



Assessment of the Application of Community Law in a Third Country

North Macedonia Update

For the purpose of participation of the Energy and Water Services Regulatory
Commission of North Macedonia in Working Groups of the Agency for the
Cooperation of Energy Regulators



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1. Introduction

1.1. Scope and context

The present report assesses the compliance of the legislation of North Macedonia with the criteria of Article 43 of Regulation 2019/942 (hereinafter 'ACER Regulation')¹ concerning participation of third countries² in the working structures of the Agency for the Cooperation of Energy Regulators (ACER). More specifically, the review analyses whether North Macedonia is on track to meet the requirements of Article 43(1) of Regulation 2019/942 within the next six to twelve months which could trigger the possibility for staff of the Energy and Water Services Regulatory Commission of North Macedonia (hereinafter ERC or 'the regulator')³ to participate in working structures of ACER.

The assessment complements an analysis presented by the Energy Community Secretariat (hereinafter 'the Secretariat') in January 2020 (hereinafter 'the 2020 Report') that is available at https://www.energy-community.org/dam/jcr:5ced9de5-c2a7-4a75-9b84-6064bccb533c/ECS_ACER_Reg_NMK_012020.pdf. It responds to the request of ACER for a more detailed evaluation of the environmental and competition law framework in North Macedonia as well as an update on the status of measures expected in the 2020 Report to be adopted by end 2020.⁴

The review covers transposition *and* implementation of both primary and secondary legislation in the areas of *acquis communautaire* (hereinafter 'acquis') referred to in Article 43(1) ACER Regulation, namely: energy, regulatory independence, third-party access to infrastructure and unbundling, energy trading and system operation, consumer participation and protection, environment and competition.

To the extent, legal or practical changes compared to the explanations and conclusions of the 2020 Report have not been observed, they are not repeated fully in the present report but presented in a summarized way; for transparency reasons additional references to the relevant chapter(s) of the 2020 Report are made.

The present review is performed by the Secretariat following a request of ERC to apply for observer status in ACER. The Secretariat's role in assisting ACER in assessing the progress of Contracting Parties (CP) in evaluating an application for the participation of a CP national regulatory authority (NRA) in working groups of ACER and its substructures is stipulated in Section 4 of the Administrative Agreement on Working Modalities in the Area of Gas and Electricity (hereinafter 'the Agreement') signed by the Secretariat and ACER on 2 December 2016 and amended on 7 October 2019.⁵ According to the Agreement, this should include but is not be restricted to:

- a. *the adoption by the CP of all measures necessary for the transposition, as well as their practical implementation;*

¹ OJ L 158 of 14.06.2019, p 22 *et seq.*

² In the meaning of non-EU Member States.

³ www.erc.org.mk.

⁴ ACER, letter addressed to ERC of 19.11.2020, ref. ACER-CZ-DH-ss-2020; ERC, reply to ACER of 17.12.2020, ref. 03-2524/1.

⁵ A consolidated version of the amended Administrative Arrangement is available at: <https://www.energy-community.org/dam/jcr:447ef1a3-b14e-400b-9193-9c8392fe7cef/Administrative%20Agreement%20between%20ACER%20and%20Energy%20Community%20Secretariat%20consolidated%20version.pdf>.

- b. *the degree of actual independence and the competences of its NRA, taking into consideration, inter alia, the provisions of Articles 35 to 38 of Directive 2009/72/EC and Articles 39 to 42 of Directive 2009/73/EC and the guidance and interpretative notes developed by the European Commission.*⁶

The conclusions and recommendations of the present analysis are without prejudice to the right of ACER to decide on conceding the participation of a third country's regulator in its working groups and / or substructures.

1.2. Relevant legal framework

Articles 17 and 21 of the ACER Regulation limit membership to ACER's formal bodies, i.e. the Board of Regulators and the Administrative Board, to representatives of EU Member States. Article 43(1), however, also opens the possibility for participation of third countries in ACER, provided that:

1. The third country has concluded an agreement with the Union (Article 43(1));
2. The third country '*has adopted and is applying the relevant rules of Union law in the field of energy including, in particular, the rules on independent regulatory authorities, third-party access to infrastructure and unbundling, energy trading and system operation and consumer participation and protection, as well as the relevant rules in the fields of environment and competition*' (Article 43(1));
3. An institutional framework has been set up in the agreement referred to under (1) to specify, in particular, the nature, scope and procedural aspects of the involvement of the third country including provisions relating to financial contribution and to staff (Article 43(2)).

The Commission by letter of 25 March 2015⁷ clarified that the Energy Community Treaty is to be considered an 'agreement' as referred to in Article 43(1).⁸

The Commission, however, also underlined that the requirements of Article 43 ACER Regulation are only relevant for a third country's participation in the Board of Regulators and the Administrative Board, whereas the criteria for acceptance of involvement of third country regulators in ACER working groups remain at the discretion of ACER. ACER, by letters of 26 November 2014⁹ and 24 July 2015,¹⁰ expressed the intention to allow participation of NRAs from third countries in ACER working groups '*as long as their countries are assessed as being on track in meeting the requirements of Article 31 [Article 43 recast ACER Regulation 2019/942] and there being an expectation that this will be achieved within a reasonable period of time (6 to 12 months)*'.

⁶ Namely: Interpretative Note of the European Commission on regulatory authorities - Commission Staff Working Document of 22.01.2010.

⁷ Ref. ENER.B2/SZ/el/ener.b2(2015)1198324.

⁸ The correspondence of ACER and the European Commission addressed in chapter 1.2 in fact refers to Article 31 of ACER Regulation 2009/713 that was in force at the time of issuance of the relevant letters. For the purpose of the present analysis reference to 31 of ACER Regulation 2009/713 is replaced by Article 43 ACER recast Regulation 2019/942 that is in force at the moment of issuance of the present report. Article 43 of Regulation 2019/942 replaces Article 31 of Regulation 2009/713 without change of content in its paragraphs (1) and (2) which are of relevance for the present assessment.

