



***Annual Report on the Activities
of the Energy Community***



Energy Community Secretariat
October 2013

ANNUAL REPORT ON THE ACTIVITIES OF THE ENERGY COMMUNITY 2013

A. BACKGROUND AND APPROACH

This Report has been developed by the Energy Community Secretariat (the Secretariat) following the requirements of Article 52¹ of the Energy Community Treaty ("the Treaty") and reflects the status of implementation of the Work Programme of the Energy Community for the period between 1 September 2012 and 1 September 2013, with occasional references to activities in the first half of 2012.

The Report is based on abstracts of the Work Programme, as adopted by the Ministerial Council,² where all tasks envisaged within the period covered are listed and developed in more detail.

B. MEMBERSHIP

The accession by Croatia to the European Union on 1 July 2013 changed that country's status under the Treaty. Instead of a Contracting Party, Croatia has now become a Participant. We are very proud of Croatia's success. It is a living example of the *raison d'être* of the Treaty. Although the Work Programme has a very technical focus, we should never forget the big picture. Just like the European Coal and Steel Community in the past, the Energy Community is a prime example of European sector integration.

In January 2013, Georgia, currently an Observer, applied for full membership. We expect that it becomes full Party by a decision of the Ministerial Council in October 2014.

As per 1 September 2013, Parties to the Treaty are the European Union and 8 Contracting Parties: Albania, Bosnia and Herzegovina, Kosovo³, former Yugoslav Republic of Macedonia, Moldova, Montenegro, Serbia and Ukraine. The following countries are Observers: Armenia, Georgia, Norway and Turkey. 17 of the 28 EU Member States have the status of Participant according to Article 95 of the Treaty.

C. BUDGET

The budget is established in correspondence with the strategic planning of activities within the overall objectives of the Treaty establishing the Energy Community ("EnC") for the same period. Those activities are laid down in the corresponding Energy Community Work Programme being part of the budget proposal as required under Article 25 of the *Energy Community Procedures for the Establishment and Implementation of the Budget, Auditing and Inspection (thereinafter: "Budgetary Procedures")*.

In general, there are few sources of revenue of the Energy Community budget:

- budget contributions by the Parties⁴
- donations
- other revenue;

The majority of the budget comes from the financial contributions of the Parties to the Treaty, financial responsibilities of which are assumed already in the Treaty and specified in the relevant *Energy Community Procedures for the Establishment and Implementation of the Budget, Auditing and Inspection*.

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 Conclusion 20, 9th MC meeting, 06.10.2011

³ This designation is without prejudice to positions on status and is in line with UNSCR 1244 and the ICJ Opinion on the Kosovo declaration on independence.

⁴ In accordance with Annex IV of the Treaty (in its amended version per decision of the Ministerial Council)

The budget of the Energy Community for the year 2012 falls into the biannual budget 2012-2013 approved by the Ministerial Council on the proposal of the European Commission⁵. It is approved in its initial value and is adjusted 'pro memoria' at the end of each financial year⁶. The overview of the budget for the biennium 2012-2013 is presented in a table format below:

(in EUR)	INITIAL BUDGET 2012	FINAL BUDGET 2012	INITIAL BUDGET 2013
Number of staff	n=22		n=23
HUMAN RESOURCES	1,650,000	1,650,000	1,750,000
TRAVEL EXPENDITURES	240,000	240,000	244,800
OFFICE	218,000	389,028	222,360
OTHER COSTS AND SERVICES	1,122,000	1,132,000	1,125,040
TOTAL	3,230,000	3,411,028	3,342,200

In 2012, in addition to the budget contribution received from the Parties to the Treaty, based on the ongoing commitment of the Republic of Austria since 2005, the Energy Community received donations from the Republic of Austria in the amount of EUR 159.952.

In 2012, the Energy Community actual expenditures⁷ - they are presented budget line per budget line – reached the following levels:

- Human Resources	EUR 1.643.909
- Travel	EUR 190.037
- Office	EUR 344.551
- Other Costs/ Services	EUR 1.082.902

Year-end accounts for 2012 were audited in March 2013 by the designated external audit company⁸, KPMG. The audit scope, as for every year, included the review of the annual accounts of the Energy Community as well as of the internal control systems relevant for the implementation of the budget.

Auditors issued unqualified audit opinion given the fact that "it did not give rise to any objections⁹". This cited KPMG report together with the Report of the Budget Committee to the Ministerial Council shall be examined by the Council and provide a basis for the discharge decision from the administrative and financial responsibility for the financial year 2012.

⁵ According to Article 88 of the Treaty establishing the Energy Community; approved on 6 October 2011;

⁶ See FINAL BUDGET 2012 in table below; Final Budget 2013 will be established in the course of establishment of the year-end accounts 2013;

⁷ Actual expenditures of the year include legal commitments of the year

⁸ In accordance with Article 80 of the Budgetary Procedures

⁹ See KPMG Report on the Audit of the Financial Statement for the year ended 31 December 2012

D. PERFORMANCE ON THE TASKS

I. REGIONAL MARKET DEVELOPMENTS

1. SUMMARY

The key activities in this area continued to focus on the support to the Contracting Parties, concerning the implementation of the *acquis communautaire* in the electricity, gas and oil sectors, as well as the horizontal provisions of the Treaty. In this context, another focus was on the support to the gradual development of a regional market, in particular starting with the opening of wholesale markets in the region.

A strong stimulus in this aspect was the adoption of the Ministerial Council decision on the implementation of the Third Energy Internal Market Package¹⁰ and the 2009 Directive on renewable energy.

Extensive work with the governments and governmental structures (ministries, agencies), regulatory authorities, the Parliaments and also with non-governmental organizations took place in all the Contracting Parties and Observers. The excellent cooperation between the Secretariat and ECRB significantly contributed to the success of the process.

The creation of a coherent and convergent regional market, operating on harmonized legal and regulatory rules remains a key requirement for attracting investments and increasing market liquidity in the Energy Community. Only if the relatively small individual markets join forces and create a common and competitive trading area, the benefits for customers and social development to be gained from market liberalization can materialize.

Both in the electricity and the gas areas, the path towards a common regional market strongly depends on streamlining with European developments, keeping in mind the final target of integrating the European and Energy Community markets. On EU level, the entry into force of the Third Energy Package together with the target of completing the internal energy market by 2014 form the framework for electricity market development. The Third Energy Package was incorporated in the Energy Community in October 2011¹¹ with a transposition deadline by 1 January 2015. This also includes adopting the European Network Codes, once legally binding on European level, in the Energy Community.

2. ACTIVITIES

2.1. Electricity

Benchmarking the institutional, legal and regulatory performance in the Contracting Parties related to the requirements of the electricity *acquis* was on the everyday agenda of the Energy Community.

The focus in this aspect was on developing legislative and regulatory frameworks to increase compliance with the energy *acquis* and to open the markets. This concerned factually all Contracting Parties and some Observers.

In this aspect, it should be noted that the Secretariat – both upon request and on its own motion – was actively consulted on most of the relevant draft legislative acts, market rules and documents of strategic nature, whose preparation and adoption is reflected in the annual Implementation Report for each of the Contracting Parties.

Following the adoption of new acts of primary legislation in the area of electricity in recent years such activities commenced in several Contracting Parties. Despite the efforts made, they remain to be completed in the following period. The cooperation with the Contracting Parties continued to shift towards the development of secondary legislation (market rules, switching rules, balancing rules, tariff methodologies), and solving problems connected to the practical implementation of the open electricity market (monitoring and transparency).

Direct cooperation between the Secretariat and regulatory authorities increased in intensity and in substance. The elements needed for opening of the local electricity markets were also targeted - the state of unbundling and the

¹⁰See Conclusion 9, 9th Ministerial Council (06.10.2011).

¹¹ Decision 2011/02/MC-EnC of the Ministerial Council of 6 October 2011.

treatment of eligibility and public service in the first place. Assistance in addressing specific problems in the performance of some operators was also provided by the Secretariat.

The Contracting Parties were supported by the Secretariat in their progress or assessed in their compliance, such as:

- In the context of the new primary legislation remarkable efforts were invested in the draft Electricity Market Act of Ukraine, through repeated rounds of comments, working sessions and public hearings.
- Another similar exercise was the EU (IPA) funded Project for Legal Compliance in Bosnia and Herzegovina, targeting implementation of the Third Legislative Package.
- The Third Legislative Package was implemented in Croatia. The Secretariat's involvement was limited mainly to monitoring.
- Another example where implementation of the Third Package is being supported is the draft Energy Law of Montenegro – the Secretariat provided significant support and comprehensive feedback to the Working Group in the process of drafting.
- A general shift towards the implementation of the Third Legislative Package took place in the Energy Community. The Secretariat was involved in defining the policy and methodology of its implementation. The assistance included workshops and discussion of the problem in all fora and technical and political meetings.
- Cooperation and assistance in development of the secondary rules related to the market in FYR of Macedonia (i.e. market rules) and Montenegro (balancing rules, market operator) took place. The progress of Serbia and Bosnia and Herzegovina in this area was monitored and reported.
- Cross-border transmission capacity allocation and congestion management rules of Ukraine were discussed in repeated sessions in the context of an infringement case. Following an earlier round of infringement cases, the development of such acts for Moldova and Albania was assisted through meetings and comments.
- Monitoring missions were organized in FYR of Macedonia and Bosnia and Herzegovina.
- In addition, Secretariat representatives took part and provided support in the missions of the EC (DG Enlargement) in the framework of the EU Enhanced Policy Dialogue or implementation of the Stabilization and Association Agreements, respectively in Albania, Bosnia and Herzegovina, FYR of Macedonia, Serbia and Kosovo*.

The Secretariat started preparing the implementation of the European Network Codes in the Energy Community. In this context the Secretariat initiated Workshops with the European Network of Transmission System Operators for Electricity and, together with the PHLG and ECRB, developed procedural rules for the adoption of the European Network Codes.

The so-called Regional Action Plan for Wholesale Market Opening in South East Europe (SEE RAP)¹² defines the steps for regional market integration in the 8th Region streamlined with the milestones and actions of the European electricity target model and the four cross-regional roadmaps¹³ - capacity calculation, long term capacity allocation, day ahead capacity allocation (market coupling), and continuous mechanisms for implicit cross-border intraday trading.

Activities during the reporting period concentrated on further promoting regional wholesale market opening were, in particular, related to;

- *The establishment of a SEE Coordinated Auction Office (SEE CAO), targeting harmonization of the allocation and nomination rules for long and medium term transmission rights in the 8th Region and executing multilateral coordinated auctions on all SEE borders as a regional one-stop-solution for end of 2014. The Secretariat supported the TSOs in founding a so-called *Project Team Company in Charge of Establishing a SEE CAO (PTC)*¹⁴ with the scope of preparing the effective operation of the SEE CAO. As of December 2012 the PTC executes its activities in a team of four experts.*

¹² <http://www.energy-community.org/pls/portal/docs/1810178.PDF>. The SEE RAP has been jointly developed by the Energy Community Regulatory Board and ENTSO-E RG SEE and received support of the Ministerial Council of the Energy Community.

¹³ The goal of integrating the seven European electricity regions into a single market area is addressed through the *Regional Initiatives* process which falls under ACER's responsibility and - according to the EU Energy Work Plan for 2011-2014 in Electricity - focuses on four cross-regional roadmaps.

¹⁴ The network operators of Albania, Bosnia and Herzegovina, Croatia, FYR of Macedonia, Greece, Kosovo*, Montenegro, Romania, Slovenia and Turkey are shareholders of the PTC. The Company is co-funded by the individual shareholders and significant contributions from International Financing Institutions EBRD, KfD and USAID; www.seecao.com.

- The implementation of a *single day-ahead Price Coupling* (PC) model in the Energy Community that simultaneously determines volumes and prices in all relevant zones, based on the marginal pricing principle¹⁵. Progress was made at the 18th Energy Community Electricity Forum (June 2013) at which the participants supported the Serbian SEEPEX as a possible pilot project for the development of market coupling across the region that can be extended to other Contracting Parties¹⁶. Another comparable initiative has been started in Croatia with the aim of establishing a PX or entering into joint venture agreements by the end of 2013 / early 2014.

The framework for cooperation in the forthcoming period related to security of supply was set with the establishment of the Security of Supply Coordination Group in October 2012. In the reporting period there were no effective meetings of the Group due to the fact that the security of system operation and the conditions for electricity supply were not disturbed. The Secretariat supported the development and assessed the submitted Security of Supply Statements in the domain of electricity in the updated format.

2.2. Gas

In the gas sector, the lack of a developed gas infrastructure across the region and in particular interconnections between the individual Contracting Parties has been the major obstacle for creating a regionally liquid market. On these grounds, the Energy Community developed the Gas Ring concept and Gas to Power Initiative which would allow gas-to-gas competition and boost security of supply. The selection of *TAP* as a project to transport Shah Deniz II gas to Europe will have significant positive consequences for the Energy Community and the region as a whole.

The Secretariat started preparing the implementation of the European Network Codes in the Energy Community. In this context the Secretariat initiated Workshops with the European Network of Transmission System Operators for Gas and developed procedural rules for the adoption of the European Network Codes. The Secretariat also intensively discussed the order and possible priorities for Network Code implementation with the Contracting Parties and entered into content related discussions of the Network Codes on ECRB level, still during their development phase.

Similarly to electricity, and following the primary legislation adoption in earlier periods, the focus in the gas sector has shifted to the development of secondary legislation. Considerable amount of work was invested in executing the study on security of gas supply and reactivating the Security of Gas Supply Coordination Group with a clear vision of further security of supply *acquis* evolution in the Energy Community.

