

ANNUAL REPORT

ON THE ACTIVITIES OF THE ENERGY COMMUNITY TO THE EUROPEAN PARLIAMENT AND THE NATIONAL PARLIAMENTS

The Ministerial Council of the Energy Community is requested to present an annual report on the activities of the Energy Community to the European Parliament and the Parliaments of the Adhering Parties and of the Participants to the Treaty establishing the Energy Community¹ (The Treaty).

This report, which covers the implementation period May 2007 till October 2008, draws a synthesis from a set of documents published by the Energy Community, in particular the comprehensive monitoring and market development reports as well as the work programme (available on www.energy-community.org).

1. IMPLEMENTATION OF THE EU LEGISLATION LISTED IN THE TREATY

The indicated period was marked by intensive activities within the Contracting Parties for the implementation of the legal framework as outlined by the Treaty establishing the Energy Community (the Treaty) in all *acquis* areas (energy, environment, renewables and competition).

1.1. The *acquis* on energy

The transposition of the *acquis* on electricity and gas² has been substantially advanced. Once the deadlines expired on 1 July 2007, the Ministerial Council of the Energy Community called upon the Contracting Parties to overcome remaining obstacles to full implementation by 1 July 2008. During this year, considerable progress has been achieved due to intensified efforts by the Contracting Parties. Through ongoing bilateral assistance as well as through case-related dispute settlement, the Secretariat supported these activities. The electricity sector, already well developed, was further refined through amendments to primary and secondary legislation bringing the market models closer in line with the requirements of the *acquis*. Unbundling of networks and third-party access are generally well advanced. One of the difficult issues, the facilitation of trans-border electricity flows, is now

¹ Article 52 – The Ministerial Council shall submit an annual report on the activities of the Energy Community to the European Parliament and to the Parliaments of the Adhering Parties and of the Participants.

² Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity and repealing Directive 96/92/EC; Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC and Regulation (EC) No 1228/2003 of the European Parliament and the Council of 26 June 2003 on conditions for access to the network for cross-border exchanges in electricity.

being tackled actively by the Contracting Parties both on governmental and company level. The development towards full market opening is picking up pace.

In the gas sector, several Contracting Parties without any gas legislation so far have adopted or are on the verge of adopting gas laws modelled on Directive 2003/55/EC. This is even more remarkable as only a minority of Contracting Parties has functioning gas markets yet, but are preparing the legal environment to favour gas related investments.

1.2. The acquis on renewables

The Treaty requirements in relation to renewables have been formally fulfilled.

All Contracting Parties have developed national plans for adoption of Directive 2001/77/EC of the European Parliament and of the Council of 27 September 2001 on the promotion of electricity, produced from renewable energy sources in the internal electricity market and Directive 2003/30/EC of the European Parliament and of the Council of 8 May 2003 on the promotion of the use of biofuels or other renewable fuels for transport. The relevant information on the work performed has been noted by the Ministerial Council at its meeting in June 2007.

Nevertheless, although out of the formal scope of the Treaty, practical steps towards the implementation of the action plans are moving ahead.

1.3. The acquis on environment

According to annex II of the Treaty, the Contracting parties shall implement since the entry into force of the Treaty, the Directive 85/337/EEC on the Environmental Impact Assessment and article 4(2) of Directive 79/409/EEC on the conservation of wild birds.

The Environmental Impact Assessment Directive has been fully or almost totally transposed in all Contracting Parties, either with a specific legislation or as part of general environmental protection laws. Its implementation to specific infrastructure projects remains a key priority, especially in the case of new electricity generation plants.

The transposition of Article 4(2) of the Birds Directive is at different stages in the Contracting Parties; while in few of them it is already quite advanced, in the majority of the cases it is still at an early phase.

The Energy Community Secretariat has started at the end of 2007 a comprehensive fact finding mission and presented to the Parties to the Treaty a first report on the implementation of the Environmental Acquis in March 2008. This was followed by a separate Workshop, targeting the most pressing issues on Environmental Impact Assessment and promoting the creation of a network of environmental experts. In cooperation with the European Commission's own monitoring activities, the Secretariat is dedicating increasing attention and resources to the environmental dimension.