⁹ Ref. ACER-AP-FG-ss-2014-647.

¹⁰ Ref. ACER-AP-FG-ss-2015-390.

1.3. North Macedonia under the Energy Community Treaty

North Macedonia is Party to the Energy Community Treaty (hereinafter 'the Treaty') that was signed in October 2005 in Athens and entered into force in July 2006. Articles 5 and 6 in conjunction with Article 11 of the Treaty commit the signatories to implement the *acquis communautaire* (hereinafter 'the acquis' or 'the Energy Community law') as listed in Annex 1 to the Treaty. The acquis relevant for the present assessment is summarized in chapter 1.4; implementation and compliance by North Macedonia is further discussed in chapter 2.

1.4. Relevant Energy Community law

The following areas of Energy Community law are relevant for the present analysis.

1.4.1. Electricity and gas

As regards electricity and gas market legislation, relevant EU law in the form of the so-called Clean Energy Package is not yet part of the Energy Community acquis. Therefore and specifically as regards the electricity sector, the compliance assessment of the present analysis refers to the Third Energy Package.¹¹

The Third Energy Package – namely Electricity Directive 2009/72/EC, Gas Directive 2009/73/EC, Electricity Regulation 714/2009 and Gas Regulation 715/2009¹² – has been included in the Energy Community acquis by Energy Community Ministerial Council Decision 2011/02/MC-EnC with a general deadline for transposition and implementation of 1 January 2015.¹³

Complementary to the Third Energy Package also Regulation 1227/2011 on wholesale energy market integrity and transparency (hereinafter 'REMIT Regulation')¹⁴ and a certain set of Third Energy Package related Network Codes (hereinafter 'the Network Code(s)') are part of the Energy Community acquis.

An adapted version of the REMIT Regulation has been adopted by Energy Community Ministerial Council Decision 2018/10/MC-EnC with a deadline for transposition of 29 November 2019 and implementation by 29 May 2020. The adapted REMIT Regulation essentially lacks the provisions on central data collection [by ACER] as in force on EU level.

The following Network Codes are part of Energy Community law:

- Regulation 2016/1388 establishing a network code on demand connection adopted by Decision of the Energy Community Permanent High Level Group (PHLG) 2018/05/PHLG-EnC;¹⁵

¹¹ This approach is confirmed in section 4, fn 1, of the Administrative Arrangement between ACER and the Secretariat.

¹² The ACER Regulation is not part of the Energy Community acquis.

¹³ Deviating from the general implementation deadline, specific deadlines apply for Electricity Directive 2009/72/EC and Gas Directive 2009/73/EC Article 9(1): 01.06.2016, Article 9(4): 01.06.2017, Article 11: 01.01.2017; Electricity Regulation 714/2009 and Gas Regulation 715/2009: 01.01.2014. Different from EU level, in general Regulations are not directly applicable in the Energy Community but require transposition into the national legal framework of the CPs. As an exception from this general rule, Third Energy Package related Network Codes and Guidelines are directly applicable in North Macedonia pursuant to the Energy Law.

¹⁴ OJ L 326 of 08.12.2011, p 1 *et seq.*

¹⁵ Transposition deadline 12.07.2018, general implementation deadline 12.07.2021, Articles 4(2)(a)(b), 6(4), 56, 57 implementation deadline 12.07.2018, Article 51(1) implementation deadline 12.03.2019.

- Regulation 2016/631 establishing a network code on requirements for grid connection of generators adopted by PHLG Decision 2018/03/PHLG-EnC;¹⁶
- Regulation 2016/1447 establishing a network code on requirements for grid connection of HDVC power park modules adopted by PHLG Decision 2018/04/PHLG-EnC;¹⁷
- Regulation 703/2015 establishing a network code on interoperability and data exchange in gas adopted by PHLG Decision 2018/02/PHLG-EnC;¹⁸
- Regulation 2017/459 establishing a network code on capacity allocation in gas transmission systems adopted by PHLG Decision 2018/06/PHLG-EnC;¹⁹
- Regulation 2017/460 establishing a network code on harmonised transmission tariff structures adopted by PHLG Decision 2018/07/PHLG-EnC;²⁰
- Regulation 312/2014 establishing a network code on gas balancing of transmission networks adopted by PHLG Decision 2019/01/PHLG-EnC;²¹
- Amendment to Annex I of Regulation 715/2009 as amended at EU level by Commission Decision (EU/2012/490 of and Commission Decision 2015/715 adopted by PHLG Decision 2018/01/PHLG-EnC.²²

These Network Codes have been adopted for the Energy Community with minimal adaptations specific to the market situation of the CPs. Comparison tables between the versions applicable in the EU and Energy Community CPs are available at <https://www.energy-community.org/legal/acquis.html>.

1.4.2. Competition

As regards competition law, the acquis rests on three pillars (Article 18 of the Energy Community Treaty):

- the prohibition of anti-competitive agreements established by Article 101 of the Treaty on the Functioning of the European Union ("TFEU");
- the prohibition of abuse of a dominant position provided for in Article 102 TFEU; and
- the prohibition of State aid granted in violation of Article 107 TFEU and the principles of the Treaty.

According to Article 19 of the Energy Community Treaty, public undertakings, including undertakings providing services of general economic interest, must also comply with the above rules. CPs are under an obligation to introduce, to the extent the trade of network energy between the CPs may be affected, rules prohibiting cartels,²³ abuses of a dominant position, and rules prohibiting State aid. While the Treaty does not contain

¹⁶Transposition deadline 12.07.2018; general implementation deadline 12.07.2021, Articles 4(2)(a)(b), 7(4), 58 and 59 implementation deadline 12.07.2018, Articles 68(1) and 69(1) implementation deadline 12.07.2018, Article 61(1) implementation deadline 12.03.2019.

