment

The Law on Environmental Protection of 2002 lays down the basic principles of the procedure upon which the Law on **Environmental Impact Assessment** of 2003 elaborates in more detail, backed by secondary law. Overall, the legislation still falls short of fully implementing the Directive. Amendments of the law are expected to be adopted in 2010.

With regard to **wild birds**, an assessment of the presence of birds species listed in the Directive and of suitable sites for designation of special protection areas has been initiated, as well as an evaluation of possible conservation measures. Albania has further designated protection sites under the RAMSAR Convention. Legislation on the Protection of Wild Fauna and a law "On wild fauna protection" adopted in October 2009 are reported to is reported to further align the legislative framework to the Wild Birds Directive, but are not yet available in English, with full transposition being envisaged for 2012 only.

Regarding the transposition of **IPPC** Directive, a draft Law is being prepared with the assistance of EC experts and expected to be adopted in 2010.

The **LCP** Directive is still awaiting direct transposition, with Albania having passed laws on air quality in January 2009 for the accession to the Helsinki protocol and Sofia protocol to the 1979 convention "On long-range transboundary air pollution".

Competition

Since 2003, **competition** law in Albania is governed by the Law on Competition Protection. The Law largely transposes the Energy Community *acquis* on substantive competition law. Draft amendments prepared by the Competition Commission (ACC) are currently pending before Parliament. The goal is to fully align Albanian competition law with EC rules and practice. In terms of procedural law, ACC adopted new regulations on fines and leniency and on *de minimis* in 2009.

Furthermore, ACC has been very active in recent years with respect to competition law advocacy in the energy sectors.

ACAC carried out a general investigation in the energy markets in 2007-2009. With respect to electricity, the Authority in October 2008 recommended the “real opening” of the electricity market in accordance with Directive 2003/54/EC and made further detailed recommendations to the Ministry, the regulatory authority and the TSO. In cooperation with the energy regulatory authority, ACC recommended to the legislator the liberalization of production and distribution operations of the electricity sector, as well as the application of a market-oriented tariff setting approach.

Following up on the investigation in the hydrocarbons market, the Authority in May 2009 did not find clear evidence for the existence of coordinated behaviour by the market participants in the market for motor fuels. Simultaneously, ACC recommended to the Parliament amendments to legislation applicable to hydrocarbons because of their anti-competitive effects on the wholesale markets. In December 2008, the Authority had already recommended to the Government to withdraw a decision on the quality of fuels produced from refining Albanian crude oil due to its restrictive effects on imports.

In October 2008, ACC authorized the purchase of 85% of shares of ARMO, the State-owned oil refining company, by AMRA, an Albanian and international consortium. In May 2009, ACA also approved the sale of 76% of the state-owned DSO OSSH to CEZ under the merger rules, as well as the sale of BP Greece to Hellenic Petroleum. The Competition Commission furthermore exempted an exclusive agreement, between Tirana International Airport and AIR BP Albania on securing, depositing and trading fuel for aircrafts in Mother Teresa airport.

With respect to **State aid** control, Albania applies the Law on State Aid since 2006. The Law establishes the State Aid Commission (SAC) as an “operationally independent” decision-making body. SAC is chaired by the Minister for Economic Affairs and supported by a State Aid Department within the Ministry of Economy, Trade and Energy. Further to the developments made in 2008, secondary legislation concerning, *inter alia*, environmental aid was adopted in June 2009.

Renewables

Albania has sent recently the draft Renewable Energy Law to the Secretariat for comments. It is expected that the Law will transpose all the requirements of the Directives 2001/77/EC and 2003/30/EC and even to consider some relevant provisions from Directive 2009/28/EC.

The adoption of the national targets is to be set by the Council of Ministers. There is a concern regarding the introduction of mixed support schemes based on feed-in tariffs and quota obligation for the electricity produced from renewable energy sources. The provisions related to the guarantees of origin have to be reconsidered.

Albania approved The Law for Production, Transport and Trade of biofuels and other Renewable fuels in Transport in February 2008. The Law deals with the functional and organizational aspects for production, transportation and trade of biofuels. Some incentives to support the competitiveness of biofuels and renewable fuels on the market

have been clearly identified (e.g. special tax advantages for machineries, equipments and materials necessary for the construction and commissioning of biofuels plants etc.). The significant steps have been made ahead in the implementation of Directive 2003/30/EC by setting the national indicative targets for biofuels. However, for the targets within the new Renewables directive, starting point is the achieved level in 2005.

The Law on Renewable sources has been drafted recently, aiming to implement some of the key principles of the new EU Directive 2009/28/EC, dealing with the energy from renewable sources in general. It is very encouraging to see such a strong intention and willingness to act proactively, even before the implementation of new acquis has been discussed and decided by the Ministerial Council.

According to expressed scope, the Law aims to deal with the all renewable energy sources, including biofuels. But, text of many of the articles, even in the general part, makes impression that the scope of the Law is just electricity production from renewable energy sources. The link with biofuels and other renewable sources of energy for transport should be clarified – by upgrading the related parts of the draft and by referring to the Law for Production, Transport and Trade of biofuels and other Renewable fuels in Transport (there even might be the need to amend this Law, accordingly new draft).

5.2 BOSNIA AND HERZEGOVINA

Legislative framework

In 2009 in Republika Srpska the Energy Law was adopted and Electricity Law was amended introducing improvements in customer protection, security of supply and licensing. In Federation of Bosnia and Herzegovina new Electricity Law is in preparation, as well as the regulation on RES. The legal and regulatory frameworks of both entities need to be further upgraded.

Recent development of Bosnia and Herzegovina legal framework was also introduced by Decisions from the Office of the High Representative (OHR). Newly enforced legislation include amendments on the following legal acts: (1) the Law on establishment of company for transmission of electric power in Bosnia and Herzegovina, (2) the Law on transmission of electric power, regulator and system operator in Bosnia and Herzegovina, (3) the Law on electricity in Federation of BiH and (4) the Law on electricity in Republika Srpska.

The set of amendments aims at repairing two major drawbacks in the overall legal pattern. First, it imposes additional conditions on management of the Company for transmission of electric power in Bosnia and Herzegovina. These provisions are obviously needed as prerequisites for repairing of current, and prevention of future administrative obstacles in its operation. The Amendments are designed to ensure functioning of the executive bodies in the transmission company, among else by enabling urgent decisions to be brought by simple majority in case of general manager non performance of his/her duties. Notwithstanding the imminent character of the enforced measures, further systematic upgrade of the state-level legal and regulatory framework may appear necessary for sustainable operation and development of the transmission system of Bosnia and Herzegovina.

The other aspect of reference in the Amendments relates to security of supply of electricity for customers in Brčko District of Bosnia and Heryegovina. The enforced legal measure provides balanced administrative solution focussed mainly on the requirement for non-discriminatory treatment of citizens of Bosnia and Herzegovina with regard to electricity distribution and supply. The new tasks imposed on the State Electricity Regulatory Commission (SERC) may require additional measures for practical implementation. The new legislation brings regulated supply of electricity in Brčko District on comparable level of organization as in the other two entities. However the prospects of wholesale competition and customers' switching of the supplier have yet to be treated - along with the overall process of deregulation and further effective liberalization of the electricity market in Bosnia and Herzegovina.

Electricity

The main challenge in securing the electricity supply and sufficient development of the basic infrastructure in the electricity sector of Bosnia and Herzegovina is to ensure sustainable operation of the electricity transmission system. Major concerns are twofold: (1) the need to maintain the activities of the transmission company “Elektroprenos–Elektroprijenos” BiH related to operation, maintenance and development of the transmission grid which requires reestablishment of operative and efficient management structure, and (2) efficient operation of the independent system operator – “NOS” BiH, which basically means SERC to further develop / approve required regulatory rules and the Transmission Company to continuously supply all the required data.