During the reporting period the support in development of the legislation in the gas sector focused concretely on the following:

- Reviewing and commenting the Energy Law and the Gas Market Law in Croatia. Both drafts were afterwards improved significantly and adopted;
- Reviewing amendments in the primary legislative acts of Moldova and former Yugoslav Republic of Macedonia;
- Continuous contribution to resolving disputes in Croatia (on distribution tariff methodology for Greenfield projects); in former Yugoslav Republic of Macedonia and Moldova on the disputes on transmission tariff (cost reflectivity). In Moldova, the Secretariat is also engaged in the process of settling disputes on distribution tariff and treatment of losses;
- In Bosnia and Herzegovina, the Secretariat proceeded with its dispute case of 2011 by submitting a Reasoned Request to the Ministerial Council;
- The Secretariat examined the situation in Serbia characterized by lack of progress in unbundling. In this context, the Secretariat reviewed the Grid Code drafted for the first time by Serbia's TSO;
- Ukraine was in the focus in many respects, such as facilitating reverse gas flow with the neighbouring Member States, assistance in primary legislation in the upstream business activities, assistance in developing TSO's necessary codes compliant with the *acquis*;

¹⁵ Implementation of PC in the 8th Region entails a step-wise approach, starting from bilateral/ trilateral market coupling by mid 2013 following a nucleus approach or based on different regional initiatives and achieving a single regional PC model by end of 2014 with the scope of integrating with the European PC zone by mid 2015.

¹⁶ Specific arrangements may need to be found for Moldova and Ukraine.

- The Secretariat has worked in close cooperation with the Albanian regulatory authority *ERE* on an exemption decision under the Third Package, which culminated in giving its opinion on *ERE*'s decision to exempt *Trans Adriatic Pipeline (TAP)* from obligations related to unbundling, third-party access and tariff regulation.

In relation to gas, market activities were focused on removing primary obstacles for creation of a regional market and on deepening the regional cooperation, related to:

- Providing inputs and facilitating work on the feasibility studies (including participation at the steering committees and support to organizing the IAP Interstate Committee meetings), within the Western Balkan Investment Facility, for several projects such as inter alia the *IAP* project (market study, ESIA scoping report, route selection and the technical study); *Croatia's LNG* project (gap analysis, inception report, scoping report, market study); to the *Southern Connection Croatia-Bosnia Herzegovina* (inception report and line route report); and to the study on Consortium approach to Gas to power and the Energy Community Gas Ring;
- Initiating the Contracting Parties' TSO applications for Observer status in ENTSOG - GAMA of former Yugoslav Republic of Macedonia on this ground became Observer; Ukraine's and Serbia's TSOs were encouraged strongly to proceed likewise; In addition, the Secretariat was facilitating communication between Contracting Parties and ENTSOG on updating the Ten Year Network Development Plan;
- Participating as an observer to the ad hoc Working Group on the North-South gas interconnections in CEE and SEE and Southern Corridor WG, promoting the Gas Ring projects
- Organising the 7th Gas Forum which took place in Bled in September 2012 gathering more than 150 participants; this underlines the increasing importance of the Gas Fora in the Energy Community.

Activities in the area of security of supply were manifold:

- The Security of Supply Coordination Group on Gas was reactivated. The plenary session took place on 17 October 2012, and the Gas Subgroup met again on 12 February 2013.
- The Group worked to improve the next set of Security of Supply (SoS) Statements, which could serve as a basis for future Risk Assessments, as defined in Regulation 994/2010. The Group also made an update of the list of emergency contacts and the format for an emergency questionnaire template.
- In 2012, the Secretariat launched a study to facilitate the implementation of Regulation on security of gas supply (EC) 994/2010. The Study's key objective is to assist the Contracting Parties in their efforts to meet the future commitments under the Energy Community Treaty and to increase thereby the security of gas supply.
- The Secretariat assessed the Security of Supply Statements from the previous year.
- The Secretariat continued its active participation in the EU Gas Coordination Group (GCG), thus acting as a link between the EU and the Energy Community at operational level. During the reporting period, it presented twice the situation in the Contracting Parties in the GCG sessions on this subject.

3. KEY FINDINGS AND UPCOMING STEPS

Electricity

The assistance to the transposition of the Energy Community *acquis* is ongoing. There are still several primary acts with obsolete provisions in Albania, Bosnia and Herzegovina and Ukraine while implementation is still a work in progress. Shifting to the Third Legislative Package is the most important source of current and future activities in this domain.

The following key findings can be identified:

- The original deadline for the SEE CAO to auction annual capacities for 2014 at the end of 2013 will not be met¹⁷. Instead, the SEE CAO is expected to be functional no later than 1 July 2014, starting with monthly allocation periods as an initial step for centrally coordinated forward capacity allocation and complementary to

¹⁷ Conclusions 18th Athens Forum.

market coupling. Concrete progress has also neither been met related to the choice of a single capacity allocation algorithm as key requirement for market coupling, nor as regards the establishment of Power Exchanges (PX) or commissioning services from existing PXs. The related deadlines of the SEE RAP have been clearly missed. The support of the 18th Athens Forum for the Serbian SEEPEX as a possible pilot project¹⁸ for the development of market coupling across the Region that can be extended to other Contracting Parties¹⁸ has to be seen as a positive signal towards progress. It has to be underlined that delay in progress is strongly home-made and mainly due to lack of serious political commitment: all elements of the SEE RAP can be implemented within the legal framework of the Second Energy Package. The establishment of a regionally coordinated congestion management is explicitly required by Regulation (EC) 1228/2003 and subject to open infringement cases by the Secretariat.

Finally, effective market opening is also hindered by a number of legislative provisions in the Contracting Parties that need to be abolished, in particular related to public supply, single buyer models, regulated energy prices, non-market based procurement and trade of electricity and monopoly positions in electricity generation and supply. The Secretariat will focus on these aspects in the course of the legislative adjustments for implementation of the Third Energy Package.

Gas

Transposition of the Energy Community *acquis* in the gas sector is not yet completed. There are still several primary acts with obsolete provisions, and any primary act is lacking in Bosnia and Herzegovina. Implementation is still a work in progress. However, shifting from the initial level to the Third Legislative Package is the most remarkable source of current and future activities in this domain.

The development and improvement of the necessary secondary legislation is a work in progress. The grid codes and market rules, together with tariff systems, are on the Secretariat's agenda.

The market fundamentals have yet to materialise to allow customers to reap their benefits. With the selection of *TAP* as a Southern Corridor project, a strong impetus for infrastructure development and realization of the Gas Ring is provided. However, in order to achieve real progress, more intense work by all the Contracting Parties is required to enable creation of liquid national gas markets under harmonised rules, which would be able to be integrated at regional level.

II. PROMOTING INVESTMENTS AND DEVELOPING ENERGY INFRASTRUCTURES

1. SUMMARY

The Task Force that prepared the Energy Community Strategy has been mandated to prepare the PECE list for the PHLG. Between January 25 and May 29 2013 the Task Force met four times, and assisted by a consultant selected and coordinated by the Secretariat, assessed and ranked the PECE candidates. In its last meeting on 29 May, it also agreed on the list of PECEs to be submitted to the PHLG in June.

In parallel, two rounds of public consultations were conducted, and an Open Day on PECEs was held in Belgrade in April, in order to give stakeholders the chance to express their views on the PECE candidates.

Regulatory Authorities were also consulted on the PECE list as well as possible regulatory incentive measures to accompany PECEs.

The PHLG in its meeting in June 2013 welcomed the PECE list and proposed it to the MC for its approval.

In parallel, the Secretariat worked with Western Balkans Investment Framework (WBIF) beneficiaries to prepare good applications for technical assistance for feasibility studies and environmental assessment studies for infrastructure investments; as a consequence, additional 4 energy infrastructure projects, and respectively 7 were

¹⁸ Specific arrangements may need to be found for Moldova and Ukraine.

approved for receiving Technical Assistance. Some of these are also on the PECE list. In addition, the sector study on biomass based heating in the Western Balkans was approved by the WBIF Steering Committee in June 2013. This is expected to identify bankable investments in efficient heating based on biomass.

Besides, the Secretariat organised the 5th and the 6th Investors' Advisory Panel meetings, in November 2012 and May 2013, in Vienna. These were opportunities to discuss issues related to investments (TPA exemptions, renewable energy and progress with the *acquis* adoption, PECE selection, gas to power initiative, new proposals under the WBIF funding, etc.) and identify key barriers and steps to remove these.

2. KEY FINDINGS AND UPCOMING STEPS

Projects from the PECE list, if adopted on Ministerial Council in October 2013, will have to be supported by the Contracting Parties. Therefore the Secretariat and the ECRB prepared a list of potential investment incentives as a comprehensive tool for National Regulatory Agencies. The adoption of the EU Regulation on Guidelines on Trans-European Energy Infrastructure should be anticipated.

III. RENEWABLE ENERGY SOURCES

1. SUMMARY

On 18 October 2012 the Ministerial Council extended the Energy Community *acquis*¹⁹ in the area of Renewable Energy by amending Article 20 of the Treaty establishing the Energy Community and adopting Directive 2009/28/EC.

The Ministerial Council Decision includes an agreement on binding 2020 RES targets for the Contracting Parties and defines the framework for the cooperation mechanisms between EU Member States and the Contracting Parties. According to the deadlines adapted for the Contracting Parties, by 30 June 2013 the Contracting Parties must submit National Renewable Energy Action Plans (NREAP), and by 1 January 2014, the Directive 2009/28/EC (as adapted) must be implemented in the national legislation of each Contracting Party. Only Serbia submitted the NREAP adopted by the Government before the required deadline, while the others have the document in various stages of preparation.

1. ACTIVITIES

During the first half of 2013, the Secretariat provided technical assistance to the Contracting Parties in their NREAP preparation and assisted some Contracting Parties with the proper transposition of the legal requirements in the national legislation. A capacity building workshop was organized for the Contracting Parties on 23-24 April 2013. Best practices and lessons learned from the experience of the EU Member States in the implementation of the Directive were presented and discussed by the participants during the two day event.

During 2013, the Secretariat was also involved in capacity building through TAIEX programs organized for Serbia and Albania. Further assistance is going to be provided to other Contracting Parties upon their agreement.

In February 2013, the Secretariat conducted a fact-finding mission on renewable energy and energy efficiency in Georgia in the context of the latter's application for membership in the Energy Community.

2. KEY FINDINGS AND UPCOMING STEPS

¹⁹ Please consult the 10th Ministerial Council meeting documents at:
http://www.energy-community.org/portal/page/portal/ENC_HOME/INST_AND_MEETINGS?event_reg.category=E12820

Special attention must be paid to the introduction of a sustainability regime for biofuels and bioliquids, as the Contracting Parties seem to be less prepared in understanding of the entire framework necessary to comply with the new requirements of the Directive. A dedicated workshop on this topic might be organised by the end of 2013.

Until the end of 2013, the Secretariat will work closely with the Contracting Parties to advance the transposition and the implementation in the national legislation of all the provisions of the Directive with the aim to create conducive investment environments and to remove the regulatory and administrative barriers for the development of renewable energy projects in the region.

IV. ENVIRONMENT AND CLIMATE CHANGE

1. SUMMARY

The work related to this part of the Work Programme was based on the explicit requirements of the *acquis* concerning environment, as envisaged by Article 16 of the Treaty, namely the transposition and implementation of the pieces of legislation listed therein.

2. ACTIVITIES

In the context of the annual Implementation Report, information on the implementation status of Directives 85/337/EEC, 1999/32/EC, as well as Article 4(2) of Directive 79/409/EEC, was prepared for the Ministerial Council at its meeting in October 2013.

As regards the implementation of Directive 1999/32/EC, enforcement action needed to be taken against several Contracting Parties. Opening Letters were sent in February 2013 in order to address the missing or incomplete transposition and/or implementation of the Directive's provisions.

The Secretariat managed preparation for a proper and timely implementation of Directive 2001/80/EC on the limitation of emissions of certain pollutants into the air from large combustion plants. The deadline for the implementation of Directive 2001/80/EC is 31 December 2017. Considering the volume of investments in the sector as well as the investment cycles the shortness of the remaining timeframe calls for immediate action.

The 4th and 5th meetings of the Environmental Task Force took place on 30 October 2012 (accompanied with a technical workshop) and 16 May 2013 in Vienna and the implementation of Directive 2001/80/EC was one of the main topics for discussion.

On 29 April 2013, the European Commission made a proposal on the implementation of Directive 2001/80/EC and on the implementation of Chapter III, Annex V and Article 72(3)-(4) of Directive 2010/75/EU, the successor of Directive 2001/80/EC. Negotiations on this topic are currently ongoing.

The main focus of the work of the Task Force will remain the preparation for the implementation of the Large Combustion Plants Directive in the Contracting Parties.

2.3. Follow-up activities in the field of climate change

The Secretariat continued to monitor the developments in the field of climate change in the Contracting Parties. This work was backed up by the conclusions and recommendations of a "Study on the potential for climate change combating in power generation in the Energy Community" which was finalised in March 2011. The findings of the Secretariat can be found in the Implementation Report 2011-2012.

3. KEY FINDINGS AND UPCOMING STEPS

The Secretariat will continue monitoring the implementation of the pieces of the environmental *acquis*. In particular, the Secretariat will bring forward the legal cases on the implementation of Directive 1999/32/EC, should the issues not be solved after the responses provided to the opening letters.