1.4. The acquis on competition

The Treaty's chapter on competition requires the Contracting Parties to implement Articles 81, 82, 86 and 87 EC and apply them in the energy sector in accordance with jurisprudence of the EC courts. As of now, all Contracting Parties have adopted general competition legislation following the model of pre-2004 EC competition law. With the exception of one Contracting Party, independent competition authorities are

in place. As regards State aid, however, legislation and institutions are still lacking in some Contracting Parties. This area, as well as the enforcement of the Treaty's competition acquis in concrete cases requires further action.

Following an initial implementation report presented in March 2008, a Workshop in the coming months will provide the opportunity to target the most topical problems of energy competition law within the Energy Community.

1.5. New acquis introduced

The Ministerial Council of the Energy Community, taking note of the importance of the Security of Supply perspective, which has to be targeted in the context of the European Union experience, decided at its meeting in December 2007 to expand of the energy acquis by incorporating Council Directive 2004/67/EC of 26 April 2004 concerning measures to safeguard security of natural gas supply, Regulation (EC) No 1775/2005 of the European Parliament and the Council of 28 September 2005 on conditions for access to the natural gas transmission networks, and Directive 2005/89/EC of the European Parliament and of the Council of 18 January 2006 concerning measures to safeguard security of electricity supply and infrastructure investment. The Regulation and the Directives are to be implemented by the Contracting Parties by the end of 2008 and 2009 respectively. Currently, the monitoring process on the implementation of Regulation 1775 is actively ongoing; in addition, concrete support in this aspect is being provided by the Energy Community Secretariat to all Contracting Parties.

2. COOPERATION AMONG REGULATORY AUTHORITIES

The Energy Community Regulatory Board (gathering the Regulatory Authorities), established in December 2006, has three Working Groups with limited mandate covering electricity, gas wholesale and retail issues. In 2007 an ad hoc working group was created to promote the idea of a coordinated auction office (for cross-border electricity trade) jointly with all market players.

The Energy Community Regulatory Board also issued its first independent report on market development, on the basis of the contribution of each national Regulatory Authority.

This market development report underlines that special priority shall be given to issues relating to cross border trade and transmission of electricity and gas, establishment of a regional wholesale market which requires underlying compatible rules. Furthermore cost reflectivity of tariffs and bill collection remain a challenge for several parties involved. These questions are of particular importance to raise investors' interest to develop new generation capacities.

3. TARGETING INVESTMENTS

Noting the fact that investments in the energy sector of all Contracting Parties is a key priority and substantial tool for development of the energy market, the Energy Community institutions targeted this issue explicitly in their work. The Ministerial Council of the Energy Community, on the ground of the activities undertaken by the Secretariat and the Contracting Parties, agreed on an indicative list of priority projects – mostly of regional value, whose development is being promoted and followed. A ministerial level Investment Conference took place in Athens in October 2007 and acknowledged the increasing and urgent need for energy infrastructure

investments, and the commitment of the Contracting Parties to support these. In addition, expert level conference in October 2008 contributed to focusing on specific investment issues.

The IPA Investment Projects Facility, launched by the European Commission in March 2008, is being also used to support the preparation of solid infrastructure developments.

The Ministerial Council of the Energy Community is updated on regular basis on the recent developments.

4. ENERGY EFFICIENCY

A Task Force on Energy Efficiency was set up upon a decision of the Ministerial Council in December 2007. It includes representatives of the Contracting Parties and some from the Participant countries. In February 2008, the Task Force adopted its work programme, which covers the envisaged 18 months' period of its existence. The Task Force has already prepared initial analysis and action plans for the advancement of energy efficiency; an approach towards awareness raising campaign. Further, eventual implementation of EU acquis in this direction shall be considered and reported to the Ministerial Council.

5. SOCIAL DIMENSION

The Social Dimension of the Energy Community has been introduced in concrete terms via the Memorandum of Understanding on Social Issues in the Context of the Energy Community, signed in October 2007 by all Parties to the Treaty.