Part of the amendments to the legal framework imposed by OHR was triggered by the need for stalemate in the management and operation of the transmission company. Concrete reason for the amendments was that Peace Implementation Council, among others, noted with concern that operations of the electricity transmission company of Bosnia and Herzegovina have seriously deteriorated as a result of the continued boycott

by the members of the Management Board from Republika Srpska and urged the Republika Srpska Government to promptly and constructively reengage in the company and contribute to its smooth functioning. Further to the promulgated legal measures, by mid-November key official representatives of both constitutional entities have reached a common understanding to undertake necessary administrative activities to re-establish the Management Board, reprogram all outstanding maintenance and investment priorities into the Year 2010 Investment Plan, and start reconsidering allocation of the 110 kV substation facilities between the Transmission Company and the Electricity Utilities in order to facilitate further investments in required upgrading.

Independent system operator (NOS BiH) is established as an entity responsible for overall electricity system operation. It is compelled to provide sufficient information on power flows and on other aspects of the transmission grid and its own operation, on its web page. In addition to the need for continuous availability of data owned by the Transmission Company, another issue of concern is the applied principles of pro-rata scaling in case of congestion of interconnection capacities, differing from the practice developed in all the neighbouring transmission systems. The issue is becoming increasingly important taking into consideration the ongoing process of establishment of the CAO in South East Europe.

Market operator is supposed to be established within NOS BiH but its operation is still marginal, as market opening is progressing slowly. Recent developments indicate interest of new entrants in the competitive retail market and increase the share of consumption of eligible customers in the second semester of 2009. The three electricity Utilities are looking at the wholesale market mainly from the position of securing the required electricity supply for their indigenous customers. The regulators responsible for electricity supply (RERS and FERC) are foreseeing gradual implementation of eligibility criteria. More effective deregulation and faster development and implementation of harmonized balancing and switching rules may better serve the interest of the Utilities and provide for a favourable solution for market opening where eligible final customers shall seek their electricity supply at least between the offers from each of the three Utilities in BiH - until new independent suppliers follow the example and enter the market.

Methodologies to determine charges for connection to transmission and to distribution networks were adopted in 2008 and their implementation followed in 2009. In Republika Srpska tariffs for connection to the distribution network has been established by the Regulator. In Federation BiH, the Regulator approves connection fees in a structure developed by the Utilities in accordance with the methodology adopted by the Regulator.

Unbundling of distribution and regulated supply from competitive supply has not been completed yet, however specific measures are under preparation in this direction. Regulatory oversight on compliance with unbundling requirements and publishing of findings still has to be improved.

Planning of new transmission infrastructure was on hold due to operational difficulties of the transmission company. In generation, there are several renewable projects being developed in both entities, much more are in planning phase. Investment in new TPP is underway, as well as in distribution networks. Both entities contemplate their own policies and local investment priorities as well as possible ways to finance implementation of new investments strictly on entity level. Major challenges in this respect are: (1) administrative support typically restricted only for investments in "own" infrastructure on its own territory, (2) lack of transparent and standardized approach for new capacity authorization and (3) missing development strategy on state level.

Gas

An Expert Group, established at the end of 2007, put a lot of efforts in developing the proper legislative frame for the gas sector in BiH in 2009, but concrete results have not been accomplished so far.

Ad Directive 2003/55/EC

The developments in BiH have not progressed in the sense that a (draft) gas act has been submitted to the Secretariat. There is an existing gas act available in the Republic of Srpska and there is a decree on the gas sector available in FBiH. The reforms appear to be observed as important to the level of their political relevance.

The Implementation of the Acquis on gas – is a complex process and progressing slowly partially due to the specific political structure - hence additional efforts in the elaboration and in the implementation of the requirements of the obligations resulting from the Treaty establishing the Energy Community are needed.

The areas of special concern regarding the requirements of the Directive 2003/55/EC – which came up in the discussions - are the following:

- Public service obligations
- Customer protection – in particular mechanisms for protection of vulnerable customers.
- Authorization procedures.
- Tasks of system operators
- Unbundling – of the TSO(s) including the compliance programme
- Unbundling of accounts provisions
- Refusal of access -rules
- New infrastructure – exemptions from the third party access regime - provisions
- Competences of the regulatory authorities
- Derogations in relation to take or pay contracts
- Emergent and isolated markets rules – linked with the possibility of derogation from some provisions in the Directive.

Ad Regulation 1775/2005:

There is no noted progress at the state level regarding the implementation of the Regulation (EC) 1775/2005. It has to be noted that BiH, has so far has not provided to the ECS the fulfilled Road Maps dealing with the Regulation (EC) 1775/2005

Ad Directive 2004/67/EC:

So far progress related to the transposition and implementation of the Directive 2004/67/EC has not been achieved. It has to be noted that BiH, has so far has not provided to the ECS the fulfilled Road Maps dealing with the Directive 2004/67/EC.

Next steps related to legislative issues:

With respect to gas, it can be concluded that if a political agreement were achieved, the existing draft Gas Act could be developed and implemented relatively quickly. Any prediction with regard to an agreement is not possible. Another critical point is the insufficient administrative capacity in terms of human resources; its strengthening should be considered the first priority.

Proper implementation of the Directive 2003/55/EC - being a crucial precondition for the implementation of the Regulation (EC) 1775/2005 and of the Directive 2004/67/EC –

would enable quick steps forward regarding the transposition and implementation of Regulation 1775/2005 and Directive 2004/67/EC.

Ad Ten Years Network Development Statement:

BiH committed themselves to continue with the provision of data – as it has done so far – to GTE+ for the development of the Ten Year Network Development Plan in order to provide a sound basis for the assessment of further gasification of SEE.

Ad Security of Supply Statement:

BiH has provided the Security of Supply statement requested to be available in 2009, which included most of the required issues also in the gas sector despite the hurdles in the transposition of the Directive 2003/55/EC.

Environment

In the Federation of Bosnia and Herzegovina, the Law on Environmental Protection deals with **EIA**. No information has been provided as regards the law applicable in Republika Srpska. Overall, the transposition of the Directive in the Federation of Bosnia and Herzegovina still requires substantial efforts before full implementation, but EIA procedures do take place.

According to the information received, in the Federation of Bosnia and Herzegovina the implementation of Article 4(2) of the **Wild Birds** Directive has yet to begin. In the Republika Srpska, transposition is as at an early stage with two protection sites having been established under the RAMSAR Convention (one in each entity). Bosnia and Herzegovina has ratified the UN Convention on Biodiversity, CITES, the Berne Convention on Conservation of European Wild Species and Habitats and the Aarhus Convention. The adoption of a law, presumably amending the current Law on Nature Protection, is foreseen to ensure full transposition of the Wild Birds Directive by 2013.

No new developments are reported to have taken place in the field of **IPPC** in the last year, but transposition is reported to be partially ensured by the Law on Environmental Protection and secondary legislation, including the Rulebook on Best Available Techniques for Attaining the Environmental Quality Standards adopted in 2007 and the Rulebook on Conditions for Applying the Environmental Permit for Installations with a Permit Obtained Before the Law on Environmental Protection Came into Effect. The said laws are yet to be translated into English. In terms of the implementation of the **LCP** Directive, the Law on Air Protection together with the Rulebook on ELV of combustion plants and Decree No 19/04 are reported to take initial steps in transposing the Directive, though no advances in transposition have taken place in the last year, with full transposition being envisaged by 2012.

Competition

Competition law in Bosnia and Herzegovina is governed by the federal Act on Competition in force since 2005. The Act follows the EC model. It is enforced by the Council of Competition, a federal authority. Decisions in the energy sectors concern merger control in the markets for oil and lubricants (2006) as well as three “phase I” resolutions (below threshold) concerning the takeover of several refineries by the Russian Neftegaz (2007). In November 2008, the Council assessed the merger between MOL and INA in the market for wholesale and retail trade in oil and oil derivatives without objecting. In June 2009, the Council approved the majority purchase of the Albanian state-owned TSO OSSH by CEZ. In July 2009, the Council adopted a draft decision on “size, conditions and time schedule of opening the electricity market in Bosnia and Herzegovina” which so far has not been made available to the Secretariat.

In the area of **State aid**, where Bosnia and Herzegovina still does not have legislation on State level, a draft Law has been prepared in October 2009 which is expected to be endorsed by the Council of Ministers. The draft has not been submitted to the Secretariat.