The Secretariat will continue with its efforts to achieve a compromise between the proposal of the European Commission and the Contracting Parties on the implementing rules regarding Directive 2001/80/EC and the introduction of the relevant measures of Directive 2010/75/EU.

V. ENERGY EFFICIENCY

1. SUMMARY

The work related to this part of the Work Programme was focused on the support in transposition and implementation of the energy efficiency *acquis* adopted by the Ministerial Council Decisions in December 2009,²⁰ September 2010²¹ and October 2011.²² The Energy Efficiency Task Force implemented its Work Programme for 2012, and continued cooperation with EU and other international organizations and the donors' community to support implementation and launching of new regional financing facilities for energy efficiency. In December 2012, the PHLG set up its successor, the Energy Efficiency Coordination Group for 2013-2014.

2. ACTIVITIES

As of October 2011, the following energy efficiency directives are part of the Energy Community *acquis*:

- Directive 2006/32/EC on energy end-use efficiency and energy services;
- Directive 2010/31/EU on the energy performance of buildings and
- Directive 2010/30/EU on the indication by labelling and standard product information of the consumption of energy and other resources by energy-related products, as well as, a set of implementing directives/delegated acts.

Within the period the Secretariat provided technical assistance to the Contracting Parties in the process of implementation of the three directives and to the Energy Efficiency Task Force (EETF) and Energy Efficiency Coordination Group (ECCG).

Task Force and Energy Efficiency Coordination Group

The Energy Efficiency Coordination Group's mandate was adopted by the PHLG in its meeting in March 2013. This Group builds upon the results achieved so far by the Task Force, and also provides a well structured platform for sharing experience in the implementation of the current energy efficiency *acquis*, as well as discussing the adoption of the new Energy Efficiency Directive 2012/27/EU. It also plays an important role as implementation partner of the regional technical assistance and investment programmes, especially the Regional Energy Efficiency Programme (REEP) with EBRD, the GIZ Open Regional Fund - Energy Efficiency, the WBIF/WB sectoral programme 'Biomass based heating in the Western Balkans'.

The Work Programme of the Coordination Group for 2013 and 2014 includes a comprehensive set of activities which will be implemented in cooperation with the Donors' community. It is worth mentioning that in 2012 Armenia and Georgia nominated representatives in the EECG as observer countries.

Preliminary reports on the progress with the implementation of the 1st NEEAPs were prepared by all "old" Contracting Parties (i.e. Western Balkans) in 2012, as part of the process of monitoring the implementation, with the technical support of GIZ Open Regional Fund - Energy Efficiency. GIZ will continue to provide valuable

²⁰ Ministerial Council Decision 2009/05/MC-EnC of 18 December 2009 on the implementation of certain Directives on Energy Efficiency

²¹ Ministerial Council Decision 2010/02/MC-EnC of 24 September 2010 amending Decision 2009/05/MC-EnC

²² Ministerial Council Decision D/2011/03/MC-EnC of 6 October 2011 on adopting certain Delegated Regulations on energy related products

assistance through the new regional project for the creation of integrated monitoring and verification platform for the implementation of NEEAPs.

The “old” Contracting Parties (Albania, Bosnia and Herzegovina, FYR of Macedonia, Kosovo*, Montenegro and Serbia) are obliged to prepare the 2nd NEEAP by 30 June 2013; within the Task Force, the Template for the 2nd NEEAP was adopted in October 2012; this is based on the model used by the EU Member States, adjusted for the Contracting Parties with the Croatian experience. A regional training workshop on the preparation of the 2nd NEEAP was organized in October 2012, to support Contracting Parties to learn from the rich EU experience, and to discuss and clarify open issues related to preparation of the 2nd NEEAP.

Another important ongoing project delivered by IFI Coordination Office as part of the EC funding assists Contracting Parties to identify suitable financing options for different energy efficiency measures planned in the NEEAPs. A series of country workshops on “Options for financing implementation of NEEAP” were organized by June 2013 (Montenegro, Bosnia and Herzegovina, Croatia, Serbia; Albania and FYR of Macedonia will follow in the second half of 2013), as well as a successful regional workshop for key stakeholders, including finance ministries, was organized in April 2013 in Vienna, with the cooperation of the Secretariat.

Working with donors’ Regional programmes

A number of regional investment projects are being developed in close cooperation with the Coordination Group and Secretariat as implementing partners. In June 2012, the Western Balkans Investment Framework (WBIF) approved EUR 20 million Regional Energy Efficiency Programme (REEP), managed by EBRD. Another EUR 75 million is available through EBRD credit facility WeBSEFF. It will support legislators and investors to eliminate market barriers to energy efficiency, and accelerate the take up of energy services. This will involve work across three domains selected in consultation with national stakeholders:

- i) Supporting NEEAP implementation through energy supply utility participation as well as energy tariff reform, energy metering and billing;
- ii) Assistance with transposition of the Energy Performance of Buildings Directive; and
- iii) Development of public procurement codes and guidelines.

In June 2013, the WBIF approved a Sector Study on Biomass-based Heating in the Western Balkans, in the Western Balkans Contracting Parties. Energy Community Secretariat has coordinated the application and the study will be implemented by the World Bank as lead IFI, in close cooperation with the Energy Community Secretariat, and will investigate the potential for energy efficient heating based on biomass. This is expected to identify the best opportunities for investments in energy efficient biomass heating.

The World Bank also supports sustainable energy efficiency developments in buildings through its new regional programme “Scaling up Energy Efficiency in Buildings in the Western Balkans”. A workshop organized in June 2013 presented and discussed the preliminary results of the World Bank supported study, proposed a framework for implementing scalable energy efficiency programs in buildings, key financing options and drafted a roadmap for scaling up energy efficiency in buildings.

GIZ – Open regional fund Energy Efficiency supports in 2013/2014, the development of an integrated monitoring and verification platform for the implementation of NEEAPs of the Western Balkans. This will be a very valuable tool for evaluating savings against targets and taking corrective actions.

Support to Ukraine and Moldova and Observer countries to develop legislative and institutional frameworks in line with Energy Community requirements is being provided in cooperation with INOGATE programme – component C “Sustainable Energy Component”. USAID support will continue to the EECG, mainly in the frame of the regional programme “Enhancing Capacity for Low Emission Development Strategies”.

3. KEY FINDINGS AND UPCOMING STEPS

The majority of Contracting Parties made progress in transposition of energy efficiency directives in the reporting period. The most advanced in this process are Croatia, the former Yugoslav Republic of Macedonia, Moldova, Montenegro, Serbia and Kosovo*. On the other side Albania, Bosnia and Herzegovina, and Ukraine prepared (draft) energy efficiency laws and by-laws without adopting these yet.

In order to sustain the progress in the Energy Community and to successfully follow the very dynamic trend in EU in the area of energy efficiency, regional cooperation is of great importance. The focus will be on implementation of the Work Programme of the Energy Efficiency Coordination Group for 2013 and 2014 which includes an overarching set of activities which will be implemented in cooperation with the Donors' community. This includes

the finalization and implementation of legislation, preparation of the 2nd National Energy Efficiency Action Plans, as well as the implementation of new investment programmes, especially those funded by WBIF/EBRD, USAID, World Bank etc. The Secretariat and the Coordination Group will also support the adoption by the Ministerial Council of a Recommendation on the implementation of the recent EU Directive 2012/27/EU on energy efficiency, as well as conduct further work on impact analysis, with the view of adopting a binding Decision in 2014 (if decided so by the Ministerial Council).

The Secretariat will continue to support the Contracting Parties in their implementation of the energy efficiency *acquis* and monitor the whole process. For the Contracting Parties that are lagging behind, the Secretariat will initiate dispute settlement proceedings for non-compliance with the Treaty and the respective directives.

VI. ENERGY STATISTICS

1. SUMMARY

With the adoption of the *acquis* on energy statistics, namely Regulation (EC) No 1099/2008 on energy statistics and Directive 2008/92 concerning a Community procedure to improve the transparency of gas and electricity prices charged to industrial end-users, in October 2012, the Contracting Parties committed to apply EU methodologies in collection, compilation and dissemination of their energy statistics data. The aim of this *acquis* is to ensure consistent, accurate and coherent energy data as a key tool for setting, monitoring and evaluation of effectiveness of energy policies in the Energy Community.

The deadline for implementation of the *acquis* on statistics is the end of 2013. The Decision adopting the *acquis* authorized the Secretariat to monitor implementation of the *acquis* in accordance with its mandate and to work with responsible institutions to face and overcome key challenges.

2. ACTIVITIES

The Permanent High Level Group on its 25th meeting invited each Contracting Party to appoint a national coordinator for the harmonization of energy statistics. The Secretariat is invited to coordinate the work with the Contracting Parties on their revised action plans with a view to a common approach to technical assistance. Technical assistance for implementation of the *acquis* on statistics is envisaged to take place from 2013 to the end of 2014 with the aim to improve working procedures, develop methodologies and to support conducting surveys together with domestic institutions where necessary.

Following the mandate given by the PHLG, in coordination with the national coordinators for implementation of the *acquis* on energy statistics nominated by the Contracting Parties and Observers by February 2013, the Secretariat developed the template for national institutions to present:

- A revised action plan and timeline for transposition and implementation of Regulation 1099 /2008 and Directive 2008/92 and definition of a common approach to technical assistance and
- Specification of needed technical assistance to implement statistical *acquis*.

After submission of the revised action plans and specification of needed assistance, the Secretariat prepared a summary of key activities to implement the *acquis* and necessary assistance for each activity. On the basis of action plans and identified needs, the Secretariat drafted the terms of reference for technical assistance, which was discussed with EUROSTAT and agreed by all Contracting Parties and the Observer Georgia.

The technical assistance shall be provided in two stages, the first being focused on improving the quality of annual statistics, particularly in terms of RES statistics and energy consumption, on monthly statistics, and on establishing and/or improving price statistics. The tender documents were published on 28 May 2013 and selection of a successful bidder is planned by end July 2013. The work schedules developed by Contracting Parties envisaged the services to begin in August 2013.

3. KEY FINDINGS AND UPCOMING STEPS

Technical assistance, particularly transfer of know-how, should enable Contracting Parties' institutions to implement key elements of the *acquis* and build their capacity to permanently improve quality of energy statistics. However, the available human, financial and technical resources in respective institutions of the Contracting Parties pose a serious challenge to establishing a reporting system in time, particularly as regards monthly statistics and conducting comprehensive and regular surveys.

As defined in the Decision 2012/02/MC-EnC, adaptations of certain provisions of the Regulation 1099/2008 and Directive 2008/92/EC must be considered.

In order to ensure consistency with the EU methodology, the Ministerial Council is invited to adopt Regulation (EC) 147/2013 amending Regulation 1099/2008.

VII. OIL DIMENSION

1. SUMMARY

The 10th Ministerial Council adopted the Decision on the implementation of Directive 2009/119/EC on imposing an obligation on Member States to maintain minimum stocks of crude oil and/or petroleum products²³. All Contracting Parties should be able to become compliant with this Directive by 2023 through the adoption of a phased programme of changes and investment.

2. ACTIVITIES

The main activity to report is the 4th Oil Forum held in November 2012 which, among others, urged all Contracting Parties to consider coordinated assistance from experienced oil stockholding experts in preparing their national legislation on Emergency Oil Stocks and Emergency Response System.

3. KEY FINDINGS AND UPCOMING STEPS

In order to implement Directive 2009/119/EC on time, a speedy preparation of updated roadmaps and setting out the concrete implementation steps for each Contracting Party will be required. This would allow the Contracting Parties to transpose the Directive into their national legislation by December 2014 at the latest.

The Secretariat's efforts during the first half of year 2013 on implementation of the Oil Stocks Directive were focused on starting the coordinated technical assistance mainly related to the drafting of legislation containing the general provisions of the Oil Stocks Directive, legislation on an Emergency Response System, preparation of an Oil Stockholding Strategy, definition of Action Plan content, establishment of the Central Stockholding Entity, drafting by-laws and regulations on monitoring and reporting of oil stocks, drafting bilateral intergovernmental agreements on stockholding, etc.

As upcoming steps, the Secretariat considers the conclusions of the 29th PHLG meeting²⁴ held in June 2013 where all Contracting Parties are encouraged to present their preferences regarding the topics and timing of the experts' visit as soon as possible but no later than the end of July 2013 and establishing their own working group to ensure consistency and progress in proposed technical assistance through 2013/2014.

VIII. COMPETITION

1. SUMMARY

²³ [Ministerial Council Decision - D/2012/03/MC-EnC-EnC](#)

²⁴ [PHLG 29 - Oil Stocks - Next Steps](#)

The Secretariat continuously monitored the implementation of the competition *acquis*, focusing not only on the substance of the laws on competition and State aid, but also on enforcement activities and case law in the energy sectors. The main focus of this year's activities was the establishment of the Energy Community Competition Network.

2. ACTIVITIES

In the area of *competition law*, the Contracting Parties are relatively well advanced in terms of transposition. With the adoption of new State aid Law by Moldova in 2012, in addition to the newly adopted State aid legislation in Bosnia and Herzegovina and Kosovo* in the previous couple of years, the transposition of State aid *acquis* also increased. The Secretariat monitored the effective implementation of the newly adopted laws and establishment of enforcement institutions. Closing the pending cases initiated by the Secretariat against Bosnia and Herzegovina and Kosovo* for lack of implementing the State aid *acquis* depends on the enforcement authorities becoming fully operational.

