

Herbert Smith

EER - the European Energy Handbook 2012



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Introduction

I am delighted to introduce the 2012 edition of “EER - The European Energy Handbook” which will give an in-depth survey of current issues in the energy sector in 41 European jurisdictions.

In addition to the chapters authored by Herbert Smith lawyers, this year, we have contributions from Schoenherr (Albania, Austria, Bulgaria, Croatia, Czech Republic, Hungary, Montenegro, Romania, Serbia, Slovakia and Slovenia); Stibbe (Belgium, Luxembourg and the Netherlands); Karanovic & Nikolic (Bosnia and Herzegovina and the former Yugoslav Republic of Macedonia); Georgiades & Pelides (Cyprus), Kromann Reumert (Denmark); Raidia Leijns & Norcous (Estonia, Latvia and Lithuania); Roschier (Finland); Gleiss Lutz (Germany); Kyriakides Georgopoulos & Daniolos Issias (Greece); BBA// Legal (Iceland); Arthur Cox (Ireland); Studio Legale Legance (Italy); Linkage & Mind LLP (Kazakhstan); Refalo & Zammit Pace Advocates (Malta); Arntzen de Besche Advokatfirma AS (Norway); WKB Wierciński, Kwieciński, Baehr (Poland); Esquivel Advogados (Portugal); Advokatfirman Vinge (Sweden); Homburger (Switzerland); Hergüner Bilgen Özeke (Turkey); and Sayenko Kharenko (Ukraine).

The review includes a summary of each legal and regulatory energy framework and analyses issues such as industry structure, Third Party Access, the framework applying to use of system both at the transmission and distribution levels, market entry, nuclear power and cross border interconnection. Special attention is given to the status of transposition and implementation of the Third Energy Package and the Climate Change Package into national law.

Although most elements of the Third Energy Package and Climate Change Package have now entered into force, they are slow to find their way onto national statute books. The Commission has highlighted its intention to prioritise the implementation the applicable energy market legislation and has commenced numerous infringement proceedings in this respect.

Whilst these packages are not yet fully implemented in all EU member states, further European measures have been announced and or adopted: The European Commission has been busy over the last twelve months and has put forward key initiatives for the European energy market, including in relation to the safety of offshore oil and gas operations, the improved co-ordination of the EU’s external energy policy, and the strengthening of Europe’s energy networks.

As 2012 will also see the coming into force of the unbundling provisions of the Third Energy Package, we can expect further lively debate and changes in the European energy sector in the year ahead.

Silke Goldberg

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January 2012

Energy law in Bosnia and Herzegovina

Recent developments in the energy market in Bosnia and Herzegovina

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Bosnia and Herzegovina (“BH”) a complicated political structure with several layers of government within the overall federal government. The most important of these is the division of the country into two entities: the Republic of Srpska (“RS”) and the Federation of Bosnia and Herzegovina (“FBH”) (together the “Entities”). In addition, the Brcko District (“BD”), a specific unit of local government, was created in 2000.

The energy sector in BH reflects this constitutional organisation of the country. The regulatory powers in the sector are divided between central government and the Entities. BD does not have any regulatory authority for the energy sector. The purpose of this article is to provide an overview of the significant legal and commercial developments in the energy sector of BH.

Expected changes in the RES regulatory framework

The regulation of the RES sector in BH is divided between RS and FBH. Currently, the RES sector in the Entities is regulated by governmental decree. However, according to unofficial information, the RES regulatory framework will undergo significant changes in the next few months. Most importantly, RES incentives in both Entities are to be regulated by law, and not by governmental decree. This is a major step forward which is likely to be of great importance to investors and financiers.

The laws relating to RES are expected to offer similar incentives to those provided by the current regulations but with new rules regarding the eligibility of generators for such incentives. Specifically, all RES generators, regardless of their installed capacities, should be able to acquire the status of privileged generator, thus making them eligible for all incentives, with the exception of mandatory take-off at guaranteed prices.

The decision of which types of facilities and installed capacities will be eligible for mandatory take-off at guaranteed prices is likely to be regulated by governmental decree. The duration of mandatory take-off is expected to be set at 12 years.

Changes in the regulatory framework aimed at solving electricity problems in brcko

A lack of production capacity and absence of obligations for public suppliers in the Entities to supply electricity to consumers in BD has resulted in a number of problems relating to electricity in this part of BH. The first steps towards overcoming these long-standing problems, such as uncertainty of supply and high costs, were taken in September 2009. Amendments were made to state level legislation in order to impose an obligation on the Entities’ governments to ensure that the public suppliers provide electricity to consumers in BD on the same terms as consumers in the Entities. Furthermore, the regulatory powers of the State Electricity Regulatory Commission (“SERC”) were expanded to include the electricity sector in BD.