Renewables

Although there is no Renewable Energy Strategy at state level, there have been made some important steps related to implementation of Directive 2001/77/EC at Entities levels, due to the jurisdiction for renewable energy in both legal and regulatory aspects.

There are adopted systems of incentives for electricity generation from renewable sources and co-generation for installed capacities below 5MW at the level of both entities, however some of them have to be revised and do not include all types of renewable energy.

Electricity generation facilities using renewable sources shall pay 50% of the fixed part of connection fee, as the State Energy Regulatory Commission adopted in 2008. Facilities using hydro power shall be able to use this benefit if their capacity does not exceed 10 MW.

As the legal and regulatory frameworks is advancing at Entities level, there are some issues of further concern like inconsistencies in approach and differences in rules, no appointed institution at State level that monitors the level of implementation, lack of information for potential investors etc.

After the adoption of the Plan of implementation in 2007, Bosnia and Herzegovina did not make a lot of steps at the state level regard the implementation of the Directive 2003/30/EC. There is a legislative framework at the entity level, enabling the set up of targets and supporting measures, but it can not be applied for the entire Contracting Party. Some formats of the technical assistance, to solve institutional issues related to renewables, have been launched, but so far the indicative targets and the strategy regarding biofuels in Bosnia and Herzegovina have not been determined yet.

5.3 CROATIA

Legislative framework

In the beginning of 2009 Croatia adopted amendments to the Law on Energy and the Law on Electricity Market aimed to improve the area of electricity trading and supply, tasks of the Market Operator, customer rights and conditions of final customer supply including new switching conditions. New rules on allocation of cross-border transmission capacities were introduced bringing in compliance this area of activities.

In the gas domain, the below listed legislative basis was submitted to the Energy Community Secretariat for comments. The drafts were discussed during the mission in Zagreb in spring 2009 and afterwards – taking the results of the discussions into consideration - approved by the end of April 2009:

- the General Conditions of Natural Gas Supply (OG 43/09)
- the Ordinance on Natural Gas Market Organisation (OG 50/09)
- the Transmission System Network Regulations (OG 50/09)
- the Distribution System Network Regulations (OG 50/09)
- the Rules on Storage System Using (OG 50/09)

Electricity

In 2009 Croatia took several important final steps to overcome some outstanding gaps in the process of bringing the market environment in compliance with the requirements from the Energy Community Treaty.

The electricity market is open for all customers since 1st of July 2008, and final customer services are defined and established. The practical implementation of eligibility has been phased out and currently all non-household customers are compelled to seek their own supplier. Available supply option is the electricity supply wing of the state-owned holding (HEP Opskrba). Public supply services are performed by the distribution system operator (HEP ODS) and are available primarily to households and small commercial customers under regulated, well structured and published tariffs. Additionally, the applied switching rules support HEP ODS to perform as a supplier of last resort and provide limited, temporary electricity supply under regular tariffs and default electricity supply under open market conditions for those eligible customers who could not manage to contract their supply.

The new amendments allow further practical measures to be considered in several directions including development of optimal criteria for the competitive default supply, improvement of the customer protection instruments, supporting the interest of new suppliers to enter the market, further more substantial unbundling of the distribution network operation from the public supply services, further optimization of the balancing criteria, more efficient reporting including reporting to the European Commission required by the relevant Acquis - Directive 2003/54/EC, Regulation (EC) 1228/2003 and Directive 2005/89/EC, further practical steps for regional market integration, etc.

The new rules on allocation of cross-border transmission capacities eliminate any priority allocation and enforce market-based methods for congestion management to be gradually applied on all borders (including on 50% of the capacity on the border with Bosnia and Herzegovina).

The new Law on Construction is expected to provide simplified tendering procedure and more efficient authorization criteria.

The Modification and Updates of the Energy Development Strategy of Croatia are drafted in 2008. The new energy strategy publication is expected to reflect the latest energy policy priorities for long-term development planning.

Gas

The developments in Croatia have progressed substantially and there are just some minor issues left to be elaborated and subsequently implemented so that one could say that the implementation of the requirements of the Treaty related to gas has been achieved. More details please find below.

Ad Directive 2003/55/EC and Regulation 1775/2005:

Croatia has transposed and implemented the requirements resulting from the Directive 2003/55/EC and the Regulation 1775/2005. There are some minor issues which have to be improved in the market rules. As mentioned, all of the requested provisions of the mentioned directive and regulation - except the provisions related to the role of the EC - have been transposed

- Croatia has decided to apply the so called balance group model. The functioning of the market is depending mainly on the market operator, the head of the balance groups and the permanent energy balance energy provider. The provisions related to the market structure have been implemented and the restructuring process is ongoing in practical terms in particular with the establishment of a storage system operator, market operator and the application of the rules towards the DSOs. Having said this:
 - possible approaches for tendering the services of a market operator, serving the balancing services for a defined period of time, have to be dealt with;
 - the technical requirements related to the transmission system, the storage facility, the reaction time to deal with pressure fluctuations etc. need to be further fine tuned with the available technical equipment and the resulting possibilities.
 - the tasks of the IT system, hence the specification in terms of minimum performance has to be analyzed, discussed, assessed and consequently implemented.
 - the options resulting from completion of the interconnector between Hungary and Croatia have to be taken into consideration in the ongoing development/process
- Standardisation/calculation of connection fees is a task resulting from the rules of Directive 2003/55/EC. Since this is a potential for discriminatory treatment of customers and at the same time a significant factor in the competition between gas and alternative fuels, the calculation has to be done carefully. Resolutions have to be developed, analysed, assessed and realised.
- The methodology for the calculation of tariffs for the infrastructure usage (transmission system, distribution system and storage facility) has been developed. Special cases have to be analyzed, discussed and assessed and subsequently developed and implemented in order to improve acceptance of the price the customers have to pay for the use of the infrastructure. Minor improvements for the calculation of transmission system tariffs might lead to tariffs which match a bit better the requirements of tariffs, namely cost reflectivity of an

efficient transmission system operator including a reasonable rate of return on investments, facilitation of efficient gas trade etc.

Ad Directive 2004/67/EC:

Croatia has transposed and implemented the requirements resulting from the Directive 2004/67/EC. Croatia has also implemented a crisis mechanism.

Next steps related to legislative issues:

The market rules and the technical rules should be finalized in due time in order to provide the proper basis for a transparent, non-discriminatory and competitive market environment and a sound basis for investments.

Ad Ten Years Network Development Statement:

Croatia committed themselves to continue with the provision of data – as it has done so far – to GTE+ for the development of the Ten Year Network Development Plan in order to provide a sound basis for the assessment of further gasification of SEE.

Ad Security of Supply Statement:

Some items are missing in the Security of Supply statement. Having in mind that the missing items, like the maintenance of the network, the technical rules, demand forecast etc, are in practice in operation it should be relatively easy to fill in the minor issues in the statement, thus providing all the requirements stated in the relevant legislation and even beyond these needs.

Environment -

The **EIA** Directive has been transposed into national law by the Environmental Protection Act which entered into force in November 2007, along with by-laws. A new ordinance taking into consideration Croatia's experience in nature impact assessment implementation within the last two years has also been adopted, providing new mechanisms for environmental impact assessment. Legislation to strengthen public participation in the process of environmental impact assessment has also been adopted. Croatia became the 13th Party to the first Amendment to the Espoo Convention and the 10th Party to the second Amendment to the Espoo Convention on 11 February 2009.

Article 4(2) of the **Wild Birds** Directive is transposed into Croatian legislation by the Nature Protection Act and regulations and ordinances adopted pursuant to it - the Regulation on proclamation of ecological network of the Republic of Croatia and the Ordinance on the impact assessment of plans, programs and projects on ecological network.

In the area of **integrated pollution prevention and control**, as well as that of environmental impact assessment, progress has been further achieved by beginning the process of permitting already existing installations falling under the scope of the Directives and granting permits for new installations beginning with the 31st of March 2009. The "Decree on type of activities and installations that the integrated permit shall be granted for" the contents of Annex I of the IPPC Directive and determines IPPC installations subject to IPPC Law. IPPC is partially transposed into the Croatian legislation through the Environmental Protection Act and the Regulation on information and participation of the public and public concerned in environmental protection issues.