Since most of the national competition authorities do not apply competition law to the energy sectors to the extent needed to support liberalization of the energy sectors, the focus this year was thus on monitoring the implementation of competition law in the energy sectors. For this purpose, the special focus of this year's activities of the Secretariat was the launching of an Energy Community Competition Network. On 23 November 2012, a Joint Declaration on cooperation between the Competition Authorities and the Energy Community Secretariat on the establishment of an Energy Community Competition Network was signed in Vienna by all Contracting Parties, as well as Armenia, Austria and Georgia. The Network establishes a platform for promoting cooperation and discussion on competition law enforcement in the energy sectors. It also serves the purpose of exchanging experience and developing best practices with respect to competition policy, legislation and enforcement of the EU competition *acquis* within the Energy Community. The members of the Network met two times so far, in November 2012 and in June 2013. This network is also linked to the national regulatory authorities and their cooperation within the ECRB. In this respect, the June meeting in Athens was followed by a joint meeting with the ECRB.

Outside the annual meetings, the Secretariat launched an electronic platform for exchange of information and mutual consultation among the competition authorities in July 2013. This platform shall allow for continuous exchange of information among the members.

3. KEY FINDINGS AND UPCOMING STEPS

In the area of competition and State aid in the context of the Treaty, compliance of the institutional legislative framework of the Contracting Parties with Article 18 of the Treaty and its proper implementation will be targeted, including monitoring of the establishment of fully functioning enforcement authorities.

The Secretariat will provide support to the Energy Community Cooperation Network, coordinating its activities and meetings. In addition, the Secretariat will run the electronic platform for continuous exchange of information among the members of the Network.

IX. SOCIAL DIMENSION

1. SUMMARY

Energy sector reforms are complex processes that include restructuring, privatization, the introduction of competition and independent regulation. In parallel, these reforms are associated with social consequences that must be anticipated and faced by the Contracting Parties.

In this context some key activities were undertaken within the Energy Community both in 2012 and 2013.

2. ACTIVITIES

The Secretariat has organized two Social Fora in 2012/2013:

The 5th Social Forum held in Bečići in September 2012 reviewed the progress achieved in the implementation of the national Social Action Plans (SAPs). These originate from the commitments made in the form of the Memorandum of Understanding in 2007. The discussions focused on energy poverty and affordability. The Forum welcomed the Secretariat's invitation to the participants to work together towards outlining a Social Strategy by mid 2013.

The 10th Ministerial Council Meeting held in October 2012 invited the Secretariat, in cooperation with the social partners, to prepare an outline of the Social Strategy for discussion and eventual adoption at the Ministerial Council meeting in 2013.

In December 2012 a public consultation with all stakeholders on the outline of the Social Strategy was held. The Secretariat received eight responses.

The possible outline of the Social Strategy was also at the top of the agenda of the 6th Social Forum held in Belgrade in April 2013. In addition, energy poverty and consumer protection, as well as social dialogue were in focus during this Forum. Particularly the definition of "vulnerable customers" is a pressing issue. The Forum agreed that the outline of the Social Strategy should propose a regional definition of vulnerable customer. Upon this suggestion, the Secretariat proposed at the 29th PHLG held in June 2013 a regional definition of vulnerable customers. The 29th PHLG endorsed the Outline of the Social Strategy²⁵ and referred it for further approval to the Ministerial Council in October 2013.

3. KEY FINDINGS AND UPCOMING STEPS

The monitoring of the Social Action Plans (SAP) implementation shows that the progress is inadequate. There are still two Contracting Parties (Albania, Kosovo*) that have not approved the SAP at the Governmental level. Most of the Contracting Parties have not informed the Secretariat sufficiently on the progress of the envisaged activities in the social action plans. Often these activities are too general and lack clear energy focus. Real progress in social dialogue, including management of change, is limited. As another important topic, the issues of consumer protection and the needs of vulnerable customers should be considered social issues rather than energy policy issues and should hence be addressed in the context of broader social policy. Moreover, the Contracting Parties are encouraged to develop programmes aiming to promote energy efficiency and targeting low-income households.

The outline of the Social Strategy provides the basis of the upcoming steps for all Contracting Parties related to their positions towards the social dimension and to take further steps in line with the political obligations in the context of the Memorandum of Understanding on Social Issues.

X. OVERALL AND CROSS-CUTTING ACTIVITIES

1. SUMMARY

The key objective of these activities is to provide sufficient information as a background of relevant decisions by the competent Energy Community institutions as well as to facilitate the necessary steps by the Contracting Parties allowing adequate implementation of the Treaty provisions.

²⁵ [Outline of the Social Strategy of the Energy Community](#)

Besides, they target additional steps for promotion of competition along the Treaty requirements, raising more Energy Community awareness and securing necessary operational support for efficient performance of the tasks of all Energy Community institutions.

2. ACTIVITIES

The operational activities, related to the overall and cross-cutting tasks, had different scope, matching on the one side the concrete necessities, and on the other – the competences of the Secretariat and the other Energy Community institutions.

2.1. DISPUTE SETTLEMENT

The actual implementation of the *acquis* requirements and its monitoring is closely linked to the ongoing enforcement process. Within the discussed period, the number and the depth of the dispute settlement procedures indicate trends, which clearly specify that these procedures are considered by more stakeholders as an adequate format for enforcement. The following list of cases only comprises those where the Secretariat formally opened proceedings. The vast majority of cases within the framework of dispute settlement are discussed and often resolved already at an informal level.

Open dispute settlement cases upon complaints

a) Case ECS-3/08 was initiated with an Opening Letter sent by the Secretariat to the Republic of Serbia on 17 September 2010. Following Serbia's reply, the Secretariat issued a Reasoned Opinion on 7 October 2011. The case was initiated by a complaint from the operator of the electricity transmission system located in Kosovo*, KOSTT. In the Secretariat's assessment, the lack of compensation to KOSTT for costs incurred as a result of electricity transit on the network operated by it violates Article 3 of Regulation (EC) 1228/2003. Attempts to solve this case through bilateral negotiations between the two companies or the Governments involved have not succeeded so far.

b) On 26 February 2013, the Secretariat sent an Opening Letter in Cases ECS-6/13 to Ukraine. The Secretariat, takes the preliminary view that the Auction Rules adopted for the allocation of capacity on the country's electricity interconnectors with its Western neighbours and Moldova, as well as their appliance in practice by the system operator, fails to respect relevant Energy Community rules, namely Regulation (EC) 1228/2003 and the Congestion Management Guidelines.

Open dispute settlement cases on Secretariat's own motion

a) On 21 September 2010 and on 8 February 2011 the Secretariat sent Opening Letters to Bosnia and Herzegovina in Case ECS-1/10 and to Kosovo* in Case ECS-7/11 respectively. The Secretariat takes the preliminary view that Bosnia and Herzegovina and Kosovo* failed to fulfil their obligations under the Energy Community Treaty by not adopting legislation prohibiting State aid and enforcing that prohibition, as required by Articles 6 and 18 of the Treaty. In July 2011 Kosovo* and in February 2012 Bosnia and Herzegovina adopted State aid laws which follow the principles of the *acquis* on State aid and transposes Article 18(c) of the Treaty. However, fully functioning authorities enforcing this legislation are still not established and thus effective implementation of these new laws in practice is still pending.

b) On 20 January 2011, the Secretariat sent Opening Letters to Albania, Bosnia and Herzegovina, Croatia, former Yugoslav Republic of Macedonia, Montenegro and Serbia (Article 12 of the Rules of Procedure for Dispute Settlement) in Cases ECS-1–6/11. The Secretariat challenges that these six Contracting Parties have not yet adopted a common coordinated congestion management method and procedure for the allocation of capacity to the market, according to their obligation from a decision by the Ministerial Council of 2008. The transmission system operators of Albania, Bosnia and Herzegovina, Croatia, former Yugoslav Republic of Macedonia, Greece, Montenegro, Romania, Slovenia, Kosovo* and Turkey on 13 June 2012 signed an agreement for establishing a company tasked with preparing the establishment of a Coordinated Auction Office in South East Europe within 12 months. Until this Office is operational, the cases remain open.

c) On 7 October 2011, the Secretariat initiated dispute settlement proceedings against Bosnia and Herzegovina for noncompliance with several provisions of Directive 2003/55/EC and Regulation (EC) No 1775/2005 by an Opening Letter in Case ECS-8/11. Having taken into account the reply of the Government to the Opening Letter, the Secretariat sent a Reasoned Opinion on 24 January 2013, and submitted the case to the Ministerial Council for decision by way of a Reasoned Request on 21 May 2013.

d) On 11 February 2013, the Secretariat sent Opening Letters to Albania, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, Serbia and Ukraine in accordance with Article 12 of the Rules of Procedure for Dispute Settlement. The Secretariat comes to the preliminary conclusion that these five Contracting Parties have not yet transposed and implemented the requirements of Directive 1999/32/EC as required by Article 16 and Annex II of the Treaty. Directive 1999/32/EC aims to reduce emissions of SO₂ resulting from combustion of heavy fuel oils and gas oils.

2.2. COOPERATION OF ENERGY REGULATORS WITHIN ECRB

Recalling that under the Work Programme the key objective of the cooperation of energy regulators within the ECRB is to support the harmonized development of regulatory rules in the Energy Community, as well as to provide a platform for exchanging knowledge and developing common best practice solutions for implementing the Treaty in a harmonized way, concrete activities were undertaken within the indicated period.

Acknowledging the need to develop joint efforts on regulatory and ministerial level and recognizing that regulatory activities have to operate within the general energy policy framework, the ECRB has defined a general framework for its activities embedded in the Energy Community Work Programme 2011-2012. Starting from this, a more detailed definition of activities has been elaborated and published in the ECRB Work Programme 2011 and the ECRB Work Programme 2012²⁶.

According to its Work Programme the ECRB activities in 2012 and 2013 involved:

(1) Electricity

- Harmonized wholesale trade licensing
- Balancing
- Regulatory input to the development of a regionally coordinated capacity allocation
- Development of common market monitoring guidelines in cooperation with USAID
- Renewables

(2) Gas

- Regulatory Measures for Realization of the Energy Community Gas Ring
- Interoperability
- Balancing

(3) Customer issues

- Customer Protection
- Customer Supplier Switching
- Small Customers' Electricity Generation
- Grid Connection

Related to the ECRB activities, in 2012 the Secretariat has finalized studies related to:

- Customer Supplier Switching
- Electricity Balancing

The ECRB reported about its 2012 activities in detail in a separate annual report which is available on the Energy Community²⁷ website.

2.3. OTHER CROSS-CUTTING ACTIVITIES

²⁶ See www.ecrb.eu.

²⁷ www.energy-community.org.

The key objective of these activities is to provide sufficient information as a background of relevant decisions by the competent Energy Community institutions as well as to facilitate the necessary steps by the Contracting Parties allowing adequate implementation of the Treaty provisions.

The Energy Community Secretariat along its mandate continued to provide assistance to all institutions within the scope of their competences both on organizational and policy levels. Thus, this included *inter alia* organization of the relevant Energy Community events, coordination of the work of relevant working groups and task forces, where needed. Secretariat's internationally recruited experts (in 2013, 23 employees) stemming from 13 nationalities provide content input to the preparation of the meetings organized on behalf of the Energy Community. In 2012, some 60 meetings were organized²⁸. the overall budget foreseen for the organization of those meetings as well as for the refunding of the travel expenses to the delegates participating to the meetings amounted in 2012 to EUR 470.000 (in 2013: EUR 472.200). Some 1.800 participants took part throughout the year at the meetings organized. For financial and administrative reasons the majority of the meetings takes place in the premises of the Secretariat in Vienna, where conference facilities are provided for.

A substantial part of this work was the effective budget management (including also relevant procurement), which has been also reflected in the relevant audit report and report of the Budget Committee for the 10th Ministerial Council meeting²⁹.

One of the key tasks, performed regularly by the Secretariat, was presenting adequate information by the Secretariat via different types of reports along the Treaty requirements as well as on its own initiative. This reporting was done to the PHLG, the Fora, and the Budget Committee and is also a permanent part of the Ministerial Council agenda.

A key part of the information process was strongly linked to the factual support, provided to the Contracting Parties and Observers in the implementation of the Energy Community *acquis*, and to its concrete outcome. This support was provided via operational communication as well as missions and specific events. In 2012, more than 50 visits to the Contracting Parties were undertaken, depending on the objective needs – to some of those more often (like Ukraine) than to others (for example Croatia). The required funds for the travels of experts as provided in budget 2012 were used at the level of EUR 190.000.

The actual implementation of the *acquis* requirements and its monitoring is closely linked to the ongoing enforcement process. Within the discussed period, the number and the depth of the dispute settlement procedures indicate trends, which clearly specify that these procedures³⁰ are considered by more stakeholders as an adequate format for enforcement.

Another sphere of activities, which was further strengthened, is the promotion of the Energy Community achievements. This included different measures e.g. improvement of the website, active links with the other national and international institutions, with municipalities and their international organizations, with business representatives, as well as participation as guest speakers in other fora etc.

E. CONCLUSION

The current status of implementation of the Work Programme of the Energy Community indicates that up to September 2013 the envisaged tasks are being targeted as specified. There are no particular areas of concern related to the full implementation of the Work Programme.

²⁸ See Energy Community Event Calendar at http://www.energy-community.org/portal/page/portal/ENC_HOME/CALENDAR?pSelectedYear=2012

²⁹ Both documents are part of the documentation for the Ministerial Council meeting of 18.10.2012

³⁰ The current status of the dispute settlement procedures is subject to a separate report.