Further to the formal reference of the social aspects of the Energy Community in the Treaty, particular necessity to face in concrete terms and in more details the issue is backed up by the substantial social consequences of the energy reforms in the Contracting Parties. Strong involvement of the social partners for discussing these consequences has been envisaged.

At the Ministerial Council meeting in December 2007, it was decided to organise a Forum on social issues in the context of the Energy Community each year, in order to discuss the progress in the implementation of the Memorandum. Individual Social Action Plans are being developed to address the issues deriving from the market oriented reforms in the energy sector in each Contracting Party. A first workshop gathering the social partners from the region was organised in May 2008 in order to prepare the first Energy Community Social Forum scheduled for 18-19 November 2008.

6. OIL DIMENSION

The Ministerial Council discussed in June 2008 options for developing the Energy Community Oil Dimension. This concerns eventual extension of the Treaty to oil via specifying the relevant acquis by the end of 2010.

In parallel, development of a regular Oil Forum shall be considered.

The Ministerial Council is expected to decide on the issue at its 5th meeting in December 2008.

7. DISPUTE SETTLEMENT

By adoption of Dispute Settlement Procedures in June 2008, the Energy Community has now a concrete and fully fledged procedural instrument as to deal with complaints by private bodies, concerning failure by a Party to comply with the Treaty obligation or to implement Decision addressed to it.

The already filed cases indicated the necessity of such rules and turn to be concrete proof that the Treaty is a living instrument in the scope of international law.

III. CONCLUSIONS

Further to the strong efforts on implementation of the acquis, the revised period of activities of the Energy Community is characterized by concrete steps towards stimulating the investment process. The development of the energy market remains an overwhelming priority - a common regulatory framework is being actively considered on the ground of one-stop-shop approach. Besides, specific activities targeting common steps towards coordinated auctioning, mutual recognition of licenses and tariffication are undertaken as to secure prevailed influence of regional approach through long term planning of generation and transmission capacities over national protectionism. In parallel, the social dimension of the Energy Community including vulnerable customers support is being further elaborated. Detailed and concrete discussions concerning energy efficiency and the oil dimension are ongoing.

Despite the challenges, the growing Energy Community follows clear vision of its development forward within a two years detailed Work Programme (2008-2009), adopted by the Ministerial Council. This development is backed up by the concrete involvement of its institutions and the active support by the European Community.

ANNEX: ABOUT THE ENERGY COMMUNITY

- The Energy Community Treaty entered into force on 1st July 2006. Albania, Bosnia-Herzegovina, Croatia, the Former Yugoslav Republic of Macedonia, Montenegro, Serbia, the United Nations Interim Administration Mission in Kosovo and the European Community are parties to this Treaty.
- The general objective of the Energy Community is to create a stable regulatory and market framework in order to:
 - Attract investment in power generation and networks in order to ensure stable and continuous energy supply that is essential for economic development and social stability;
 - Create an integrated energy market allowing for cross-border energy trade and linked to the EU market ;
 - Enhance the security of supply
 - Improve the environmental situation in relation with energy supply in the region.
- In order to pursue these objectives, the main instrument of the Energy Community Treaty is the implementation of parts of the EU acquis:
 - Key electricity and gas directives and regulations
 - Key environment directives, in particular the Environmental impact assessment directive
 - Key directives on renewables and biofuels
 - The main principles of the EU competition policy
 - Major acquis in relation to security of supply.
- Contracting parties have the obligation to implement these instruments within specific timeframes.
- Since 1st July 2006, all the Institutions of the Energy Community have been established and started their effective operations; these being the Ministerial Council, the Permanent High Level Group, the Regulatory Board, the Electricity and Gas Fora, and the Secretariat in Vienna. The appointment procedures of all 16 members of the staff of the Secretariat have been completed in October 2007 and it is now fully operational.
- The budget of the Energy Community is about €2,9 million for 2008.
- All documents related to the activities of the Energy Community are available on www.energy-community.org .