While being in the beginning of the process of directly implementing the **LCP** Directive, the Directive has been transposed into Croatian legislation through the Air Protection Act, the Regulation on limit values of pollutant emissions from stationary sources into the air and

the Ordinance on monitoring pollutant emissions from stationary sources into the air, with amendments being expected for the said laws.

Legislation to transpose **Kyoto** flexible mechanisms including emissions allowance trading into national legislation such as the Regulation on Greenhouse Emission Quotas and Emissions Allowance Trading has been adopted, with the establishment of a Greenhouse Gas Emission Registry being under way. A National Allocation Plan for greenhouse gas emissions allowances has also been adopted for the 2010-2012 period, targeting to reduce Croatia's base year GHG emissions level from an estimated 35,027 million tons CO₂ to 33,276 million tons CO₂.

Competition

In the field of **competition**, Croatia made significant progress by adopting a new Competition Act in June 2009. It will enter into force on 1 October 2010. The improvements as compared to the previous law from 2003 concern mainly procedural issues such as empowering the Croatian Competition Agency (CCA) to impose fines directly, establishment of a leniency programme, dawn raids etc. CCA decisions can now be appealed to only one court, the High Administrative Court of Croatia. The new law further provides for *ex officio* assessment of agreements and opening of the proceedings in cases of abuse of a dominant position, the issuance of statement of objection, as well as the right to propose commitments. The new Competition Act also abolishes individual exemptions from the cartel prohibition and thus the shift towards a self-assessment approach in line with the current EC model. Furthermore, the merger control rules are being aligned with Regulation (EC) 139/2004. With respect to the energy sectors, the definition of services of general economic interest in line with Article 86(2) EC is to be mentioned. Overall, the new Law brings Croatian competition law in line with the *acquis* on competition.

The CCA has developed a well-established body of case law. The most recent cases in the area of energy include a case concerning exclusive purchase agreements on the lease of container for gas and agreements on sale of gas (commitment decision) as well as on abuse of dominant position on the market for the sale of liquefied petroleum gas (LPG) by non-transparent and discriminatory application of a rebate policy. In June 2009, CCA conditionally approved the MOL/INA merger, imposing both structural and behavioural measures.

State aid control in Croatia is governed by the State Aid Act in force since 6 December 2005. Despite following the EC model, the purpose of the State Aid Act is still limited to *"the ... implementation of the... the Stabilisation and Association Agreement between the Republic of Croatia and the European Communities."* From an Energy Community point of view, the scope should be broadened so as to explicitly include the Treaty.

The CCA is the authorizing and monitoring authority under the State Aid Act. Cases in the energy sectors include individual aid granted to an undertaking in the form of free electricity supply and the conversion of an undertaking's gas debt into equity. In 2008, the Government adopted a decision on rules for the compensation of the costs from the liberalisation of the electricity market.

Renewables

Being in the final stages of negotiations for accession to the European Union, Croatia has agreed also the 2020 mandatory national target for renewable energy at 20.02% of the gross final energy consumption according to the Directive 2009/28/EC.

Croatia has transposed all the requirements of the Directive 2001/77/EC and already advanced with the requirements of the new EU RE Directive, i.e. preparing the National Renewable Action Plan to be submitted by June 2010 as all the EU Member States.

In relation to implementation of Directive 2003/30/EC, the targets were defined for each year in 2007 and 2008, and the Biofuels Act was adopted in 2009. The relevant subordinated acts are planned to be in force by the end of 2009 in order to fully comply

with the acquis regarding biofuels and the adopted Plan on the implementation of the Directive 2003/30/EC. Also, it has to be reported that there are 5 biodiesel production plants in Croatia.

However, Croatia has prepared Action Plans in line with the new Renewable Directive 2009/28/EC, as a part of the accession process to EU.

5.4 FORMER YUGOSLAV REPUBLIC OF MACEDONIA

Legislative framework

In July 2009, the Secretariat sent a Reasoned Opinion in pending Case ECS-2/08 to the Government. The case concerns both the design of the wholesale market for electricity and certain aspects of the price-setting methodology by the Energy Regulatory Commission. In October 2009, the Government adopted an Action Plan in which it committed itself to amending the Law on Energy and invited the Energy Regulatory Commission to amend its rulebook on price and tariff setting.

New amendments to the Energy Law are currently prepared by the Ministry of Economy to increase the compliance with the energy acquis and to integrate the requirements of the security of supply Directives. The amendments are expected to be sent soon to the Secretariat for comments.

In 2009, the Strategy for Energy Development for the period 2008-2020 with a vision to 2030 prepared by the Academy of Sciences and Arts has been commented by the Secretariat and it is foreseen to be completed by December 2009.

The Network Code on Transport of Natural Gas was approved by the Energy Regulatory Commission of the former Yugoslav Republic of Macedonia in March 2009. The Code has been discussed several times in 2008 – during the meeting at the Energy Community Secretariat premises and during the missions.

Electricity

The Market Rules remain to be finalised after the new amendments of the Energy Law will be adopted as the market design is included in the Energy Law.

It is expected that the amendments will create the framework for real market opening and will enhance the powers of the Regulator to comply with the responsibilities required by the energy and security of supply acquis.

In October 2009, Energy Regulatory Commission established a Working Group to analyse and to review the methodologies for tariff calculation of charges for access to networks as to ensure the viability of distribution and transmission networks. In particular the consideration of losses, bad debts and maintenance costs are in the focus of the Working Group.

The TSO has to be strengthening furthermore and to enforce its position in the electricity market. The transmission tariff has to include an appropriate rate of return to allow the needed investments in the transmission network and to ensure the viability of the company on medium and long-term. The investments in the new interconnections are delayed that could affect the security of electricity supply.

The TSO and DSO have to make public its audited accounts and to unbundle the accounts of transmission system operator and market operator activities, and distribution and supply activities, respectively.

Compliance with the Regulation (EC) 1228/2003 has to increase furthermore and a special attention has to be paid to transparency and removal of barriers for cross-border trade.

Gas

Ad Directive 2003/55/EC and Regulation 1775/2005

The gas market is in the scope of the Energy Law, which covers all energy sectors in the former Yugoslav Republic of Macedonia. The Energy Law has been amendment several times so far, but still many of crucial provisions of the Directive 2003/55/EC have to be

transposed. The missing provisions were discussed – among others - during the mission in February 2009.

The main issues that need further attention for proper implementation are:

- Definitions (and their harmonisations with Directives and secondary legislation)
- Public Service Obligations/ Customer protection / Vulnerable customers
- Security of Supply requirements of the Directives 2003/55/EC and 2004/67/EC
- Unbundling requirements (vertically integrated company, infrastructure/supply) including unbundling of accounts and the right of access to accounts
- Third Party Access requirements (tariffs, connection to the grid, refusal, appeal)
- Tasks of network operators in accordance with the Directive 2003/55/EC
- New infrastructure – criteria for exemption from TPA and related responsibilities of the regulatory authority
- Market opening and reciprocity
- Competences of the regulatory authority (ex-ante and ex-post powers in relation to access to the grid, monitoring competences, dispute settlement authority for cross-border disputes,
- Licences procedures
- Provisions of the Regulation (EC) 1775/2005, related to the tasks, rights and responsibilities of the Regulatory Authority and of the Transmission System Operator, which can not be covered by secondary legislation
- Minister's Rights to impose tasks to the entities, in accordance with the Energy Law, by secondary legislation
- Compliance programs by TSOs and DSOs.

The Network Code on Transport of Natural Gas, approved in March 2009, transposes almost all provisions of the Regulation (EC) 1775/2005. However, practical operability of the Code is questionable, due to fact that many of the crucial provisions of the Directive 2003/55/EC, still have not been transposed into primary legislation yet.

In view of the fulfilment of the requirements related to gas acquis within the Energy Community Treaty, the intended role of the European Commission in line with the requirements of the Directive 2003/55/EC respectively the Regulation 1775/2005 is missing in the presented primary legislation. At present the analyses – done by EC - related to the possible application of the role of the European Commission in the Energy Community are ongoing.

Ad Directive 2004/67/EC

The Directive 2004/67/EC still has to be transposed, by amending the Energy Law, and it is not expectable to transpose this directive by the end of 2009.