¹⁷ Transposition deadline 12.07.2018, general implementation deadline 12.07.2021, Articles 4(2)(a)(b), 6(4), 51(1), 56 and 57 implementation deadline 12.07.2018, Article 78(1) implementation deadline 12.03.2019.

¹⁸ Deadline for transposition and implementation 01.10.2018.

¹⁹ Transposition deadline 28.08.2019, implementation deadline 28.02.2020.

²⁰ Transposition deadline 28.08.2019, implementation deadline 28.02.2020.

²¹ Transposition deadline 12.09.2020, implementation deadline 12.12.2020.

²² Deadline for transposition and implementation 01.10.2018.

²³ I.e. agreements between undertakings, decisions by associations of undertakings and concerted practices.

specific rules on mergers, the case law of the Court of Justice of the European Union applying what is now Article 101 and Article 102 TFEU to concentrations is applicable to the Contracting Parties through Articles 18(2) and 94 of the Treaty.

Pursuant to Article 6 of the Treaty, CPs are also obliged to ensure efficient implementation of their obligations under the Treaty including efficient enforcement.

1.4.3. Environment, climate change and renewables

As regards environmental legislation, the following pieces of EU law are part of the Energy Community acquis: Directive 2011/92/EU on environmental impact assessment, as amended,²⁴ Directive (EU) 2016/802 on the sulphur content of liquid fuels,²⁵ Directive 2001/80/EC on the emissions of large combustion plants, Chapter III and Annex V of Directive 2010/75/EU on industrial emissions,²⁶ Article 4(2) of Directive 79/409/EEC on wild birds, Directive 2001/42/EC on strategic environmental assessment,²⁷ Directive 2004/35/EC on environmental liability²⁸

For the purpose of the present analyses, the Secretariat understands reference to “environmental law” in Article 43(1) ACER Regulation in a broader sense and analyses the legislative and factual aspects of renewable energy sources (RES), climate action as well as decarbonisation in North Macedonia. By this, the Secretariat also acts on the request of ACER for a more in depth analysis of the environmental law in North Macedonia compared to the one provided in the 2020 Report.

The RES acquis consists of Directive 2009/28/EC on the promotion of the use of energy from renewable sources.²⁹

Explicitly binding Energy Community acquis in the areas of climate action or decarbonisation is not in place. However, Contracting Parties have expressed their commitment towards climate protection in form of recommendations and guidelines, namely:

- a 2016 Recommendation of the Energy Community Ministerial Council preparing for the implementation of Regulation (EU) No 525/2013 on a mechanism for monitoring and reporting greenhouse gas emissions,³⁰
- a 2018 Recommendation of the Energy Community Ministerial Council on preparing for the development of integrated national energy and climate plans by the Contracting Parties of the Energy Community that aims at preparing the analytical, institutional and regulatory preconditions for the development of integrated National Energy and Climate Plans (NECPs) by the Contracting Parties.³¹

²⁴ As amended by Energy Community Ministerial Council Decision 2016//12/MC-EnC.

²⁵ Adopted and adapted by Energy Community Ministerial Council Decision 2016/15/MC-EnC. This includes Commission implementing Decision 2015/253 on sampling and reporting under Council Directive 1999/32/EC as regards the sulphur content of marine fuels.

²⁶ Included by Energy Community Ministerial Council Decision 2013/05/MC-EnC and as amended by Energy Community Ministerial Council Decisions 2015/06/MC-EnC and 2015/07/MC-EnC.

²⁷ Included by Energy Community Ministerial Council Decision 2016/13/MC-EnC.

²⁸ Included by Energy Community Ministerial Council Decision 2016/14/MC-EnC.

²⁹ Adapted and adopted by Energy Community Ministerial Council Decision 2012/04/MC-EnC. Implementation deadline 01.01.2014; Georgia 31.12.2018.

³⁰ R/2016/02/MC-EnC.

³¹ 2018/1/MC-EnC.

The Secretariat also issued a Policy Guideline on the development of National Energy and Climate Plans under Recommendation in 2018.³²

- a 2018 General Policy Guidelines of the Energy Community Ministerial Council on the 2030 Targets for the Contracting Parties of the Energy Community that represent the political consensus on the 2030 targets for the Contracting Parties of the Energy Community and foresee that three distinct 2030 energy and climate targets should be established: a target for energy efficiency, a target for the contribution of renewable energy sources, and a greenhouse gas emission reduction target. These targets should be in line with the EU targets for 2030, represent an equal ambition for the Contracting Parties and take into account relevant socio-economic differences, technological developments and the Paris Agreement on Climate Change.

2. State of implementation

The present chapter analyses the compliance of North Macedonia with the elements of the Energy Community law that are relevant for participation in the ACER working groups (and their sub-structures) according to Article 43(1) ACER Regulation.

To the extent, legal or practical changes compared to the explanations and conclusions of the 2020 Report have not been observed, they are not repeated in the present report but are presented in a summarized version; for transparency reasons additional references to the relevant chapter(s) of the 2020 Report are made.

The Third Energy Package³³ was transposed for both the electricity and gas sectors into legislation of North Macedonia with the adoption of a new Energy Law in May 2018 (hereinafter 'the Energy Law'), having entered into force on 4 June 2018.³⁴

2.1. The regulatory authority

2.1.1. Legal set-up

ERC is the single regulatory authority with nation-wide competences in electricity and gas. The regulator has competences for regulation of the gas and electricity market, renewables, district heating, water services as well as oil and oil derivatives.

The Energy Law, providing the legal basis for the regulator's operation, competences and set-up has been adjusted to the Third Energy Package in May 2018. The legal set up of ERC did not change since then. The

³² PG 03/2018 of June 2018.