ANNUAL REPORT ON THE ACTIVITIES OF THE ENERGY COMMUNITY 2013

A. BACKGROUND AND APPROACH

This Report has been developed by the Energy Community Secretariat (the Secretariat) following the requirements of Article 52¹ of the Energy Community Treaty ("the Treaty") and reflects the status of implementation of the Work Programme of the Energy Community for the period between 1 September 2012 and 1 September 2013, with occasional references to activities in the first half of 2012.

The Report is based on abstracts of the Work Programme, as adopted by the Ministerial Council,² where all tasks envisaged within the period covered are listed and developed in more detail.

B. MEMBERSHIP

The accession by Croatia to the European Union on 1 July 2013 changed that country's status under the Treaty. Instead of a Contracting Party, Croatia has now become a Participant. We are very proud of Croatia's success. It is a living example of the *raison d'être* of the Treaty. Although the Work Programme has a very technical focus, we should never forget the big picture. Just like the European Coal and Steel Community in the past, the Energy Community is a prime example of European sector integration.

In January 2013, Georgia, currently an Observer, applied for full membership. We expect that it becomes full Party by a decision of the Ministerial Council in October 2014.

As per 1 September 2013, Parties to the Treaty are the European Union and 8 Contracting Parties: Albania, Bosnia and Herzegovina, Kosovo³, former Yugoslav Republic of Macedonia, Moldova, Montenegro, Serbia and Ukraine. The following countries are Observers: Armenia, Georgia, Norway and Turkey. 17 of the 28 EU Member States have the status of Participant according to Article 95 of the Treaty.

C. BUDGET

The budget is established in correspondence with the strategic planning of activities within the overall objectives of the Treaty establishing the Energy Community ("EnC") for the same period. Those activities are laid down in the corresponding Energy Community Work Programme being part of the budget proposal as required under Article 25 of the *Energy Community Procedures for the Establishment and Implementation of the Budget, Auditing and Inspection (thereinafter: "Budgetary Procedures")*.

In general, there are few sources of revenue of the Energy Community budget:

- budget contributions by the Parties⁴
- donations
- other revenue;

The majority of the budget comes from the financial contributions of the Parties to the Treaty, financial responsibilities of which are assumed already in the Treaty and specified in the relevant *Energy Community Procedures for the Establishment and Implementation of the Budget, Auditing and Inspection*.

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 Conclusion 20, 9th MC meeting, 06.10.2011

³ This designation is without prejudice to positions on status and is in line with UNSCR 1244 and the ICJ Opinion on the Kosovo declaration on independence.

⁴ In accordance with Annex IV of the Treaty (in its amended version per decision of the Ministerial Council)

The budget of the Energy Community for the year 2012 falls into the biannual budget 2012-2013 approved by the Ministerial Council on the proposal of the European Commission⁵. It is approved in its initial value and is adjusted 'pro memoria' at the end of each financial year⁶. The overview of the budget for the biennium 2012-2013 is presented in a table format below:

(in EUR)	INITIAL BUDGET 2012	FINAL BUDGET 2012	INITIAL BUDGET 2013
Number of staff	n=22		n=23
HUMAN RESOURCES	1,650,000	1,650,000	1,750,000
TRAVEL EXPENDITURES	240,000	240,000	244,800
OFFICE	218,000	389,028	222,360
OTHER COSTS AND SERVICES	1,122,000	1,132,000	1,125,040
TOTAL	3,230,000	3,411,028	3,342,200

In 2012, in addition to the budget contribution received from the Parties to the Treaty, based on the ongoing commitment of the Republic of Austria since 2005, the Energy Community received donations from the Republic of Austria in the amount of EUR 159.952.

In 2012, the Energy Community actual expenditures⁷ - they are presented budget line per budget line – reached the following levels:

- Human Resources	EUR 1.643.909
- Travel	EUR 190.037
- Office	EUR 344.551
- Other Costs/ Services	EUR 1.082.902

Year-end accounts for 2012 were audited in March 2013 by the designated external audit company⁸, KPMG. The audit scope, as for every year, included the review of the annual accounts of the Energy Community as well as of the internal control systems relevant for the implementation of the budget.

Auditors issued unqualified audit opinion given the fact that "it did not give rise to any objections⁹". This cited KPMG report together with the Report of the Budget Committee to the Ministerial Council shall be examined by the Council and provide a basis for the discharge decision from the administrative and financial responsibility for the financial year 2012.

⁵ According to Article 88 of the Treaty establishing the Energy Community; approved on 6 October 2011;

⁶ See FINAL BUDGET 2012 in table below; Final Budget 2013 will be established in the course of establishment of the year-end accounts 2013;

⁷ Actual expenditures of the year include legal commitments of the year

⁸ In accordance with Article 80 of the Budgetary Procedures

⁹ See KPMG Report on the Audit of the Financial Statement for the year ended 31 December 2012

D. PERFORMANCE ON THE TASKS

I. REGIONAL MARKET DEVELOPMENTS

1. SUMMARY

The key activities in this area continued to focus on the support to the Contracting Parties, concerning the implementation of the *acquis communautaire* in the electricity, gas and oil sectors, as well as the horizontal provisions of the Treaty. In this context, another focus was on the support to the gradual development of a regional market, in particular starting with the opening of wholesale markets in the region.

A strong stimulus in this aspect was the adoption of the Ministerial Council decision on the implementation of the Third Energy Internal Market Package¹⁰ and the 2009 Directive on renewable energy.

Extensive work with the governments and governmental structures (ministries, agencies), regulatory authorities, the Parliaments and also with non-governmental organizations took place in all the Contracting Parties and Observers. The excellent cooperation between the Secretariat and ECRB significantly contributed to the success of the process.

The creation of a coherent and convergent regional market, operating on harmonized legal and regulatory rules remains a key requirement for attracting investments and increasing market liquidity in the Energy Community. Only if the relatively small individual markets join forces and create a common and competitive trading area, the benefits for customers and social development to be gained from market liberalization can materialize.

Both in the electricity and the gas areas, the path towards a common regional market strongly depends on streamlining with European developments, keeping in mind the final target of integrating the European and Energy Community markets. On EU level, the entry into force of the Third Energy Package together with the target of completing the internal energy market by 2014 form the framework for electricity market development. The Third Energy Package was incorporated in the Energy Community in October 2011¹¹ with a transposition deadline by 1 January 2015. This also includes adopting the European Network Codes, once legally binding on European level, in the Energy Community.

2. ACTIVITIES

2.1. Electricity

Benchmarking the institutional, legal and regulatory performance in the Contracting Parties related to the requirements of the electricity *acquis* was on the everyday agenda of the Energy Community.

The focus in this aspect was on developing legislative and regulatory frameworks to increase compliance with the energy *acquis* and to open the markets. This concerned factually all Contracting Parties and some Observers.

In this aspect, it should be noted that the Secretariat – both upon request and on its own motion – was actively consulted on most of the relevant draft legislative acts, market rules and documents of strategic nature, whose preparation and adoption is reflected in the annual Implementation Report for each of the Contracting Parties.

Following the adoption of new acts of primary legislation in the area of electricity in recent years such activities commenced in several Contracting Parties. Despite the efforts made, they remain to be completed in the following period. The cooperation with the Contracting Parties continued to shift towards the development of secondary legislation (market rules, switching rules, balancing rules, tariff methodologies), and solving problems connected to the practical implementation of the open electricity market (monitoring and transparency).

Direct cooperation between the Secretariat and regulatory authorities increased in intensity and in substance. The elements needed for opening of the local electricity markets were also targeted - the state of unbundling and the

¹⁰See Conclusion 9, 9th Ministerial Council (06.10.2011).

¹¹ Decision 2011/02/MC-EnC of the Ministerial Council of 6 October 2011.

treatment of eligibility and public service in the first place. Assistance in addressing specific problems in the performance of some operators was also provided by the Secretariat.

The Contracting Parties were supported by the Secretariat in their progress or assessed in their compliance, such as:

- In the context of the new primary legislation remarkable efforts were invested in the draft Electricity Market Act of Ukraine, through repeated rounds of comments, working sessions and public hearings.
- Another similar exercise was the EU (IPA) funded Project for Legal Compliance in Bosnia and Herzegovina, targeting implementation of the Third Legislative Package.
- The Third Legislative Package was implemented in Croatia. The Secretariat's involvement was limited mainly to monitoring.
- Another example where implementation of the Third Package is being supported is the draft Energy Law of Montenegro – the Secretariat provided significant support and comprehensive feedback to the Working Group in the process of drafting.
- A general shift towards the implementation of the Third Legislative Package took place in the Energy Community. The Secretariat was involved in defining the policy and methodology of its implementation. The assistance included workshops and discussion of the problem in all fora and technical and political meetings.
- Cooperation and assistance in development of the secondary rules related to the market in FYR of Macedonia (i.e. market rules) and Montenegro (balancing rules, market operator) took place. The progress of Serbia and Bosnia and Herzegovina in this area was monitored and reported.
- Cross-border transmission capacity allocation and congestion management rules of Ukraine were discussed in repeated sessions in the context of an infringement case. Following an earlier round of infringement cases, the development of such acts for Moldova and Albania was assisted through meetings and comments.
- Monitoring missions were organized in FYR of Macedonia and Bosnia and Herzegovina.
- In addition, Secretariat representatives took part and provided support in the missions of the EC (DG Enlargement) in the framework of the EU Enhanced Policy Dialogue or implementation of the Stabilization and Association Agreements, respectively in Albania, Bosnia and Herzegovina, FYR of Macedonia, Serbia and Kosovo*.

The Secretariat started preparing the implementation of the European Network Codes in the Energy Community. In this context the Secretariat initiated Workshops with the European Network of Transmission System Operators for Electricity and, together with the PHLG and ECRB, developed procedural rules for the adoption of the European Network Codes.

The so-called Regional Action Plan for Wholesale Market Opening in South East Europe (SEE RAP)¹² defines the steps for regional market integration in the 8th Region streamlined with the milestones and actions of the European electricity target model and the four cross-regional roadmaps¹³ - capacity calculation, long term capacity allocation, day ahead capacity allocation (market coupling), and continuous mechanisms for implicit cross-border intraday trading.

Activities during the reporting period concentrated on further promoting regional wholesale market opening were, in particular, related to;

- *The establishment of a SEE Coordinated Auction Office (SEE CAO), targeting harmonization of the allocation and nomination rules for long and medium term transmission rights in the 8th Region and executing multilateral coordinated auctions on all SEE borders as a regional one-stop-solution for end of 2014. The Secretariat supported the TSOs in founding a so-called *Project Team Company in Charge of Establishing a SEE CAO (PTC)*¹⁴ with the scope of preparing the effective operation of the SEE CAO. As of December 2012 the PTC executes its activities in a team of four experts.*

¹² <http://www.energy-community.org/pls/portal/docs/1810178.PDF>. The SEE RAP has been jointly developed by the Energy Community Regulatory Board and ENTSO-E RG SEE and received support of the Ministerial Council of the Energy Community.

¹³ The goal of integrating the seven European electricity regions into a single market area is addressed through the *Regional Initiatives* process which falls under ACER's responsibility and - according to the EU Energy Work Plan for 2011-2014 in Electricity - focuses on four cross-regional roadmaps.

¹⁴ The network operators of Albania, Bosnia and Herzegovina, Croatia, FYR of Macedonia, Greece, Kosovo*, Montenegro, Romania, Slovenia and Turkey are shareholders of the PTC. The Company is co-funded by the individual shareholders and significant contributions from International Financing Institutions EBRD, KfD and USAID; www.seecao.com.

- The implementation of a *single day-ahead Price Coupling* (PC) model in the Energy Community that simultaneously determines volumes and prices in all relevant zones, based on the marginal pricing principle¹⁵. Progress was made at the 18th Energy Community Electricity Forum (June 2013) at which the participants supported the Serbian SEEPEX as a possible pilot project for the development of market coupling across the region that can be extended to other Contracting Parties¹⁶. Another comparable initiative has been started in Croatia with the aim of establishing a PX or entering into joint venture agreements by the end of 2013 / early 2014.

The framework for cooperation in the forthcoming period related to security of supply was set with the establishment of the Security of Supply Coordination Group in October 2012. In the reporting period there were no effective meetings of the Group due to the fact that the security of system operation and the conditions for electricity supply were not disturbed. The Secretariat supported the development and assessed the submitted Security of Supply Statements in the domain of electricity in the updated format.

2.2. Gas

In the gas sector, the lack of a developed gas infrastructure across the region and in particular interconnections between the individual Contracting Parties has been the major obstacle for creating a regionally liquid market. On these grounds, the Energy Community developed the Gas Ring concept and Gas to Power Initiative which would allow gas-to-gas competition and boost security of supply. The selection of *TAP* as a project to transport Shah Deniz II gas to Europe will have significant positive consequences for the Energy Community and the region as a whole.

The Secretariat started preparing the implementation of the European Network Codes in the Energy Community. In this context the Secretariat initiated Workshops with the European Network of Transmission System Operators for Gas and developed procedural rules for the adoption of the European Network Codes. The Secretariat also intensively discussed the order and possible priorities for Network Code implementation with the Contracting Parties and entered into content related discussions of the Network Codes on ECRB level, still during their development phase.

Similarly to electricity, and following the primary legislation adoption in earlier periods, the focus in the gas sector has shifted to the development of secondary legislation. Considerable amount of work was invested in executing the study on security of gas supply and reactivating the Security of Gas Supply Coordination Group with a clear vision of further security of supply *acquis* evolution in the Energy Community.