Next steps related to legislative issues

During 2009, the Ministry of Economy started with the preparation of new Amendments to the Energy Law, aiming to include all missing requirements. So far, the Energy Community Secretariat has been waiting for the draft, to be able to analyse the current state of play and to provide further technical support to the implementation process – if needed. The new Amendments are once again an opportunity to implement all missing provisions It can be expected, hopefully, that the final Amendments will succeed to fulfil

existing gap in the legislation and to overcome significant delay in the process of harmonisation with EU gas directives.

Ad Ten Years Network Development Statement

The former Yugoslav Republic of Macedonia committed themselves to continue with the provision of data – as it has done so far – to GTE+ for the development of the Ten Year Network Development Plan in order to provide a sound basis for the assessment of further gasification of SEE.

Ad Security of Supply Statement

The Security of Supply statement was updated in due time, in May 2009, but it covers only supply sources and additional needed capacity. A lot of requirements, despite the limited development of the gas market, like the maintenance of the network, the technical rules, demand and supply forecast etc have to be taken into consideration.

Environment

The Law on Environment of 2005 dealing with “**Environmental Impact Assessment** of certain projects” as well as the many by-laws received prior to this year closely follow the structure and content of the Directive. With further implementation through secondary legislation on environmental assessment and public participation was adopted.

In the former Yugoslav Republic of Macedonia, the Ministry of Environment and Physical Planning, together with the Ministry of Agriculture, Forestry and Water Economy are in charge of implementing the **Wild Birds** Directive. The 2004 Law on Nature Protection, as amended in 2007, as well as the Law on Hunting from 1996, as amended in 2004, partially transpose the Wild Birds Directive.

The process of releasing **IPPC** A licenses for existing plants has begun. The **LCP** Directive is to be transposed through amendments brought to the Law on air quality, a Rulebook for limit values for the allowed levels of the emissions and types of the pollutants in the waste gases, which are emitted from the stationary sources in the air in order to insure ambient air quality, a Rulebook on the limit emission values, upper limits and objectives for reduction of different types of pollutants, emission measurements methods, as well as deadlines for fulfilment of the limit values of the pollutants and a National emission reduction plan. The adoption of these documents is envisaged by the end of 2009, with full implementation being foreseen for 2013.

Competition

In the area of **competition**, the former Yugoslav Republic of Macedonia applies its Law on Protection of Competition from 1 January 2005. It has been amended twice, in 2006 and 2007. The law is enforced by the Commission for Protection of Competition. Despite the significant progress achieved in recent years, full transposition of the *acquis* will still require some efforts, namely on the enforcement side (such as fining procedures and leniency).

With respect to case law in the energy sector, it might be noted that the Administrative Court, based on procedural deficiencies, in 2009 quashed a decision by the Commission whereby the retail supplier EVN had abused its dominant position by charging tariff customers a handling fee. According to commentators, this decisions highlights the role of emerging judicial review in competition law in the region.

State aid is subject to monitoring under the 2004 Law on State Aid which is enforced by the Commission for Protection of Competition. The principle State aid prohibition modelled

on Article 87 EC is limited to cases where “*the aid may affect trade between the [former Yugoslav] Republic of Macedonia and the European Community*”. From an Energy Community perspective, the scope of applicability of the State aid law needs to be clarified.

As regards enforcement of State aid law in the energy sector, the Commission has so far adopted two decisions in 2007 and 2008 respectively. The first case concerned a grant to the State owned transmission system operator which was used to purchase oil for the operation of TPP Negotino. The second case concerned the supply of electricity supplied at discounted price by the TSO to a ferro-silicon producing company. Both cases were considered compatible aid.

A revision of the Law on Protection of Competition as well as the Law on State Aid Law is scheduled for 2010 and is currently in the drafting phase. No draft has been submitted to the Secretariat so far.

Renewables

The legal and regulatory frameworks to support the renewable energy sources are well advanced, only the implementation remains to confirm. The renewable energy target is to be set; however, if the new Renewable Energy Directive 2009/28/EC will be adopted for implementation in the Energy Community, 2020 mandatory targets will be set as well for all the Contracting Parties.

Moreover, the Strategy for Energy Development for the period 2008 – 2020 with a vision to 2030 is foreseen to be completed in December 2009 by the Academy of Sciences and Arts. The Strategy will give a detailed review of available renewable energy resources in the former Yugoslav Republic of Macedonia and the possibilities for their utilization.

Related to biofuels, the target for biofuels was stipulated already in 2006, by the Rulebook for the quality of liquid fuels, but on a non-obligatory basic. Probably because of the voluntary approach principle very few activities have been undertaken on the realization of the indicative target - which was intended by the Plan on the implementation of the Directive 2003/30/EC. The Renewable energy sources policy is defined in the Strategy for the exploitation of renewable energy resources (Base Study on Renewable Energy Resources in the Republic of Macedonia). Furthermore, the Strategy for Energy Development for the period 2008 – 2020 with a vision to 2030 is foreseen to be completed in December 2009 by Macedonian Academy of Sciences and Arts. The Strategy will give a detailed review of available renewable energy resources in the former Yugoslav Republic of Macedonia and the possibilities for their utilization.

5.5 MONTENEGRO

Legislative framework

Energy sector is defined by the Energy Law from 2003 and secondary legislation derived from it.

During 2009 Montenegro initiated the process of upgrading its energy legislation. Ministry for Economic Development of Montenegro made sure that experts from Energy Community Secretariat be involved throughout the process of preparation of the Energy Law. To that end, ECS experts provided their support during the development of the draft Law through comments and questions related to the proposed acts. Stakeholders in Montenegro explained their position on the most important issues that had to be tackled in the revised energy legislation during the Mission in Montenegro. Following that exchange of opinions and views, Ministry for Economic Development of Montenegro submitted final draft Energy Law to ECS to the ECS for comments in April 2009.

ECS has to acknowledge that the Ministry considered and took into serious account comments and suggestions of ECS experts and provided explanations for remaining open issues.

In general, the draft Energy Law presents substantial improvement compared with the existing legislation. The draft Law provides transposition of the core requirements of the energy acquis, given the capacities of appointed authorities to develop appropriate secondary legislation within the timeframe set in this act.

Concerns of ECS experts refer mainly to licensing, particularly in definition of privileged generator, supply and trade, proper interpretation of public service obligation, its impact on compliance with competition rules and exclusive rights concerns, all of this with the view to ensure legislator's awareness of the pending tasks and implications of this rule during implementation.

Without suggestion to any specific provision of the draft Law, ECS would also emphasize the need for regulatory independence and requirement for legislator to make sure that all provisions defining the status, functioning and the role of regulator are consistent and enforceable under the current legal framework of Montenegro.

Electricity

In July 2009 Regulatory agency issued licenses to newly established company for transmission, transmission system operator and market operator, legally unbundled from vertically integrated utility "Elektroprivreda Crne Gore, a.d." This is the first step towards creating solid ground for introduction of competitive electricity market and non-discrimination between network users. From this event onwards, the implementation of market rules, monitoring and enforcement of compliance are in the hands of regulatory agency.

In regulation of network business, the key step forward was also achieved through adoption of tariffs for use of transmission and for use of distribution network, based on capacity and energy charges, applicable for all customers eligible for competitive supply from the market. Regulatory agency also adopted Methodology on connection fees for connecting to distribution network; which is another step in the direction to prevent discrimination between network users.

The first case of court's ruling against regulator's decision was registered in Montenegro in June 2009, with serious consequences, including forced change of tariffs by Regulator. Currently applied regulated end use prices were adopted in June 2009 and based on the same scheme as in 2008 (source: Regulator's web page <http://www.regagen.co.me/tabelesacijenama.html>) They reflect the same shortcomings as before: transmission network users do not have transparent network tariffs so that tariffs for excessive reactive

power and for transmission losses are different for each individual customer at transmission network. This practice prevents TSO from publishing its applicable tariffs and thus from compliance with Article 9(e) and 9(f) of the Directive 2003/54/EC. In addition, regulated tariffs for energy supplied are different for each such individual customer.