³³ For the purpose of this document: referring to the version adapted for the Energy Community and adopted by Decision of the Energy Community Ministerial Council 2011/02/MC-EnC.

³⁴ Official Journal No.96, dated 28.05.2018.

explanations provided in chapter 2.1 of the 2020 Report on the structure, organisational and financial independence and accountability of ERC therefore remain valid.

Besides that, two out of the seven commissioner posts are currently vacant. This does however not affect the decision making quorum of the regulator. Appointment of the commissioners is expected within the next months.

2.1.2. Performance and independence

The Secretariat observed in its Annual Implementation Report 2020 that ERC continued to demonstrate a high commitment to energy reforms and regulatory independence.³⁵ This is particularly noteworthy having in mind that the regulator has been exposed to challenges of its independence in the setting of prices for the universal electricity supplier and that the need for approval of ERC's annual employment plan and the requirement to follow cumbersome selection procedures are detrimental to attracting human resources. Despite this, ERC in 2020 succeeded to significantly strengthen its human resources which contributes to the regulator's ability to pro-actively design the energy market.

On regional level, ERC has shown continuous active engagement in the Energy Community Regulatory Board (ECRB), including the role of the ECRB President since beginning of 2020 as well as various task force leader roles in ECRB working groups.

2.2. Electricity

The Energy Law transposes the requirements of Directive 2009/72/EC and Regulation 714/2009. North Macedonia is not subject to an infringement procedure related to a failure to comply with the Energy Community electricity acquis.

2.2.1 State of compliance

The 2020 Annual Implementation Report of the Secretariat ranks compliance of North Macedonia with the electricity acquis at 82% assessing that "implementation in the electricity sector of North Macedonia is almost completed".³⁶

- Unbundling

The status of unbundling did not change compared to the 2020 Report, the related assessment in chapter 2.2 therefore remains valid.

Ownership unbundling and certification of the transmission system operator, *MEPSO*,³⁷ as well as legal, functional and accounting unbundling of the distribution system operator, *Elektrodistribucija DOOEL*,³⁸ were

³⁵ Secretariat, Annual Implementation Report 2020, p 148.

³⁶ Secretariat, Annual Implementation Report 2020, p 142.

³⁷ The certification decision No. 02/2851/1 was adopted on 15 August 2019, following a positive Opinion 03/2019 of the Secretariat issued on 17.06.2019.

³⁸ *Elektrodistribucija DOOEL* was established in 2016 as subsidiary of EVN Makedonija, functional unbundling including establishment of a separate virtual identity and the regulatory approval of the compliance program and appointment of a compliance officer was concluded by December 2018.

successfully completed in line with the acquis. The closed distribution system operator within the state-owned generation company, *ESM*, serves less than 80 customers and is therefore exempted from legal unbundling. The same is the case for the network operator *ELEM* that also holds generation and supply licenses but equally falls under the threshold of 100.000 connected customers.

- *Third Party Access*

The applicable third party access rules did not change since the 2020 Report, the assessment in chapter 2.2 therefore remains valid.

Non-discriminatory third party access is provided on tariffs regulated by ERC. Allocation of cross-border capacities is performed in a regionally coordinated manner by SEE CAO, except for the borders of North Macedonia to Serbia and Bulgaria due to lack of participation of these countries' electricity transmission system operators in SEE CAO.

The rules for the operation of the closed distribution system operator and the distribution code approved in 2019 continue to be valid.

- *Market opening, eligibility, price regulation and energy trading*

The legal set up for market opening, eligibility, price regulation and energy trading did not change since the 2020 Report, the assessment in chapter 2.2 therefore remains valid.

The retail market is fully liberalized as of 1 July 2019, all customers are eligible to choose their supplier on the free market. With close to 50% North Macedonia has the highest percentage of volumes subject to non-regulated transactions among the Contracting Parties. 34 electricity suppliers hold a nation-wide license. Three retailers sold at least 5% of total electricity consumed by final customers in 2019 with the market share of the three biggest suppliers reaching 92.04%. In 2019, 17.667 customers have been supplied from the competitive market. The annual switching rate in the whole electricity retail market in 2019 by number of metering points added up to 0.83%, and reached 0.008% in the household segment and 6.99% in the non-household sector. This corresponds to a volume of switched electricity of 0.01% for households and 14.74% for non-households. The annual switching rate increased from 2018 to 2019 by 66.46%.³⁹ Retail prices are de-regulated except for the universal services provided by *EVN Home* that has been selected by the Government in May 2019 in a tender procedure. As a consequence, the obligation of the incumbent generation company *ELEM* to provide electricity for supply to households and small customers under universal supply and supply of last resort was terminated as of 1 January 2019. An obligation of *ELEM* to offer a certain share of its production at market prices to the universal supplier is defined by the Energy Law. A step-wise reduction of this share, starting from 80% in 2019 to a minimum of 30% in 2025 was defined.

The wholesale market is fully liberalized since 1 July 2019. It includes the bilateral market, the day ahead and an intra-day market and the balancing market. The bilateral market started functioning in 2019, procedures for competitive procurement of balancing services came into force on 1 January 2020. 60 trader are licensed.⁴⁰

³⁹ ECRB, Gas and Electricity Retail Markets in the Energy Community, reporting period 2019 - publication December 2020.

⁴⁰ ERC, Annual Report 2020.

Since the 2020 Report progress has been made for the day ahead and intra-day market with the government's designation of the Macedonian Electricity Market Operator, *MEMO*,⁴¹ as nominated electricity market operator in line with the rules and requirements of CACM Regulation 1222/2015 on 9 September 2020 following a proposal of ERC. This gave support to a market coupling project between North Macedonia and Bulgaria based on a joint memorandum of understanding signed in 2018. Market coupling is expected to be launched in the third quarter of 2021. To further support this process, an initiative has been started to include elements of the CACM Regulation in a revision of the Energy Law. The process should be completed by end of the first quarter of 2021.