During the reporting period the support in development of the legislation in the gas sector focused concretely on the following:

- Reviewing and commenting the Energy Law and the Gas Market Law in Croatia. Both drafts were afterwards improved significantly and adopted;
- Reviewing amendments in the primary legislative acts of Moldova and former Yugoslav Republic of Macedonia;
- Continuous contribution to resolving disputes in Croatia (on distribution tariff methodology for Greenfield projects); in former Yugoslav Republic of Macedonia and Moldova on the disputes on transmission tariff (cost reflectivity). In Moldova, the Secretariat is also engaged in the process of settling disputes on distribution tariff and treatment of losses;
- In Bosnia and Herzegovina, the Secretariat proceeded with its dispute case of 2011 by submitting a Reasoned Request to the Ministerial Council;
- The Secretariat examined the situation in Serbia characterized by lack of progress in unbundling. In this context, the Secretariat reviewed the Grid Code drafted for the first time by Serbia's TSO;
- Ukraine was in the focus in many respects, such as facilitating reverse gas flow with the neighbouring Member States, assistance in primary legislation in the upstream business activities, assistance in developing TSO's necessary codes compliant with the *acquis*;

¹⁵ Implementation of PC in the 8th Region entails a step-wise approach, starting from bilateral/ trilateral market coupling by mid 2013 following a nucleus approach or based on different regional initiatives and achieving a single regional PC model by end of 2014 with the scope of integrating with the European PC zone by mid 2015.

¹⁶ Specific arrangements may need to be found for Moldova and Ukraine.

- The Secretariat has worked in close cooperation with the Albanian regulatory authority *ERE* on an exemption decision under the Third Package, which culminated in giving its opinion on *ERE*'s decision to exempt *Trans Adriatic Pipeline (TAP)* from obligations related to unbundling, third-party access and tariff regulation.

In relation to gas, market activities were focused on removing primary obstacles for creation of a regional market and on deepening the regional cooperation, related to:

- Providing inputs and facilitating work on the feasibility studies (including participation at the steering committees and support to organizing the IAP Interstate Committee meetings), within the Western Balkan Investment Facility, for several projects such as inter alia the *IAP* project (market study, ESIA scoping report, route selection and the technical study); *Croatia's LNG* project (gap analysis, inception report, scoping report, market study); to the *Southern Connection Croatia-Bosnia Herzegovina* (inception report and line route report); and to the study on Consortium approach to Gas to power and the Energy Community Gas Ring;
- Initiating the Contracting Parties' TSO applications for Observer status in ENTSOG - GAMA of former Yugoslav Republic of Macedonia on this ground became Observer; Ukraine's and Serbia's TSOs were encouraged strongly to proceed likewise; In addition, the Secretariat was facilitating communication between Contracting Parties and ENTSOG on updating the Ten Year Network Development Plan;
- Participating as an observer to the ad hoc Working Group on the North-South gas interconnections in CEE and SEE and Southern Corridor WG, promoting the Gas Ring projects
- Organising the 7th Gas Forum which took place in Bled in September 2012 gathering more than 150 participants; this underlines the increasing importance of the Gas Fora in the Energy Community.

Activities in the area of security of supply were manifold:

- The Security of Supply Coordination Group on Gas was reactivated. The plenary session took place on 17 October 2012, and the Gas Subgroup met again on 12 February 2013.
- The Group worked to improve the next set of Security of Supply (SoS) Statements, which could serve as a basis for future Risk Assessments, as defined in Regulation 994/2010. The Group also made an update of the list of emergency contacts and the format for an emergency questionnaire template.
- In 2012, the Secretariat launched a study to facilitate the implementation of Regulation on security of gas supply (EC) 994/2010. The Study's key objective is to assist the Contracting Parties in their efforts to meet the future commitments under the Energy Community Treaty and to increase thereby the security of gas supply.
- The Secretariat assessed the Security of Supply Statements from the previous year.
- The Secretariat continued its active participation in the EU Gas Coordination Group (GCG), thus acting as a link between the EU and the Energy Community at operational level. During the reporting period, it presented twice the situation in the Contracting Parties in the GCG sessions on this subject.

3. KEY FINDINGS AND UPCOMING STEPS

Electricity

The assistance to the transposition of the Energy Community *acquis* is ongoing. There are still several primary acts with obsolete provisions in Albania, Bosnia and Herzegovina and Ukraine while implementation is still a work in progress. Shifting to the Third Legislative Package is the most important source of current and future activities in this domain.

The following key findings can be identified:

- The original deadline for the SEE CAO to auction annual capacities for 2014 at the end of 2013 will not be met¹⁷. Instead, the SEE CAO is expected to be functional no later than 1 July 2014, starting with monthly allocation periods as an initial step for centrally coordinated forward capacity allocation and complementary to

¹⁷ Conclusions 18th Athens Forum.

market coupling. Concrete progress has also neither been met related to the choice of a single capacity allocation algorithm as key requirement for market coupling, nor as regards the establishment of Power Exchanges (PX) or commissioning services from existing PXs. The related deadlines of the SEE RAP have been clearly missed. The support of the 18th Athens Forum for the Serbian SEEPEX as a possible pilot project¹⁸ for the development of market coupling across the Region that can be extended to other Contracting Parties¹⁸ has to be seen as a positive signal towards progress. It has to be underlined that delay in progress is strongly home-made and mainly due to lack of serious political commitment: all elements of the SEE RAP can be implemented within the legal framework of the Second Energy Package. The establishment of a regionally coordinated congestion management is explicitly required by Regulation (EC) 1228/2003 and subject to open infringement cases by the Secretariat.

Finally, effective market opening is also hindered by a number of legislative provisions in the Contracting Parties that need to be abolished, in particular related to public supply, single buyer models, regulated energy prices, non-market based procurement and trade of electricity and monopoly positions in electricity generation and supply. The Secretariat will focus on these aspects in the course of the legislative adjustments for implementation of the Third Energy Package.

Gas

Transposition of the Energy Community *acquis* in the gas sector is not yet completed. There are still several primary acts with obsolete provisions, and any primary act is lacking in Bosnia and Herzegovina. Implementation is still a work in progress. However, shifting from the initial level to the Third Legislative Package is the most remarkable source of current and future activities in this domain.

The development and improvement of the necessary secondary legislation is a work in progress. The grid codes and market rules, together with tariff systems, are on the Secretariat's agenda.

The market fundamentals have yet to materialise to allow customers to reap their benefits. With the selection of TAP as a Southern Corridor project, a strong impetus for infrastructure development and realization of the Gas Ring is provided. However, in order to achieve real progress, more intense work by all the Contracting Parties is required to enable creation of liquid national gas markets under harmonised rules, which would be able to be integrated at regional level.

II. PROMOTING INVESTMENTS AND DEVELOPING ENERGY INFRASTRUCTURES

1. SUMMARY

The Task Force that prepared the Energy Community Strategy has been mandated to prepare the PECE list for the PHLG. Between January 25 and May 29 2013 the Task Force met four times, and assisted by a consultant selected and coordinated by the Secretariat, assessed and ranked the PECE candidates. In its last meeting on 29 May, it also agreed on the list of PECEs to be submitted to the PHLG in June.

In parallel, two rounds of public consultations were conducted, and an Open Day on PECEs was held in Belgrade in April, in order to give stakeholders the chance to express their views on the PECE candidates.

Regulatory Authorities were also consulted on the PECE list as well as possible regulatory incentive measures to accompany PECEs.

The PHLG in its meeting in June 2013 welcomed the PECE list and proposed it to the MC for its approval.

In parallel, the Secretariat worked with Western Balkans Investment Framework (WBIF) beneficiaries to prepare good applications for technical assistance for feasibility studies and environmental assessment studies for infrastructure investments; as a consequence, additional 4 energy infrastructure projects, and respectively 7 were

¹⁸ Specific arrangements may need to be found for Moldova and Ukraine.

approved for receiving Technical Assistance. Some of these are also on the PECE list. In addition, the sector study on biomass based heating in the Western Balkans was approved by the WBIF Steering Committee in June 2013. This is expected to identify bankable investments in efficient heating based on biomass.

Besides, the Secretariat organised the 5th and the 6th Investors' Advisory Panel meetings, in November 2012 and May 2013, in Vienna. These were opportunities to discuss issues related to investments (TPA exemptions, renewable energy and progress with the *acquis* adoption, PECE selection, gas to power initiative, new proposals under the WBIF funding, etc.) and identify key barriers and steps to remove these.

2. KEY FINDINGS AND UPCOMING STEPS

Projects from the PECE list, if adopted on Ministerial Council in October 2013, will have to be supported by the Contracting Parties. Therefore the Secretariat and the ECRB prepared a list of potential investment incentives as a comprehensive tool for National Regulatory Agencies. The adoption of the EU Regulation on Guidelines on Trans-European Energy Infrastructure should be anticipated.

III. RENEWABLE ENERGY SOURCES

1. SUMMARY

On 18 October 2012 the Ministerial Council extended the Energy Community *acquis*¹⁹ in the area of Renewable Energy by amending Article 20 of the Treaty establishing the Energy Community and adopting Directive 2009/28/EC.

The Ministerial Council Decision includes an agreement on binding 2020 RES targets for the Contracting Parties and defines the framework for the cooperation mechanisms between EU Member States and the Contracting Parties. According to the deadlines adapted for the Contracting Parties, by 30 June 2013 the Contracting Parties must submit National Renewable Energy Action Plans (NREAP), and by 1 January 2014, the Directive 2009/28/EC (as adapted) must be implemented in the national legislation of each Contracting Party. Only Serbia submitted the NREAP adopted by the Government before the required deadline, while the others have the document in various stages of preparation.

1. ACTIVITIES

During the first half of 2013, the Secretariat provided technical assistance to the Contracting Parties in their NREAP preparation and assisted some Contracting Parties with the proper transposition of the legal requirements in the national legislation. A capacity building workshop was organized for the Contracting Parties on 23-24 April 2013. Best practices and lessons learned from the experience of the EU Member States in the implementation of the Directive were presented and discussed by the participants during the two day event.

During 2013, the Secretariat was also involved in capacity building through TAIEX programs organized for Serbia and Albania. Further assistance is going to be provided to other Contracting Parties upon their agreement.

In February 2013, the Secretariat conducted a fact-finding mission on renewable energy and energy efficiency in Georgia in the context of the latter's application for membership in the Energy Community.

2. KEY FINDINGS AND UPCOMING STEPS

¹⁹ Please consult the 10th Ministerial Council meeting documents at:
http://www.energy-community.org/portal/page/portal/ENC_HOME/INST_AND_MEETINGS?event_reg.category=E12820

Special attention must be paid to the introduction of a sustainability regime for biofuels and bioliquids, as the Contracting Parties seem to be less prepared in understanding of the entire framework necessary to comply with the new requirements of the Directive. A dedicated workshop on this topic might be organised by the end of 2013.

Until the end of 2013, the Secretariat will work closely with the Contracting Parties to advance the transposition and the implementation in the national legislation of all the provisions of the Directive with the aim to create conducive investment environments and to remove the regulatory and administrative barriers for the development of renewable energy projects in the region.

IV. ENVIRONMENT AND CLIMATE CHANGE

1. SUMMARY

The work related to this part of the Work Programme was based on the explicit requirements of the *acquis* concerning environment, as envisaged by Article 16 of the Treaty, namely the transposition and implementation of the pieces of legislation listed therein.

2. ACTIVITIES

In the context of the annual Implementation Report, information on the implementation status of Directives 85/337/EEC, 1999/32/EC, as well as Article 4(2) of Directive 79/409/EEC, was prepared for the Ministerial Council at its meeting in October 2013.

As regards the implementation of Directive 1999/32/EC, enforcement action needed to be taken against several Contracting Parties. Opening Letters were sent in February 2013 in order to address the missing or incomplete transposition and/or implementation of the Directive's provisions.

The Secretariat managed preparation for a proper and timely implementation of Directive 2001/80/EC on the limitation of emissions of certain pollutants into the air from large combustion plants. The deadline for the implementation of Directive 2001/80/EC is 31 December 2017. Considering the volume of investments in the sector as well as the investment cycles the shortness of the remaining timeframe calls for immediate action.

The 4th and 5th meetings of the Environmental Task Force took place on 30 October 2012 (accompanied with a technical workshop) and 16 May 2013 in Vienna and the implementation of Directive 2001/80/EC was one of the main topics for discussion.

On 29 April 2013, the European Commission made a proposal on the implementation of Directive 2001/80/EC and on the implementation of Chapter III, Annex V and Article 72(3)-(4) of Directive 2010/75/EU, the successor of Directive 2001/80/EC. Negotiations on this topic are currently ongoing.

The main focus of the work of the Task Force will remain the preparation for the implementation of the Large Combustion Plants Directive in the Contracting Parties.

2.3. Follow-up activities in the field of climate change

The Secretariat continued to monitor the developments in the field of climate change in the Contracting Parties. This work was backed up by the conclusions and recommendations of a "Study on the potential for climate change combating in power generation in the Energy Community" which was finalised in March 2011. The findings of the Secretariat can be found in the Implementation Report 2011-2012.

3. KEY FINDINGS AND UPCOMING STEPS

The Secretariat will continue monitoring the implementation of the pieces of the environmental *acquis*. In particular, the Secretariat will bring forward the legal cases on the implementation of Directive 1999/32/EC, should the issues not be solved after the responses provided to the opening letters.