Remaining issues relevant for implementation and enforcement of electricity acquis will be discussed in CP mission, as well other aspect of the introduced and other secondary legislation, (role of public supplier and competition acquis, supplier of last resort, switching rules and customer rights, administrative burden, etc.) implementation of existing rules and their amendments.

Transmission Company publishes its plans for maintenance, reconstruction and construction of new plants according to the Regulation 1228/2003, as well as rules for allocation of interconnection capacities.

Market operator is established within Transmission Company, but has not started functioning yet. Development of market rules, balancing rules and tariffs for market operator is the tasks of this unit and preparations are underway. These documents will be effective when approved by Regulator.

In February 2009 part of the State's stake in the power utility was put on tender for sale of 11,4 mil. of shares, out of 113 mil. shares of the company's equity. Tendering procedure ended with contract of Montenegro Government with Italian A2A who purchased offered state's shares in EPCG for 8,4 EUR/share and with the guaranteed buy-out price for other shareholders, thus obtaining approximately 17% of the company's equity, with around 70% is still in the state's ownership.

While there was no major investment in new generation, except rehabilitation of TPP, the Government initiated tendering for investment in wind and small hydro power plants.

In the transmission network interconnecting line Podgorica 2 –Tirana, construction and reinforcement of high voltage lines and substation are planned for commissioning by end 2009. Distribution network is also being enforced and works on important lines and substations are ongoing.

Gas

Ad Directive 2003/55/EC, Regulation 1775/2005 and Directive 2004/67/EC

The Gas Law, which was drafted and discussed with the Secretariat during several missions in 2008, has been integrated into the new Energy Law. In the first half of 2009, the new draft Energy Law was submitted to the Energy Community Secretariat for comments.

The provisions of the Directive 2003/55/EC and most of the provisions of the Regulation (EC) 1775/2005, and partially the requirements of the Directive 2004/67/EC, have been transposed into the new draft Energy Law. So far, the ECS has not received the final version of the Energy Law, which is in very advanced phase of the preparation process and is supposed to be approved very soon. Thus, it is hard to access if they all related remarks, done by the ECS, have been taken into the consideration and improved the draft issued at the beginning of the year. However, the latest version of the draft has been discussed on the spot during the mission on 17th November 2009.

In view of the fulfilment of the requirements related to gas acquis within the Energy Community Treaty, the intended role of the European Commission in line with the requirements of the Directive 2003/55/EC, the Regulation 1775/2005 respectively the Directive 2004/67/EC is missing in the presented primary legislation. At present the analyses – done by EC - related to the possible application of the role of the European Commission in the Energy Community are ongoing.

Next steps related to legislative issues

During the mission on 16-17 November the last version of the new Energy Law was discussed and compared with all relevant gas acquis, with especial focus on the provisions which were missing in the previous version of the draft Law. It can be expected, that all remarks are accepted and that all needed provisions would be implemented by the new Energy Law.

It has to be taken into account that Montenegro does not have a gas market at present, thus, the secondary legislation could be developed and implemented, in parallel to construction works of regional infrastructure passing through Montenegro.

Ad Ten Years Network Development Statement

Montenegro committed themselves to continue with the provision of data – as it has done so far – to GTE+ for the development of the Ten Year Network Development Plan in order to provide a sound basis for the assessment of further gasification of SEE.

Ad Security of Supply Statement

The Security of Supply statement was updated in due time, in June 2009. The statement covers basic elements, but can be improved easily, taking into consideration that Montenegro does not have a gas market at present.

Environment

The **EIA** Directive is transposed in Montenegro primarily by the Law on Environmental Impact Assessment, backed by several by-laws. A government decree has initiated the creation of an Environmental Protection Agency to be concerned in particular with the carrying out of environmental impact assessment. Montenegro became the 43rd Party to the Convention on EIA in a Trans-boundary Context, the 16th Party to the first Amendment to the Espoo Convention and 14th Party to the second Amendment to the Espoo Convention on 9 July 2009.

Article 4(2) of the **Wild Birds** Directive is partially transposed into national law by the Law on Nature Protection's Articles 32 on for the protection of ecologically significant areas for endangered and rare species, and Article 86 providing for bird protection measures. An exception from Article 86's area of protection is provided for "upper railway cables". No advances in implementation have taken place during 2009.

The **LCP** directive is not yet implemented and the **IPPC** law requires existing installations comply with IPPC requirements by 2015, in force since the 1st of January 2008 is reported to be awaiting amendment.

Competition

In **competition**, Montenegro has a Law on Protection of Competition in place since 1 January 2006. A new law is currently being drafted and is expected to be adopted in the course of 2010. This amendment should be used to correct the shortcoming of the existing legislation, in particular as regards the status of the competition authority, competition law procedure and fines.

During 2009, the number of staff employed by the Directorate for Competition Protection has been increased from nine to eleven.

Another recent development concerns the Energy Law, which in its current Article 21 contains a special clause on the application of competition law by the Energy Regulatory Agency. This provision does not feature anymore in the proposal for a new Energy Law

which is pending in the legislative procedure. From a point of view of clarity and consistency, this development is to be welcomed.

In the area of **State aid**. Montenegro's Law on the Control of State Support and Aid is in force since May 2007. The Law contains a prohibition of State aid modelled on Article 87 EC. One of the preconditions for State aid to be prohibited is that it "*may affect the performance of internationally entered obligations of the State.*" The Law establishes a State aid Control Commission chaired by a representative of the Ministry of Finance. The Ministry of Finance is also tasked with preparing the Commission's work on procedure and substance. Granting of State aid without approval triggers a report by the Commission to the competent Government authority along with proposed correction measures.

A new draft Law on State Aid Control adopted by the Government in April 2009 has not been submitted to the Secretariat. To the Secretariat's knowledge, to this date there are still no decisions applying competition or State aid law to the energy sectors.

Renewables

The revision of the Energy Law which has been ongoing during 2009 was regarded as a good opportunity to deal also with the missing provisions regarding the biofuels and to define the indicative targets, as well as to transpose the other needed provisions of the Directives 2001/77/EC and 2003/30/EC. The Energy Law is in final stage of consultations however, the Ministry of Economy considers the transposition of the Directive 2009/28/EC on the promotion of the use of energy from renewable sources covering Directives 2001/77/EC and 2003/30/EC, that will be repealed starting 2011.

5.6 SERBIA

Legislative framework

The draft Amendments to the Energy Law have been submitted for the comments to the ECS at the end of October 2009. The Secretariat will provide its comments to the draft amendments to increase the compliance related to transposition of the electricity, gas, renewables and security of supply related acquis. The powers of the Energy Regulator are expected to be reconsidered according to the requirements of the energy and security of supply acquis.

Electricity

It is expected that the amendments of the Energy Law will provide the framework for real market opening. The existing regulated tariffs which are not cost reflective are valid for all customers and currently there is no incentive to switch the incumbent supplier. Moreover, the existing metering systems can support the change of the supplier only for the non-households customers connected to the transmission network.

As the Market Rules depend extensively on the market design, there is envisaged to be adopted after the Energy Law amendments will be passed. Moreover, the integration of renewables into the market has to be considered as the current version doesn't include it.

EMS, the Serbian TSO started negotiations with all neighbouring TSOs to implement joint auctions for cross-border capacity allocations, however the progress is uneven and the issue of different regimes of VAT remain to be solved. In the Procedure for capacity allocation on interconnections the handling fee previously imposed to all traders for all auctions has been removed

The new electricity generation projects within "Elektroprivreda Srbije" related to strategic partners to construct 2 lignite based production thermal power plants in TENT B3 and Kolubara B and the public call for the strategic partner for constructing 450 MW-electricity (plus 300 MW in heating) gas fired CHP plant in Novi Sad, are progressing.

The investments in the new interconnections and in the transmission network is progressing according to the plans, however the rate of return approved by the Regulator in the transmission tariff is set at zero affecting the viability of the company on medium and long term.