- *Customer protection and participation*

The assessment of the customer protection regime provided in chapter 2.2 of the 2020 Report remains valid.

Customer protection is the mandate of *EVN HOME* as universal service supplier and supplier of last resort. Prices for universal services are regulated by ERC. The price for the supplier of last resort is based on the reference market price, currently HUPX's day ahead price.

Electricity supply rules adopted by ERC safeguard the rights of customers and oblige retail suppliers to submit to the regulator the form and content of a reminder for customers of their rights and obligations. A new program for protection of vulnerable customers adopted by the government in January 2020 contributes to overall protection of retail customers. Switching rules are part of the supply rules; ERC was the first regulator in the Contracting Parties that established a price comparison tool on its website and continuous efforts to increase customer awareness and participation by, e.g., publishing leaflets on customers' rights and obligations in the open retail market.

- *Secondary legislation developed by ERC*

ERC has proven high standard expertise and commitment to develop in time the regulatory rules as required by the Energy Law and has set in place an advanced market model with a high degree of market orientation. To this extent, the adoption of regulatory acts in the electricity sector can be considered completed.

Unlike in the other CPs, the Network Codes adopted for the Energy Community in the electricity sector are directly applicable in North Macedonia according to the Energy Law and, thus do not require transposition. To allow for meaningful and user-friendly applicability they should be included into secondary legal acts. Related amendments to the transmission code of *MEPSO* targeting the incorporation of Regulation 2016/1388 establishing a network code on demand connection and Regulation 2016/631 establishing a network code on requirements for grid connection of generators are still to be approved by ERC.⁴²

⁴¹ The separate legal entity, spun-off of the system operator *MEPSO*, was established in October 2018, and obtained the license and became operational on 1 October 2019.

⁴² North Macedonia does not run HDVC power park modules as addressed by Regulation 2016/1447.

2.3. Natural Gas

The Energy Law transposes the requirements of Directive 2009/73/EC and Regulation 715/2009. The country's existing gas penetration ratio is still marginal.

The 2020 Annual Implementation Report of the Secretariat ranks compliance of North Macedonia with the electricity acquis at 37% assessing that "implementation in the gas sector of North Macedonia is still at an early stage".⁴³

2.3.1. State of compliance

- *Unbundling*

The Energy Law is compliant with the Third Energy Package unbundling and certification requirements. The Energy Law foresees ownership unbundling as the only possible transmission system operator model. The regulator approved the certification rules for the transmission system operation under the Third Energy Package in August 2018.

Since the 2020 Report some progress has been made on unbundling of the only licensed gas transmission system operator, *GA-MA* that is part of a vertically integrated company. On 28 December 2020 the parliament of North Macedonia adopted a law authorizing the government to sign an agreement resolving the dispute between the private gas supplier *Makpetrol AD Skopje* and the Republic of North Macedonia lasting for 23 years and hindering unbundling of *GA-MA*. The government is now entitled to purchase *Makpetrol AD Skopje's* 50% stake in *GA-MA* which paves the way for ownership unbundling and certification of the transmission system operator, expected by end of 2021. The progress made is result of a dispute resolution moderated by the Energy Community Dispute Resolution and Negotiation Centre launched in November 2019. However, the continued failure to unbundle the gas transmission system operator, is a major concern for the Secretariat.

Three distribution companies are licensed for supply and distribution system operation, which is compliant with the acquis as they serve less than 100.000 customers.

- *Third Party Access*

The status of third party access rules did not change compared to the 2020 Report, the related assessment in chapter 2.3 therefore remains valid.

The Energy Law transposes the principles of third party access including provisions on refusal of access and exemption for new infrastructure in line with the Third Energy Package. ERC approves both the methodology and the tariffs for access to the transmission and distribution systems. An entry/exit transmission tariff methodology is in place, as well as provisions on capacity allocation. However, the allocation mechanisms have not been implemented in practice. Capacity allocation rules are covered by the Transmission Network Code developed by *GA-MA* (hereinafter 'the Network Code'). The Network Code provides the possibility for allocation of both firm and interruptible capacity, however, there is no obligation for the transmission system operator to offer both types. According to the Network Code, the TSO may sell annual and monthly capacity. In case the demand for firm capacity should exceed the available capacity, the TSO is obliged to offer

⁴³ Secretariat, Annual Implementation Report 2020, p 142.

interruptible capacity. A provision allowing network users to re-sell or sublet their unused contracted capacity on the secondary market is not included in the Network Code. The Network Code transposes the requirements for third party access to services, capacity allocation and transparency, but they still have to be aligned with the new Energy Law and fully adjusted to Regulation (EC) 715/2009.

- *Market opening, eligibility, price regulation and energy trading*

Gas prices – on both wholesale and retail level – are fully deregulated since 1 January 2015. At the retail level, there were 19 licensed, out of which five holding a nation-wide license, and eight active retail suppliers in 2019.

On the wholesale level the market is still illiquid. The main reason is the lack of interconnection capacity – the sole interconnector is fully booked by Gazprom on the Bulgarian side. Two traders, *Makpetrol AD Skopje*, under a long-term contract with *Gazprom*, and *Kogel Stil d.o.o.* import gas for the wholesale market. In addition to this, several big consumers import gas individually for their own needs, which accounts for three-fourths of total gas imports. There is neither a functional nor a defined virtual trading point in the transmission system.

- *Customer protection and participation*

The assessment of the customer protection regime and participation provided in chapter 2.3 of the 2020 Report remains valid. Customer protection rules for gas are in place as outlined in chapter 2.2 of the present report for the electricity sector.

- *Secondary legislation developed by ERC*

The assessment provided in chapter 2.3 of the 2020 Report remains valid.