The Secretariat will continue with its efforts to achieve a compromise between the proposal of the European Commission and the Contracting Parties on the implementing rules regarding Directive 2001/80/EC and the introduction of the relevant measures of Directive 2010/75/EU.

V. ENERGY EFFICIENCY

1. SUMMARY

The work related to this part of the Work Programme was focused on the support in transposition and implementation of the energy efficiency *acquis* adopted by the Ministerial Council Decisions in December 2009,²⁰ September 2010²¹ and October 2011.²² The Energy Efficiency Task Force implemented its Work Programme for 2012, and continued cooperation with EU and other international organizations and the donors' community to support implementation and launching of new regional financing facilities for energy efficiency. In December 2012, the PHLG set up its successor, the Energy Efficiency Coordination Group for 2013-2014.

2. ACTIVITIES

As of October 2011, the following energy efficiency directives are part of the Energy Community *acquis*:

- Directive 2006/32/EC on energy end-use efficiency and energy services;
- Directive 2010/31/EU on the energy performance of buildings and
- Directive 2010/30/EU on the indication by labelling and standard product information of the consumption of energy and other resources by energy-related products, as well as, a set of implementing directives/delegated acts.

Within the period the Secretariat provided technical assistance to the Contracting Parties in the process of implementation of the three directives and to the Energy Efficiency Task Force (EETF) and Energy Efficiency Coordination Group (ECCG).

Task Force and Energy Efficiency Coordination Group

The Energy Efficiency Coordination Group's mandate was adopted by the PHLG in its meeting in March 2013. This Group builds upon the results achieved so far by the Task Force, and also provides a well structured platform for sharing experience in the implementation of the current energy efficiency *acquis*, as well as discussing the adoption of the new Energy Efficiency Directive 2012/27/EU. It also plays an important role as implementation partner of the regional technical assistance and investment programmes, especially the Regional Energy Efficiency Programme (REEP) with EBRD, the GIZ Open Regional Fund - Energy Efficiency, the WBIF/WB sectoral programme 'Biomass based heating in the Western Balkans'.

The Work Programme of the Coordination Group for 2013 and 2014 includes a comprehensive set of activities which will be implemented in cooperation with the Donors' community. It is worth mentioning that in 2012 Armenia and Georgia nominated representatives in the EECG as observer countries.

Preliminary reports on the progress with the implementation of the 1st NEEAPs were prepared by all "old" Contracting Parties (i.e. Western Balkans) in 2012, as part of the process of monitoring the implementation, with the technical support of GIZ Open Regional Fund - Energy Efficiency. GIZ will continue to provide valuable

²⁰ Ministerial Council Decision 2009/05/MC-EnC of 18 December 2009 on the implementation of certain Directives on Energy Efficiency

²¹ Ministerial Council Decision 2010/02/MC-EnC of 24 September 2010 amending Decision 2009/05/MC-EnC

²² Ministerial Council Decision D/2011/03/MC-EnC of 6 October 2011 on adopting certain Delegated Regulations on energy related products

assistance through the new regional project for the creation of integrated monitoring and verification platform for the implementation of NEEAPs.

The “old” Contracting Parties (Albania, Bosnia and Herzegovina, FYR of Macedonia, Kosovo*, Montenegro and Serbia) are obliged to prepare the 2nd NEEAP by 30 June 2013; within the Task Force, the Template for the 2nd NEEAP was adopted in October 2012; this is based on the model used by the EU Member States, adjusted for the Contracting Parties with the Croatian experience. A regional training workshop on the preparation of the 2nd NEEAP was organized in October 2012, to support Contracting Parties to learn from the rich EU experience, and to discuss and clarify open issues related to preparation of the 2nd NEEAP.

Another important ongoing project delivered by IFI Coordination Office as part of the EC funding assists Contracting Parties to identify suitable financing options for different energy efficiency measures planned in the NEEAPs. A series of country workshops on “Options for financing implementation of NEEAP” were organized by June 2013 (Montenegro, Bosnia and Herzegovina, Croatia, Serbia; Albania and FYR of Macedonia will follow in the second half of 2013), as well as a successful regional workshop for key stakeholders, including finance ministries, was organized in April 2013 in Vienna, with the cooperation of the Secretariat.

Working with donors’ Regional programmes

A number of regional investment projects are being developed in close cooperation with the Coordination Group and Secretariat as implementing partners. In June 2012, the Western Balkans Investment Framework (WBIF) approved EUR 20 million Regional Energy Efficiency Programme (REEP), managed by EBRD. Another EUR 75 million is available through EBRD credit facility WeBSEFF. It will support legislators and investors to eliminate market barriers to energy efficiency, and accelerate the take up of energy services. This will involve work across three domains selected in consultation with national stakeholders:

- i) Supporting NEEAP implementation through energy supply utility participation as well as energy tariff reform, energy metering and billing;
- ii) Assistance with transposition of the Energy Performance of Buildings Directive; and
- iii) Development of public procurement codes and guidelines.

In June 2013, the WBIF approved a Sector Study on Biomass-based Heating in the Western Balkans, in the Western Balkans Contracting Parties. Energy Community Secretariat has coordinated the application and the study will be implemented by the World Bank as lead IFI, in close cooperation with the Energy Community Secretariat, and will investigate the potential for energy efficient heating based on biomass. This is expected to identify the best opportunities for investments in energy efficient biomass heating.

The World Bank also supports sustainable energy efficiency developments in buildings through its new regional programme “Scaling up Energy Efficiency in Buildings in the Western Balkans”. A workshop organized in June 2013 presented and discussed the preliminary results of the World Bank supported study, proposed a framework for implementing scalable energy efficiency programs in buildings, key financing options and drafted a roadmap for scaling up energy efficiency in buildings.

GIZ – Open regional fund Energy Efficiency supports in 2013/2014, the development of an integrated monitoring and verification platform for the implementation of NEEAPs of the Western Balkans. This will be a very valuable tool for evaluating savings against targets and taking corrective actions.

Support to Ukraine and Moldova and Observer countries to develop legislative and institutional frameworks in line with Energy Community requirements is being provided in cooperation with INOGATE programme – component C “Sustainable Energy Component”. USAID support will continue to the EECG, mainly in the frame of the regional programme “Enhancing Capacity for Low Emission Development Strategies”.

3. KEY FINDINGS AND UPCOMING STEPS

The majority of Contracting Parties made progress in transposition of energy efficiency directives in the reporting period. The most advanced in this process are Croatia, the former Yugoslav Republic of Macedonia, Moldova, Montenegro, Serbia and Kosovo*. On the other side Albania, Bosnia and Herzegovina, and Ukraine prepared (draft) energy efficiency laws and by-laws without adopting these yet.

In order to sustain the progress in the Energy Community and to successfully follow the very dynamic trend in EU in the area of energy efficiency, regional cooperation is of great importance. The focus will be on implementation of the Work Programme of the Energy Efficiency Coordination Group for 2013 and 2014 which includes an overarching set of activities which will be implemented in cooperation with the Donors' community. This includes

the finalization and implementation of legislation, preparation of the 2nd National Energy Efficiency Action Plans, as well as the implementation of new investment programmes, especially those funded by WBIF/EBRD, USAID, World Bank etc. The Secretariat and the Coordination Group will also support the adoption by the Ministerial Council of a Recommendation on the implementation of the recent EU Directive 2012/27/EU on energy efficiency, as well as conduct further work on impact analysis, with the view of adopting a binding Decision in 2014 (if decided so by the Ministerial Council).

The Secretariat will continue to support the Contracting Parties in their implementation of the energy efficiency *acquis* and monitor the whole process. For the Contracting Parties that are lagging behind, the Secretariat will initiate dispute settlement proceedings for non-compliance with the Treaty and the respective directives.

VI. ENERGY STATISTICS

1. SUMMARY

With the adoption of the *acquis* on energy statistics, namely Regulation (EC) No 1099/2008 on energy statistics and Directive 2008/92 concerning a Community procedure to improve the transparency of gas and electricity prices charged to industrial end-users, in October 2012, the Contracting Parties committed to apply EU methodologies in collection, compilation and dissemination of their energy statistics data. The aim of this *acquis* is to ensure consistent, accurate and coherent energy data as a key tool for setting, monitoring and evaluation of effectiveness of energy policies in the Energy Community.

The deadline for implementation of the *acquis* on statistics is the end of 2013. The Decision adopting the *acquis* authorized the Secretariat to monitor implementation of the *acquis* in accordance with its mandate and to work with responsible institutions to face and overcome key challenges.

2. ACTIVITIES

The Permanent High Level Group on its 25th meeting invited each Contracting Party to appoint a national coordinator for the harmonization of energy statistics. The Secretariat is invited to coordinate the work with the Contracting Parties on their revised action plans with a view to a common approach to technical assistance. Technical assistance for implementation of the *acquis* on statistics is envisaged to take place from 2013 to the end of 2014 with the aim to improve working procedures, develop methodologies and to support conducting surveys together with domestic institutions where necessary.

Following the mandate given by the PHLG, in coordination with the national coordinators for implementation of the *acquis* on energy statistics nominated by the Contracting Parties and Observers by February 2013, the Secretariat developed the template for national institutions to present:

- A revised action plan and timeline for transposition and implementation of Regulation 1099 /2008 and Directive 2008/92 and definition of a common approach to technical assistance and
- Specification of needed technical assistance to implement statistical *acquis*.

After submission of the revised action plans and specification of needed assistance, the Secretariat prepared a summary of key activities to implement the *acquis* and necessary assistance for each activity. On the basis of action plans and identified needs, the Secretariat drafted the terms of reference for technical assistance, which was discussed with EUROSTAT and agreed by all Contracting Parties and the Observer Georgia.

The technical assistance shall be provided in two stages, the first being focused on improving the quality of annual statistics, particularly in terms of RES statistics and energy consumption, on monthly statistics, and on establishing and/or improving price statistics. The tender documents were published on 28 May 2013 and selection of a successful bidder is planned by end July 2013. The work schedules developed by Contracting Parties envisaged the services to begin in August 2013.

3. KEY FINDINGS AND UPCOMING STEPS

Technical assistance, particularly transfer of know-how, should enable Contracting Parties' institutions to implement key elements of the *acquis* and build their capacity to permanently improve quality of energy statistics. However, the available human, financial and technical resources in respective institutions of the Contracting Parties pose a serious challenge to establishing a reporting system in time, particularly as regards monthly statistics and conducting comprehensive and regular surveys.

As defined in the Decision 2012/02/MC-EnC, adaptations of certain provisions of the Regulation 1099/2008 and Directive 2008/92/EC must be considered.

In order to ensure consistency with the EU methodology, the Ministerial Council is invited to adopt Regulation (EC) 147/2013 amending Regulation 1099/2008.

VII. OIL DIMENSION

1. SUMMARY

The 10th Ministerial Council adopted the Decision on the implementation of Directive 2009/119/EC on imposing an obligation on Member States to maintain minimum stocks of crude oil and/or petroleum products²³. All Contracting Parties should be able to become compliant with this Directive by 2023 through the adoption of a phased programme of changes and investment.

2. ACTIVITIES

The main activity to report is the 4th Oil Forum held in November 2012 which, among others, urged all Contracting Parties to consider coordinated assistance from experienced oil stockholding experts in preparing their national legislation on Emergency Oil Stocks and Emergency Response System.

3. KEY FINDINGS AND UPCOMING STEPS

In order to implement Directive 2009/119/EC on time, a speedy preparation of updated roadmaps and setting out the concrete implementation steps for each Contracting Party will be required. This would allow the Contracting Parties to transpose the Directive into their national legislation by December 2014 at the latest.

The Secretariat's efforts during the first half of year 2013 on implementation of the Oil Stocks Directive were focused on starting the coordinated technical assistance mainly related to the drafting of legislation containing the general provisions of the Oil Stocks Directive, legislation on an Emergency Response System, preparation of an Oil Stockholding Strategy, definition of Action Plan content, establishment of the Central Stockholding Entity, drafting by-laws and regulations on monitoring and reporting of oil stocks, drafting bilateral intergovernmental agreements on stockholding, etc.

As upcoming steps, the Secretariat considers the conclusions of the 29th PHLG meeting²⁴ held in June 2013 where all Contracting Parties are encouraged to present their preferences regarding the topics and timing of the experts' visit as soon as possible but no later than the end of July 2013 and establishing their own working group to ensure consistency and progress in proposed technical assistance through 2013/2014.

VIII. COMPETITION

1. SUMMARY

²³ [Ministerial Council Decision - D/2012/03/MC-EnC-EnC](#)

²⁴ [PHLG 29 - Oil Stocks - Next Steps](#)

The Secretariat continuously monitored the implementation of the competition *acquis*, focusing not only on the substance of the laws on competition and State aid, but also on enforcement activities and case law in the energy sectors. The main focus of this year's activities was the establishment of the Energy Community Competition Network.

2. ACTIVITIES

In the area of *competition law*, the Contracting Parties are relatively well advanced in terms of transposition. With the adoption of new State aid Law by Moldova in 2012, in addition to the newly adopted State aid legislation in Bosnia and Herzegovina and Kosovo* in the previous couple of years, the transposition of State aid *acquis* also increased. The Secretariat monitored the effective implementation of the newly adopted laws and establishment of enforcement institutions. Closing the pending cases initiated by the Secretariat against Bosnia and Herzegovina and Kosovo* for lack of implementing the State aid *acquis* depends on the enforcement authorities becoming fully operational.