All 5 Distribution Grid Codes for all 5 distribution companies are completed in late December 2009

The accounts unbundling for the Distribution Company activities (distribution and supply) has to advance furthermore. The distribution tariffs couldn't be adopted yet, as the Regulator observes unbundling problems between accounts of distribution and supply activities. The Distribution Company is aware of the investments needed in the metering equipment at distribution level to support eligible customers switching. The investment plan envisaged 500.000 electricity meters to be installed up to 2015 for all customers, and the aim is to have installed meters to the higher voltage levels by mid of 2011.

The energy losses in distribution are estimated at a level of 15% in 2009, increasing from 14.48% in 2008. Technical losses are estimated at 9% and non-technical losses at 6%. Collection rate is at 95% currently, however the historical debts are very high due to big industrial customers mainly as bad payers.

Related to the protection of customers, the framework conditions have to be reviewed and to be included into bilateral contracts between the incumbent supplier and each customer. The general information, contractual terms and conditions as well as the dispute settlement mechanism have to be clearly specified as required by the Article 3 of

Directive 2003/54/EC. Moreover, for the household customers, the measures set out in the Annex A of Directive 2003/54/EC have to be considered.

Gas

Some crucial provisions of the Directive 2003/55/EC have still not been transposed in the primary legislation in a proper way. The new amendments to the Law on Energy were drafted during 2009 and were submitted to the Energy Community Secretariat for the comments at the end of October 2009. The Amendments are supposed to transpose all missing provisions of the gas related legislation resulting from the commitments of the Treaty establishing the Energy Community. Based on the analyses of the received draft amendments, it can be stated that significant progress has been achieved but there are still crucial provisions missing – resulting from the requirements of the Directive 2003/55/EC and even more resulting from the provisions of the Regulation 1775/2005 and the Directive 2004/67/EC.

Ad Directive 2003/55/EC:

Serbia has amended the Energy law and has proposed a draft amended version in order to better comply with the requirements resulting from the Treaty establishing the Energy Community. Significant progress has been achieved. The following issues are missing and have to be transposed respectively some have to be improved:

- Definitions needed in the course of implementing the energy act and also for operational purposes
- Most of the Public service obligations mentioned in Article 3 of Dir. 2003/55/EC need further clarification
- Monitoring of security of supply in accordance with Art. 5 of Dir. 2003/55/EC has to be more comprehensive
- Access to upstream pipelines
- Reciprocity provisions in line with Art. 23 of Dir. 2003/55/EC
- Provisions related to safeguard measures
- Derogations in relation to take or pay commitments
- Emergent and isolated markets
- Repeals
- Measures on customer protection have to be clarified

Ad Regulation 1775/2005:

The following provisions related to the Regulation 1775/2005 are missing so far:

- Subject and scope
- Definitions
- Tariffs for access to networks (some rules are missing)
- Partially provisions related to third party access services
- Principles of capacity allocation mechanism and congestion management procedures
- Some transparency requirements
- Most of the needs for balancing services
- Most provisions related to trading of capacity rights

Ad Directive 2004/67/EC:

Most of the provisions of the Directive 2004/67/EC are missing so far.

Next steps related to legislative issues:

The missing provisions of the Directive 2003/55/EC as well as the missing provisions of the Regulation 1775/2005 and the Directive 2004/67/EC rules should be finalized in due

time in order to provide the proper basis for a transparent, non-discriminatory and competitive market environment and a sound basis for investments.

Ad Ten Years Network Development Statement:

Serbia committed themselves to continue with the provision of data – as it has done so far – to GTE+ for the development of the Ten Year Network Development Plan in order to provide a sound basis for the assessment of further gasification of SEE.

Ad Security of Supply Statement:

Some items are missing in the Security of Supply statement. Having in mind that the missing items, like the maintenance of the network, the technical rules, demand forecast etc, are in practice in operation it should be relatively easy to fill in the minor issues in the statement, thus providing all the requirements stated in the relevant legislation and even beyond these needs.

Environment

The **EIA** Directive is implemented in Serbia by the “Law on Environmental Impact Assessment”. Serbia has adopted amending legislation furthering the definitions for the determination of projects requiring mandatory impact assessment in alignment with the EIA Directive by adopting the “Regulation on determination of a List of projects subject to mandatory EIA and a List of projects subject to non-mandatory EIA” in November 2008.

Legislation has also been adopted to be used for the further definition of an ecological network designated to also achieve the objectives of the **Wild Birds** Directive. The new Law on Nature Protection adopted in May 2009 furthers the level of harmonization with the Wild Birds Directive, a network being established to identify areas of special conservation interest.

In terms of **integrated pollution prevention and control** and that of environmental impact assessment, integrated permits are beginning to be emitted for projects falling under the scope of the national laws implementing the *acquis* on environment. Drafts for horizontal legislation are also prepared for further implementing the Wild Birds, LCP and IPPC Directives.

The Law on Air Protection was adopted in May 2009, transposing the **LCP** Directive. December 2008 also saw the adoption of a “Regulation on Greenhouse gas emission quotas and the method of emissions allowance trading” establishing a registry for emission monitoring and reporting, as well as implementing Joint Implementation and Clean Development schemes.

Competition

In Serbia, the year 2009 brought significant progress in the implementation of the Treaty’s **competition** *acquis*. The Law on Protection of Competition of 2006 has been replaced by a new Law on Competition which entered into force on 1 November 2009. The Law has been upgraded in terms of substance by reducing the number and complexity of its provisions and giving more flexibility to secondary legislation and case law. Most notably, however, the procedural aspects of the Law have been improved, such as the institutional framework of the Commission for the Protection of Competition, a competition procedure modelled on EC law, including inspection rights, rights to impose fines, leniency etc. Furthermore, the thresholds for merger control are now high enough to release capacities from concentration cases to cartel and abuse cases. In all these respects, the new Law constitutes a milestone in alignment with the competition *acquis*.

Furthermore, the Competition Authority and the regulatory authority are currently preparing a Memorandum of Understanding on cooperation and exchange of information.

In terms of **State aid**, the progress achieved was at least equally important. For the first time, a Law on State aid control will in force in Serbia as of 1 January 2010. The Law contains the definition and the general prohibition of State aid. The latter provision explicitly refers to or “*internationally ratified treaties*”. Any State aid will have to be notified in advance to the authority to be established for that purpose, a five-member and “operationally independent” Commission for State Aid Control. That body is to be set up by the Government and shall be chaired by the Ministry of Finance. The operational work is performed by the Ministry of Finance. The Commission adopts binding decisions on the compatibility of State aid (in ex ante and ex post-control cases), following a procedure which eventually may include recovery. The decisions are subject to an appeal under administrative law.

Renewables

After having adopted Privileged producer criteria act in September 2009, on November 20th the Government adopted two by-laws – one amending a regulation on Energy Development Strategy Action Plan, targeting increase by 2.2% in electricity produced from renewables as well as 2.2% increase of biofuels on market, and the other – feed-in tariffs (incentives) for electricity produced from renewables. The legal and regulatory framework for promoting renewable energy sources has to advance further to attract investors to use the great potential of renewables that Serbia has and to contribute to new jobs creation in the country.

Among others goals, the targets regarding biofuels were envisaged to be decided on within the Amendments to the Realization Program (2007 – 2012) of the Development Strategy on Energy of Serbia. The blending obligation has been introduced, with targets for years 2010, 2011 and 2012.

According to the information presented at the 1st RE TF meeting, defined future priority activities include the National Action Plan on Biomass and the development of sustainability criteria on Biofuels, which is even now in line with the requirements of the new Renewable Directive.

5.7 UNMIK

Legislative framework

In the period between July and October 2009 three basic legal acts of the energy sector of Kosovo⁶, such as the Law on Energy, the Law on Energy Regulator and the Law on Electricity, have been taken into a process of amending and redrafting, targeting full compliance with the requirements of the Energy Community Treaty. The named legal acts were submitted to the Energy Community Secretariat for comments in several turns according to their different preparatory phases. Last set of comments from the Secretariat were received by the Contracting Party by mid October.

Electricity

There are high expectancies from the new drafts of the legal acts by all relevant authorities in the energy sector. Improvements of some key elements of compliance are foreseen including treatment of the regulatory authority ERO with respect to its powers, responsibilities, financing and operational capacity as well as the functional structure of the market environment, conditions for security of electricity supply, customer rights, customer protection and quality of service, market opening to competition, monitoring obligations etc.