Despite the marginal penetration of gas in North Macedonia, ERC has developed a set of secondary legislation governing the gas market as outlined above. The adoption of a transmission network code that is fully aligned with the capacity allocation-, balancing- and interoperability requirement of the *acquis* however is still pending.

2.4. REMIT

The transposition of the REMIT Regulation 1227/2011⁴⁴ did not advance in North Macedonia since the 2020 Report. Accordingly, the assessment of chapter 2.4 of the 2020 Report remains valid.

North Macedonia has not transposed the REMIT Regulation so far. Amendments to the Energy Law targeting, among other, new powers for ERC to transpose the REMIT Regulation by a regulatory act have been drafted and consulted with the Secretariat. Adoption of the law changes is expected to be concluded by end of the first quarter of 2021.

Once the amendments to the Energy Law are adopted, it can be assumed that ERC will be able to swiftly develop regulatory rules for transposition of the REMIT Regulation and launch the implementation process by establishment of a register and notification platform, definition of clear market monitoring, investigation and enforcement rules as well as regional coordination on investigations in case of possible breaches of the REMIT Regulation with cross-border effect. ERC disposes of a well-established and developed market surveillance

⁴⁴ REMIT Regulation “light” as adopted for the Energy Community. Transposition deadline 29.11.2019; implementation deadline of 29 May 2020.

software and is actively participating discussions of the REMIT working group of the Energy Community Regulatory Board on implementation of the REMIT Regulation.

2.5. Competition and State aid

The authority in charge of enforcement is the Commission for Protection of Competition (CPC). However, since its establishment, there has been only one single case of applying competition law to the electricity sector.

The CPC is also responsible for State aid enforcement. In January 2019, the CPC adopted its first decision, approving secondary legislation on renewable energy support. As a new development since the 2020 Report, the CPC in 2020 adopted two decisions regarding State aid to electricity generation and the heat company *TE-TO AD Skopje*. CPC is becoming more active in the enforcement and application of the state aid rules to the energy sectors, and is making reference to the requirements of the Energy Community acquis including the EEAG. It is cooperating closely with the Secretariat in accordance with Article 2 of the Energy Community Dispute Settlement Rules, which provides for cooperation between the Secretariat and the administrative authorities of the Contracting Parties.

In this context, the Secretariat and the CPC currently cooperate with regard to the assessment of the compliance of the current support scheme for renewable energy with the State aid acquis.

2.6. Environment, renewables, climate action and decarbonisation

2.6.1. Environment

The 2020 Annual Implementation Report of the Secretariat ranks compliance of North Macedonia with the environment acquis at 61% assessing that "implementation in the environment sector of North Macedonia is well advanced".⁴⁵

- *Environmental Impact Assessment / Strategic Environmental Assessment Directive*

The assessment of chapter 2.6 of the 2020 Report remains valid but is further elaborated hereinafter.

A Law on Environment and the relevant secondary legislation are in place and closely follow the structure and the content of the Environmental Impact Assessment Directive (EIA Directive), effectively transposing it into national law. The latest amendments to the EIA Directive introduced by Directive 2014/52/EU however still have not been transposed yet. Adoption of new or amending legislation should be supplemented with quality control of the environmental impact assessment studies. A systematic approach to the screening process of projects subject to Annex II of the EIA Directive (particularly for small hydropower projects) should be established and projects with a significant impact should be properly assessed taking into account their cumulative impact. Public participation opportunities for small hydropower projects and administrative capacities to secure proper quality control of EIA reports and screening of projects must be improved.

⁴⁵ Secretariat, Annual Implementation Report 2020, p 142.

With regard to strategic environmental assessment (SEA) the provisions of Directive 2001/42/EC have been fully transposed into national legislation. The procedure for the National Energy Strategy was implemented, which applies until 2040. More efforts are needed to the timely conduct SEAs. Opportunities for early and effective public participation have to be properly and systematically implemented.

- *Sulphur in Fuels Directive*

The assessment of chapter 2.6 of the 2020 Report remains valid but is further elaborated hereinafter.

The Law on Ambient Air Quality and the Rulebooks on the quality of liquid fuels form the legal framework that transposes the provisions of the Sulphur in Fuels Directive. The transposing national legislation is in line with the provisions of the Directive. The maximum thresholds for the sulphur content of heavy fuel oil and gas oil are fully transposed, as well as the sampling and analysis provisions, thus achieving full compliance with the acquis. Due to the lack of domestic production, fuels covered by the scope of the Directive are imported from Greece, with regular sampling and analysis taking place at the border. The provisions on marine fuels do not apply to this Contracting Party.

- *Large Combustion Plants / Industrial Emissions Directive*

The assessment of chapter 2.6 of the 2020 Report remains valid but is further elaborated hereinafter.

The emission limit values are set in compliance with the Large Combustion Plants Directive by the Rulebook on the Limit Values for the Permissible Levels of Emissions and Types of Pollutants in the Exhaust Gases and Vaporous Emitted into the Air from Stationary Sources. The adoption of the new Law on Industrial Emissions was delayed.

North Macedonia adopted a National Emission Reduction Plan (NERP) for large combustion plants in April 2017 and has started with its implementation on 1 January 2018. There are no large combustion plants under the opt-out regime in North Macedonia. Certain steps for implementing the NERP have been taken, as the procedure for issuing the overdue integrated permit for the thermal power plant Bitola is in its final stage. North Macedonia complied with its emissions reporting obligations for the reporting year 2019. The current emissions from large combustion plants show compliance with the ceiling for nitrogen oxides, while in the case of sulphur dioxide and dust there is significant non-compliance which needs to be addressed.

The Rulebook on the methodology, approaches, procedures, methods and means for measuring the emissions from stationary sources sets up the necessary monitoring requirements. The reporting data is being gathered by the Ministry of Environment and Spatial Planning according to the Rulebook on the form and the content of data submission. North Macedonia complied with its reporting obligations on pollutants under the scope of the Directive by submitting the relevant information to the European Environment Agency.