Since most of the national competition authorities do not apply competition law to the energy sectors to the extent needed to support liberalization of the energy sectors, the focus this year was thus on monitoring the implementation of competition law in the energy sectors. For this purpose, the special focus of this year's activities of the Secretariat was the launching of an Energy Community Competition Network. On 23 November 2012, a Joint Declaration on cooperation between the Competition Authorities and the Energy Community Secretariat on the establishment of an Energy Community Competition Network was signed in Vienna by all Contracting Parties, as well as Armenia, Austria and Georgia. The Network establishes a platform for promoting cooperation and discussion on competition law enforcement in the energy sectors. It also serves the purpose of exchanging experience and developing best practices with respect to competition policy, legislation and enforcement of the EU competition *acquis* within the Energy Community. The members of the Network met two times so far, in November 2012 and in June 2013. This network is also linked to the national regulatory authorities and their cooperation within the ECRB. In this respect, the June meeting in Athens was followed by a joint meeting with the ECRB.

Outside the annual meetings, the Secretariat launched an electronic platform for exchange of information and mutual consultation among the competition authorities in July 2013. This platform shall allow for continuous exchange of information among the members.

3. KEY FINDINGS AND UPCOMING STEPS

In the area of competition and State aid in the context of the Treaty, compliance of the institutional legislative framework of the Contracting Parties with Article 18 of the Treaty and its proper implementation will be targeted, including monitoring of the establishment of fully functioning enforcement authorities.

The Secretariat will provide support to the Energy Community Cooperation Network, coordinating its activities and meetings. In addition, the Secretariat will run the electronic platform for continuous exchange of information among the members of the Network.

IX. SOCIAL DIMENSION

1. SUMMARY

Energy sector reforms are complex processes that include restructuring, privatization, the introduction of competition and independent regulation. In parallel, these reforms are associated with social consequences that must be anticipated and faced by the Contracting Parties.

In this context some key activities were undertaken within the Energy Community both in 2012 and 2013.

2. ACTIVITIES

The Secretariat has organized two Social Fora in 2012/2013:

The 5th Social Forum held in Bečići in September 2012 reviewed the progress achieved in the implementation of the national Social Action Plans (SAPs). These originate from the commitments made in the form of the Memorandum of Understanding in 2007. The discussions focused on energy poverty and affordability. The Forum welcomed the Secretariat's invitation to the participants to work together towards outlining a Social Strategy by mid 2013.

The 10th Ministerial Council Meeting held in October 2012 invited the Secretariat, in cooperation with the social partners, to prepare an outline of the Social Strategy for discussion and eventual adoption at the Ministerial Council meeting in 2013.

In December 2012 a public consultation with all stakeholders on the outline of the Social Strategy was held. The Secretariat received eight responses.

The possible outline of the Social Strategy was also at the top of the agenda of the 6th Social Forum held in Belgrade in April 2013. In addition, energy poverty and consumer protection, as well as social dialogue were in focus during this Forum. Particularly the definition of "vulnerable customers" is a pressing issue. The Forum agreed that the outline of the Social Strategy should propose a regional definition of vulnerable customer. Upon this suggestion, the Secretariat proposed at the 29th PHLG held in June 2013 a regional definition of vulnerable customers. The 29th PHLG endorsed the Outline of the Social Strategy²⁵ and referred it for further approval to the Ministerial Council in October 2013.

3. KEY FINDINGS AND UPCOMING STEPS

The monitoring of the Social Action Plans (SAP) implementation shows that the progress is inadequate. There are still two Contracting Parties (Albania, Kosovo*) that have not approved the SAP at the Governmental level. Most of the Contracting Parties have not informed the Secretariat sufficiently on the progress of the envisaged activities in the social action plans. Often these activities are too general and lack clear energy focus. Real progress in social dialogue, including management of change, is limited. As another important topic, the issues of consumer protection and the needs of vulnerable customers should be considered social issues rather than energy policy issues and should hence be addressed in the context of broader social policy. Moreover, the Contracting Parties are encouraged to develop programmes aiming to promote energy efficiency and targeting low-income households.

The outline of the Social Strategy provides the basis of the upcoming steps for all Contracting Parties related to their positions towards the social dimension and to take further steps in line with the political obligations in the context of the Memorandum of Understanding on Social Issues.

X. OVERALL AND CROSS-CUTTING ACTIVITIES

1. SUMMARY

The key objective of these activities is to provide sufficient information as a background of relevant decisions by the competent Energy Community institutions as well as to facilitate the necessary steps by the Contracting Parties allowing adequate implementation of the Treaty provisions.

²⁵ [Outline of the Social Strategy of the Energy Community](#)

Besides, they target additional steps for promotion of competition along the Treaty requirements, raising more Energy Community awareness and securing necessary operational support for efficient performance of the tasks of all Energy Community institutions.

2. ACTIVITIES

The operational activities, related to the overall and cross-cutting tasks, had different scope, matching on the one side the concrete necessities, and on the other – the competences of the Secretariat and the other Energy Community institutions.

2.1. DISPUTE SETTLEMENT

The actual implementation of the *acquis* requirements and its monitoring is closely linked to the ongoing enforcement process. Within the discussed period, the number and the depth of the dispute settlement procedures indicate trends, which clearly specify that these procedures are considered by more stakeholders as an adequate format for enforcement. The following list of cases only comprises those where the Secretariat formally opened proceedings. The vast majority of cases within the framework of dispute settlement are discussed and often resolved already at an informal level.

Open dispute settlement cases upon complaints

a) Case ECS-3/08 was initiated with an Opening Letter sent by the Secretariat to the Republic of Serbia on 17 September 2010. Following Serbia's reply, the Secretariat issued a Reasoned Opinion on 7 October 2011. The case was initiated by a complaint from the operator of the electricity transmission system located in Kosovo*, KOSTT. In the Secretariat's assessment, the lack of compensation to KOSTT for costs incurred as a result of electricity transit on the network operated by it violates Article 3 of Regulation (EC) 1228/2003. Attempts to solve this case through bilateral negotiations between the two companies or the Governments involved have not succeeded so far.

b) On 26 February 2013, the Secretariat sent an Opening Letter in Cases ECS-6/13 to Ukraine. The Secretariat, takes the preliminary view that the Auction Rules adopted for the allocation of capacity on the country's electricity interconnectors with its Western neighbours and Moldova, as well as their appliance in practice by the system operator, fails to respect relevant Energy Community rules, namely Regulation (EC) 1228/2003 and the Congestion Management Guidelines.

Open dispute settlement cases on Secretariat's own motion

a) On 21 September 2010 and on 8 February 2011 the Secretariat sent Opening Letters to Bosnia and Herzegovina in Case ECS-1/10 and to Kosovo* in Case ECS-7/11 respectively. The Secretariat takes the preliminary view that Bosnia and Herzegovina and Kosovo* failed to fulfil their obligations under the Energy Community Treaty by not adopting legislation prohibiting State aid and enforcing that prohibition, as required by Articles 6 and 18 of the Treaty. In July 2011 Kosovo* and in February 2012 Bosnia and Herzegovina adopted State aid laws which follow the principles of the *acquis* on State aid and transposes Article 18(c) of the Treaty. However, fully functioning authorities enforcing this legislation are still not established and thus effective implementation of these new laws in practice is still pending.

b) On 20 January 2011, the Secretariat sent Opening Letters to Albania, Bosnia and Herzegovina, Croatia, former Yugoslav Republic of Macedonia, Montenegro and Serbia (Article 12 of the Rules of Procedure for Dispute Settlement) in Cases ECS-1–6/11. The Secretariat challenges that these six Contracting Parties have not yet adopted a common coordinated congestion management method and procedure for the allocation of capacity to the market, according to their obligation from a decision by the Ministerial Council of 2008. The transmission system operators of Albania, Bosnia and Herzegovina, Croatia, former Yugoslav Republic of Macedonia, Greece, Montenegro, Romania, Slovenia, Kosovo* and Turkey on 13 June 2012 signed an agreement for establishing a company tasked with preparing the establishment of a Coordinated Auction Office in South East Europe within 12 months. Until this Office is operational, the cases remain open.

c) On 7 October 2011, the Secretariat initiated dispute settlement proceedings against Bosnia and Herzegovina for noncompliance with several provisions of Directive 2003/55/EC and Regulation (EC) No 1775/2005 by an Opening Letter in Case ECS-8/11. Having taken into account the reply of the Government to the Opening Letter, the Secretariat sent a Reasoned Opinion on 24 January 2013, and submitted the case to the Ministerial Council for decision by way of a Reasoned Request on 21 May 2013.

d) On 11 February 2013, the Secretariat sent Opening Letters to Albania, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, Serbia and Ukraine in accordance with Article 12 of the Rules of Procedure for Dispute Settlement. The Secretariat comes to the preliminary conclusion that these five Contracting Parties have not yet transposed and implemented the requirements of Directive 1999/32/EC as required by Article 16 and Annex II of the Treaty. Directive 1999/32/EC aims to reduce emissions of SO₂ resulting from combustion of heavy fuel oils and gas oils.

2.2. COOPERATION OF ENERGY REGULATORS WITHIN ECRB

Recalling that under the Work Programme the key objective of the cooperation of energy regulators within the ECRB is to support the harmonized development of regulatory rules in the Energy Community, as well as to provide a platform for exchanging knowledge and developing common best practice solutions for implementing the Treaty in a harmonized way, concrete activities were undertaken within the indicated period.

Acknowledging the need to develop joint efforts on regulatory and ministerial level and recognizing that regulatory activities have to operate within the general energy policy framework, the ECRB has defined a general framework for its activities embedded in the Energy Community Work Programme 2011-2012. Starting from this, a more detailed definition of activities has been elaborated and published in the ECRB Work Programme 2011 and the ECRB Work Programme 2012²⁶.

According to its Work Programme the ECRB activities in 2012 and 2013 involved:

(1) Electricity

- Harmonized wholesale trade licensing
- Balancing
- Regulatory input to the development of a regionally coordinated capacity allocation
- Development of common market monitoring guidelines in cooperation with USAID
- Renewables

(2) Gas

- Regulatory Measures for Realization of the Energy Community Gas Ring
- Interoperability
- Balancing

(3) Customer issues

- Customer Protection
- Customer Supplier Switching
- Small Customers' Electricity Generation
- Grid Connection

Related to the ECRB activities, in 2012 the Secretariat has finalized studies related to:

- Customer Supplier Switching
- Electricity Balancing

The ECRB reported about its 2012 activities in detail in a separate annual report which is available on the Energy Community²⁷ website.

2.3. OTHER CROSS-CUTTING ACTIVITIES

²⁶ See www.ecrb.eu.

²⁷ www.energy-community.org.

The key objective of these activities is to provide sufficient information as a background of relevant decisions by the competent Energy Community institutions as well as to facilitate the necessary steps by the Contracting Parties allowing adequate implementation of the Treaty provisions.

The Energy Community Secretariat along its mandate continued to provide assistance to all institutions within the scope of their competences both on organizational and policy levels. Thus, this included *inter alia* organization of the relevant Energy Community events, coordination of the work of relevant working groups and task forces, where needed. Secretariat's internationally recruited experts (in 2013, 23 employees) stemming from 13 nationalities provide content input to the preparation of the meetings organized on behalf of the Energy Community. In 2012, some 60 meetings were organized²⁸. the overall budget foreseen for the organization of those meetings as well as for the refunding of the travel expenses to the delegates participating to the meetings amounted in 2012 to EUR 470.000 (in 2013: EUR 472.200). Some 1.800 participants took part throughout the year at the meetings organized. For financial and administrative reasons the majority of the meetings takes place in the premises of the Secretariat in Vienna, where conference facilities are provided for.

A substantial part of this work was the effective budget management (including also relevant procurement), which has been also reflected in the relevant audit report and report of the Budget Committee for the 10th Ministerial Council meeting²⁹.

One of the key tasks, performed regularly by the Secretariat, was presenting adequate information by the Secretariat via different types of reports along the Treaty requirements as well as on its own initiative. This reporting was done to the PHLG, the Fora, and the Budget Committee and is also a permanent part of the Ministerial Council agenda.

A key part of the information process was strongly linked to the factual support, provided to the Contracting Parties and Observers in the implementation of the Energy Community *acquis*, and to its concrete outcome. This support was provided via operational communication as well as missions and specific events. In 2012, more than 50 visits to the Contracting Parties were undertaken, depending on the objective needs – to some of those more often (like Ukraine) than to others (for example Croatia). The required funds for the travels of experts as provided in budget 2012 were used at the level of EUR 190.000.

The actual implementation of the *acquis* requirements and its monitoring is closely linked to the ongoing enforcement process. Within the discussed period, the number and the depth of the dispute settlement procedures indicate trends, which clearly specify that these procedures³⁰ are considered by more stakeholders as an adequate format for enforcement.

Another sphere of activities, which was further strengthened, is the promotion of the Energy Community achievements. This included different measures e.g. improvement of the website, active links with the other national and international institutions, with municipalities and their international organizations, with business representatives, as well as participation as guest speakers in other fora etc.

E. CONCLUSION

The current status of implementation of the Work Programme of the Energy Community indicates that up to September 2013 the envisaged tasks are being targeted as specified. There are no particular areas of concern related to the full implementation of the Work Programme.

²⁸ See Energy Community Event Calendar at http://www.energy-community.org/portal/page/portal/ENC_HOME/CALENDAR?pSelectedYear=2012

²⁹ Both documents are part of the documentation for the Ministerial Council meeting of 18.10.2012

³⁰ The current status of the dispute settlement procedures is subject to a separate report.