After unbundling of the transmission system operator (KOSTT) in 2006 the remaining vertically integrated utility (KEK) is currently undergoing further legal unbundling into two separate corporate structures – a distribution system operator performing public supply activities and an electricity generation company which shall include the embedded lignite mines. There are contemplations for consequent privatization of the DSO / public supply wing.

Market opening is implemented gradually – depending on voltage level. Since the beginning of 2009 the electricity market is declared open for all customers connected on 10 kV and above, and from August 2009 the market is declared open for all non-household customers. However public supply is still available and applied to all classes of final customers. Customer information and customer rights are specified within the contracts template recently approved by ERO. The Rule on Eligible Customers is currently being drafted and should be in place by the end of 2010. Collection rate has improved to 85% of the invoiced electricity for the period January – September 2009, while the level of technical losses of 17.1% is allowed by ERO in the tariffs. Distribution code, Metering code and General Conditions for electricity supply well outline the end-user environment. Consumer-sensitive tariff pattern is applied as a demand-side measure for reduction of the consumption.

The wholesale market is supplied on average by 9.5% through bilateral contracts (imports) and the rest by regulated buyout of the domestic production. Scarce domestic hydro capacities are mainly insufficient for balancing, which needs also to be contracted from abroad or, by default, be obtained through load shedding. Such load shedding schemes are developed, publicly available, transparent and regularly applied - whenever the demand can not be balanced with the production. There is a strong interest for participation in a (future) competitive regional balancing market. Market conditions need further consideration in order to allow for significant role of the competitive market in the supply pattern. New Market Rules are under development. However a single wholesale buyer (KEK Distribution Company) continues to have a strong position in the market.

⁶ As UNMIK is the Contracting Party to the Treaty establishing the Energy Community, in the Energy Community context any references to Kosovo should be understood only as references to the territory in accordance with UN Security Council Resolution 1244.

Security of electricity supply is still under strong influence from insufficient and inadequate domestic generation and insufficient transmission capacity. Reserve capacity, emergency power and energy compensation (exchange) arrangements are contracted abroad - mainly with the neighbouring utilities.

New Energy Strategy (2009–2018) is approved by the Government in November 2009. Electricity generation investments are given high priority through the projects for construction of the new lignite-fired TPP New Kosovo (in total – 1000 MW) planned for completion by 2015/16, and other options for hydro capacities.

ERO has adopted the Rules on Authorization Procedure for the Construction of New Generation Capacities. ERO is also engaged in reviewing applications for authorization of the construction of new capacities, mainly from RES.

ERO has approved the Rules for capacity allocation and use of interconnections which provide required framework for congestion management. However these Rules are not applied primarily due to the ongoing dispute procedure with the Serbian TSO (EMS) over the rights of operation of the interconnection capacities. In the second half of 2009 both parties are engaged in mutual attempt to solve the dispute under moderation by the Energy Community Secretariat. The Transmission Network Development Plan for the period 2007 – 2030 is approved in July 2009.

UNMIK makes efforts for its recognition in ENTSO-E and actively participates in the project for establishment of Coordinated Auction Office in the SEE region.

Gas

UNMIK has transposed the requirements of the Directive 2003/55/EC in the Law on Gas - which was promulgated on 12th November 2009. There are just some minor issues which could be implemented additionally but are not obligatory.

Ad Directive 2003/55/EC:

The DRAFT LAW ON NATURAL GAS could be extended by the provisions of Article 28 (4) of the Directive 2003/55/EC in order to provide to potential investors an even better framework for investments. The provisions of Article 28 (4) are not of obligatory nature but may be transposed. As mentioned, all of the requested provisions of the mentioned directive - except the provisions related to the role of the EC - have been transposed .

Ad Regulation 1775/2005:

The transposition of the Regulation 1775/2005 is expected to be enforced in 2010. The delay is based on the needed transposition of the sound basis represented by the Directive 2003/55/EC and the time needed for engaging with a consultant – following the public procurement procedure which is a time consuming procedure. The transposition of the mentioned regulation should focus at the beginning – taking the scarce resources into consideration purely on the transposition of the text of the Regulation 1775/2005. The resulting market rules – taking the Regulation 1775/2005 as a basis – should be developed later on.

Ad Directive 2004/67/EC:

The transposition of the Directive 2004/67/EC is foreseen for the end of the first half of 2010. The slight delay is to a certain extend resulting from the transposition of the sound basis represented by the Directive 2003/55/EC.

Next steps related to legislative issues:

The transposition of the Regulation 1775/2005 and Directive 2004/67/EC should be finalized in accordance with the envisaged time schedule in order to provide the proper basis for a transparent, non-discriminatory and competitive market environment and a sound basis for investments.

Ad Ten Years Network Development Statement:

UNMIK committed themselves to continue with the provision of data – as it has done so far – to GTE+ for the development of the Ten Year Network Development Plan in order to provide a sound basis for the assessment of further gasification of SEE.

Ad Security of Supply Statement:

Some items are missing in the Security of Supply statement. Having in mind that the missing items, like the maintenance of the network, the technical rules, demand forecast etc, need just a reference it should be relatively easy to fill in the minor issues in the statement, thus providing all the requirements stated in the relevant legislation and even beyond these needs.

Environment

A Law on Environmental Impact Assessment was adopted on the 26th February 2009 and replaced the Administrative Directive No.9/2004 on EIA. Amendments to this law have been prepared taking into account feedback received thus far on the law. The new law partially transposes the EIA Directive and needs to be completed by secondary legislation. Drafts for such legislation are awaiting adoption. Full implementation is foreseen by the end of 2010.

Legislation establishing the environmental network partially implementing Article 4(2) of the Wild Birds Directive is adopted. The new law on Nature Protection, which is currently in governmental procedure, is expected to ensure full transposition of the Wild Birds Directive by the end of this year.

A law on IPPC, based on the Directive 96/61/EC was adopted on in March 2009. Administrative Instruction No. 2006/16 defines sulfur contents on motor oil, gasoline, kerosene, gaseous oil and heating oil.

Draft laws for the implementation of the LCP and Sulphur Directives exist. An Administrative Instruction “on rules and standards of discharges on air by stationary sources of pollution” is meant to further implement the LCP Directive, with full transposition being foreseen for 2012.

Competition

With respect to **competition law**, the Law on Competition from 2004 still needs some improvement on substance, in particular as regards the provisions concerning the abuse of dominant positions. An update of the Law should rectify these shortcomings.

The draft for a new Law on Energy still contains provisions modeled on Articles 81 and 82 EC and tasks both the Energy Regulatory Office and the Competition Commission to apply their respective legal framework to the energy sectors. This cannot be considered a sufficiently clear delineation of competences and may lead to uncertainty and conflicts in future. The situation is further aggravated by the draft Law on the Energy Regulator, which calls upon the Energy Regulatory Office to “remedy” abuses of dominant positions as well as “prevent or remedy” the conclusion of anti-competitive agreements.

In terms of competition enforcement, the KCC established under the Law has finally become operational in February 2009. It currently comprises a staff of four and has already adopted decisions and recommendations. The KCC also proposed amendments to the current Law on Competition aiming at bringing domestic competition law closer to the EC *acquis*. The KCC has become a member of the International Competition Network.

There is still no **State aid** law or an independent State aid authority in place in UNMIK. A draft law on State aid is currently being discussed internally. The authorities further submitted to the Secretariat a list of grants made in the energy sector, information which is very valuable in particular for the upcoming State aid study.

Renewables

The draft of Energy and Electricity Laws submitted to the Secretariat for comments included transpositions of the main remaining articles of the Directive 2001/77/EC that were not previously considered.

During 2009, there is no much progress to be noted regard the implementation of the Directive 2003/30/EC. The Draft Administrative Instruction on the use of biofuels in transport, defines the targets at 2% of biofuels by December 2009, and at 5.75 % by December 2015. The Draft Administrative Instruction was prepared by the Ministry 2 years ago, but still has been waiting for the approval by the Government.

It is expected that the regulation on procedures and methodology for RES electricity pricing will be developed by ERO in 2010 including setting up a system for issuing Certificates of Origin.