- *Nature protection*

Two new protected areas are in the last stage of being designated as special protected areas – the National park “Shar planina” and Protected Landscape “Osogovo”. The National park “Shar planina” will extend the nature protection of the Šar Mountains (already designated as a national park in Kosovo*) to North Macedonian territory. A joint management action plan should be prepared by both Contracting Parties in order to secure proper and effective measures in line with the Wild Birds Directive. A designation file for the international protection of Lake Ohrid under the Ramsar Convention is also prepared. Ensuring proper protection of the

Emerald Network and enforcement of the Law on nature protection is still a challenge. The Bern Convention of European Wildlife and Natural Habitats announced that due to the large number of complaints in North Macedonia, it will conduct an expert mission to the country in the upcoming year to assess the protection of the Emerald sites and potential conflicts with proposed and planned energy and other infrastructure projects.

2.6.2. Renewables

The 2020 Annual Implementation Report of the Secretariat ranks compliance of North Macedonia with the renewables acquis at 65% assessing that “implementation in the renewable energy sector of North Macedonia is well advanced”.⁴⁶

The Renewable Energy Directive 2009/28/EC is transposed via the Energy Law. According to the legal framework in place, two types of support measures are applied: the administratively set feed-in tariff (FiT) and the feed-in premium (FiP) granted on a competitive basis. The first auctions under the FiP scheme were conducted in 2019, followed by signature of the first contracts in 2020. The market operator is obliged to take over electricity produced by the privileged producers under FiT support, whereas producers granted FiP sell their electricity in the market. Transmission and distribution system operators are obliged to ensure priority connection to the systems and priority in the dispatching of renewable energy, while the electricity market operator is obliged to compensate the costs for balancing and the necessary ancillary services. Provisions related to the sustainability of biofuels are not yet transposed and the relevant legal framework remains completely non-compliant with Directive 2009/28/ EC. The share of renewables in transport remains negligible, reaching only 0.12% in 2018.⁴⁷

For 2021 the government has adopted a program to promote renewable energy sources and energy efficiency in households for 2021, with a budget of EUR 840.000, including about EUR 130.000 in subsidies for prosumers.⁴⁸ The program will also subsidize the purchase and installation of solar thermal collectors with a budget of EUR 130.000,⁴⁹ provide subsidies up the amount of EUR 360.000 purchase and installation of PVC or aluminium windows and support purchase and installation of pellet stoves with a total of some EUR 230.000.⁵⁰

The RES share in North Macedonia's electricity production has been steadily increasing; from 16% in 2010 to almost 25% in 2018.⁵¹ The total capacities of renewable energy amounts to 766MW. With 18.12% of renewable energy sources, North Macedonia did however not reach its indicative trajectory of 22.3% in 2018. The renewable energy portfolio of North Macedonia is mainly based on hydropower. In 2019, only 5.5 MW of solar photovoltaic were added, while the only wind farm remains Bogdanici (37 MW), which is in operation since 2014. North Macedonia held two solar photovoltaic auctions (in 2019 and 2020) based on the bids for an additional fixed FiP on top of the price of each kWh sold on the wholesale electricity market. Auctions resulted

⁴⁶ Secretariat, Annual Implementation Report 2020, p 142.

⁴⁷ Secretariat, Annual Implementation Report 2020, p 150 *et seq.*

⁴⁸ In the case of prosumers, the state will reimburse up to 30% of the costs of the purchase and installation of photovoltaic systems, with a capacity of up to 4 kW, for the production of electricity for self-consumption. Individual subsidies are capped at about EUR 1.000 per household. Ref. <https://balkangreenenergynews.com/north-macedonia-to-subsidize-prosumers-with-eur-130000-in-2021/>.

⁴⁹ The program will cover up to 30% of the costs, and up to 70% for low-income households.

⁵⁰ In the latter two cases the state will cover 50% of the costs, and 70% for low-income households.

⁵¹ Draft National Energy and Climate Plan of North Macedonia (2020), p 24.

in eleven agreements on the right to a FiP on state-owned land with a total installed capacity of 35 MW and 24 agreements for projects to be built on private land with total installed capacity of 21 MW at an average FiP of 11 EUR/MWh. Producers have three years to complete the projects to qualify for the premiums. In February 2020, a public tender was launched for the construction of two PV units of up to 100 MW on top of a coal mine site in Oslomej, Kicevo without any support.⁵² For 2021 auctioning of 100 MW of solar PV has been announced.

Biofuels are the main reason why North Macedonia did not meet the RES target in 2020. Namely, the target for RES in transport sector for 2020 is 10%, but the achieved share of RES in this sector in 2018 is about 0.1%. In the heating and cooling sector, the share of RES in North Macedonia is 32%, primarily due to the consumption of biomass (firewood) for heating.⁵³

North Macedonia submitted its National Renewables Action Plan, amendments as well as all three Progress Reports on implementation of the Renewable Energy Directive to the Secretariat.

Investor guides for various renewable energy technologies are published, while further simplification of administrative procedures is envisaged in the next amendments to the Energy Law. There is no designated administrative body. An electronic system for issuing, transfer and cancellation of guarantees of origin is not in place yet. A concept is under preparation.

2.6.3. *Climate action and decarbonisation*

The 2020 Annual Implementation Report of the Secretariat ranks compliance of North Macedonia with the climate related recommendations at 56% assessing that “implementation in the climate sector of North Macedonia is moderately advanced”.⁵⁴

- *Reduction of greenhouse emissions*

Work on a long-term strategy on climate action started in March 2019. In view of the extensive use of fossil fuels and particularly the dominant share of domestic lignite for electricity production, there is significant potential in the country for policies and measures that lead to GHG emissions reduction.

The updated NDC (NDC2) under the United Nations Framework Convention on Climate Change (UNFCCC), has been already drafted, went through stakeholder consultation and passed the first stage of governmental procedure, adopted by the State secretaries. The NDC2 echoes the Green scenario from the National Strategy for Energy Development up to 2040 and is fully aligned with the draft National Energy and Climate Plan (NECP). The overall target proposed by North Macedonia in the draft document is 51% reduction of greenhouse gas emissions by 2030 compared to 1990 levels.

A Law on Climate Action has been finalized, but not yet adopted. Work on the second version of the Long-term strategy is in its final stage. The law sets legal obligations for the required institutionalization of the national greenhouse gas (GHG) emissions inventory system, for emissions from the aviation sector and for monitoring, reporting and verification, among other provisions.

⁵² Secretariat, Annual Implementation Report 2020, p 151.

⁵³ Draft National Energy and Climate Plan of North Macedonia (2020), p 24.

⁵⁴ Secretariat, Annual Implementation Report 2020, p 142.

- *National Energy and Climate Plan*

North Macedonia was the first Contracting Party to submit its official draft National Energy and Climate Plan (NECP) with all the required chapters to the Secretariat for review in July 2020.

The NECP covers the period from 2021 to 2030 prescribing contributions to achieve the 2030 targets. The draft NECP elaborates on all five dimensions of the Energy Union, namely decarbonisation (addressing two segments: greenhouse gas emissions and renewable energy sources), energy efficiency, security of energy supply, internal energy market, and research, innovation and competitiveness..

The draft NECP foresees transition of the energy sector towards low-carbon technologies, gradual decommissioning of the coal power plants and increased utilization of renewable sources in the electricity generation mix in conjunction with energy efficiency measures in all sectors. To promote phasing-out of conventional fuels and incentivise investments in RES and energy efficiency measures, the draft NECP envisages the introduction of a CO₂ tax. Beyond the energy sector, it proposes measures for GHG emission reduction in the non-energy sectors.⁵⁵

The final NECP is expected to be adopted in the first quarter of 2021. The Secretariat issued a first formal recommendation on the official draft NECP and assessed that it provides a solid basis for an ambitious final NECP.

3. Forecast – probability to reach full *de iure* and *de facto* compliance within the next six to twelve months

As analysed in detail in previous chapters, primary legislation of North Macedonia for the gas and electricity sectors is aligned with the Energy Community acquis. Moreover, North Macedonia is not subject to any infringement case in any of the areas covered under the Energy Community Treaty.

- *Electricity*

North Macedonia has visibly shifted up a gear since the adoption of the Energy Law in 2018 as regards the development of the electricity sector both in regulatory as well as practical terms and today ranks among the most progressive Contracting Parties in this area. In the electric sector, ERC has developed an advanced market model, continued to be proactive in the implementation of additional reforms and in delivering on time professional and market-orientated regulatory rules for the electricity sector as required under primary legislation. ERC has proven *de facto* independence and commitment to design and monitor the national electricity market.

⁵⁵ Draft National Energy and Climate Plan of North Macedonia (2020), p 10. Non-energy sector related measures include agriculture, forestry and land use include improvement of feeding and manure management practices in livestock breeding farms, land conversions as well as management of forest fires and afforestation of forestland.

- *Gas*

The adoption of a law adopted by the parliament on 28 December 2020 settling a long-lasting dispute between *Makpetrol AD Skopje* and the Republic of North Macedonia on unbundling of the gas transmission system operator *GA-MA* is an encouraging signal for turning the stalemate in the gas sector into quick market development progress. The Secretariat considers it reasonable to expect that within the next twelve months unbundling and certification of *GA-MA* can be achieved and pending regulatory gas acts will be adopted.

- *REMIT*

Evidence available to the Secretariat including draft amendments to the Energy Law already prepared, suggests that transposition and implementation of the REMIT Regulation by secondary acts of ERC can be achieved within the next six to twelve months.

- *Competition*

Noting the strengthened activities of applying State aid rules in the energy sectors since the 2020 Report, the Secretariat considers it justified to assume that CPC will improve enforcing competition and State aid law in the energy sector.

- *Environment, renewables, climate action and decarbonisation*

The first auction of renewables in 2019 proved to be a promising success and the newly adopted 2021 program for promotion of renewables and energy efficiency in households with a budget of EUR 840.000 underlines the government's commitment to continue investing into climate action and decarbonisation. This finally is also confirmed by the fact that North Macedonia was the first Contracting Party that submitted its official draft National Energy and Climate Plan with all the required chapters to the Secretariat for review. The Secretariat considers it reasonable to expect that the NECP will be adopted during 2021 on the basis of the Secretariat's recommendations.

4. Conclusions

In the light of the assessment of the present report, the Secretariat confirms that North Macedonia:

- has adopted and is to a prevailing extent already applying Union law⁵⁶ in the fields required by Article 43(1) ACER Regulation; and
- can be expected to fully apply Union law⁵⁷ in the fields required by Article 43(1) ACER Regulation within the next six to twelve months.

⁵⁶ Adopted and adapted for the Energy Community.

⁵⁷ Adopted and adapted for the Energy Community.

The Secretariat, thus, respectfully suggests to favourably consider an invitation for ERC to the following ACER working groups:⁵⁸

- The Electricity Working Group;
- The Monitoring, Integrity and Transparency Working Group, conditional on transposition and implementation of the adapted REMIT Regulation in North Macedonia within the next 6 months, including a confirmation by the Secretariat on compliance with the Energy Community acquis;
- The Gas Working Group conditional on certification of the national gas transmission system operator in line with the Opinion to be issued by the Secretariat, including a confirmation by the Secretariat on compliance with the Energy Community acquis.

⁵⁸ https://www.acer.europa.eu/nl/The_agency/Organisation/Working_groups/Paginas/default.aspx.