Between December 2010 and January 2011, the authorities of BH issued a set of regulations which aimed to overcome the long-standing problems relating to the supply of electricity in BD. The regulations include the following:

- the Law on Electricity of the Republic of Srpska was amended to require the Mixed Holding Electric Power Company of the Republic of Srpska (*Mjesoviti holding Elektroprivreda Republike Srpske*) (“EPC”) to provide at least 50% of BD’s annual electricity needs on the same terms as tariff buyers in the Republic of Srpska;

- the Government of the Republic of Srpska issued a Decision on the Manner and Terms for the Supply of Electricity to BD for the period of January to June 2011. Under this decision, EPRS is to deliver electricity to BD on the basis of a supply agreement for the period January – June 2011, with possibility of extension the supply period until the end of 2011. The EPRS and the public supplier of BD concluded the supply agreement in January 2011, with a supply period from January to December 2011;
- the SERC enacted the Rules on the Issuance of Temporary Licences for the Distribution and Supply of Electricity in BD and the Rules on the Method for Establishing Interim Tariffs for Unqualified Buyers of Electricity in BD (the “Interim Tariffs Rules”). In line with the Interim Tariff Rules, on 27 January 2011 the SERC approved the tariffs for the supply of electricity to tariff buyers of electricity in BD by the public supplier.

Privatisation and unbundling in the sector

Limited progress has been made in relation to the restructuring and privatisation of state-owned companies. Electricity and gas companies remain under state ownership. Moreover, companies have yet to complete the process of unbundling and restructuring. Progress in unbundling remains uneven across the entities. For example, RS completed the unbundling of generation from distribution and supply in 2008; however, distribution and supply activities are yet to be unbundled. In the FBH there has been no unbundling to date.

In the FBH, the state owned Electric Power Company of BH (*Elektroprivreda BH*) (“EPBH”) merged with seven coal mines in 2009. Modernisation and restructuring of these mines is expected to take place in the future. Unlike the situation in the privatisation of the oil derivative markets has been completed. This is primarily due to the entry of foreign investors to the market.

Proposed/potential investments in the electricity sector

There is significant potential for generating electricity in BH. Electricity generation capabilities are far from fully exploited and there are opportunities for new generation facilities which would increase electricity generation in BH. Below is a summary of the major projects where development is expected to commence in the near future:

- **Project:** Construction of a thermo power plant (“TPP”) with an installed capacity of 450MW and annual power generation of 2.756GWh
Location: on the existing location of TPP Tuzla
Value of the investment: €842 million
- **Project:** Construction of a TPP with an installed capacity of 300MW and an annual power generation of 1.755GWh
Location: on the existing location of TPP Kakanj
Value of the investment: €626 million

- **Project:** Construction of a TPP with an installed capacity of 300MW and an annual power generation of 1.755GWh
Location: Municipality Bugojno
Value of the investment: €681 million
- **Project:** Construction of a Combined Cycle Gas Turbine - 100MW Kakanj and an annual generation of 700GWh
Location: At the existing location of TPP Kakanj
Value of the investment: €681 million
- **Project:** Construction of a hydro power plant (“HPP”) with an installed capacity of 19.56MW and an annual power generation of 96.38GWh
Location: Zenica, Bosna River
Value of the investment: €4.29 million
- **Project:** Construction of a HPP with an installed capacity of 53.2MW and an annual power generation of 218.2GWh
Location: Foca-Ustikolina, Drina River
Value of the investment: €100 million
- **Project:** Construction of 2 HPPs with a total installed capacity of 11.88MW and an annual power generation of 30.12GWh
Location: Olovo, Biostica River
Value of the investment: €46.6 million
- **Project:** Construction of a HPP with an installed capacity of 12.0MW and an annual power generation of 56.8GWh
Location: Sanski Most, Sana River
Value of the investment: €23 million
- **Project:** Construction of a HPP with an installed capacity of 13.3MW and an annual power generation of 59.7GWh
Location: Zenica, Bosna River
Value of the investment: €33 million
- **Project:** Construction of SHPPs with an installed capacity of 26.4MW and an annual power generation of 103.0GWh
Location: Konjic, Neretvica river confluence
Value of the investment: €49.6 million
- **Project:** Construction of a wind power plant (“WPP”) with an installed capacity of 46MW and an annual power generation of 92.53GWh
Location: Mostar
Value of the investment: €48.4 million
- **Project:** Construction of a WPP with an installed capacity of 24.0MW and an annual power generation of 48.0GWh
Location: Mostar
Value of the investment: €35.7 million

- **Project:** Construction of a WPP with an installed capacity of 34MW
Location: area Plocno
Value of the investment: €44.2 million
- **Project:** Construction of 6 HPPs on the river with an installed capacity of 90MW
Location: municipalities Zepce, Zavidovici and Magalaj
Value of the investment: €150 million
- **Project:** Construction of a solar power plant with an installed capacity of 3MW
Location: municipality Bihac
Value of the investment: approximately €18 million

Overview of the legal and regulatory framework in Bosnia and Herzegovina

A. Electricity

A.1 Industry structure

Regulation of the energy sector in Bosnia and Herzegovina ("BH") is divided between the entities of the Republic of Srpska ("RS") and the Federation of Bosnia and Herzegovina¹ ("FBH") (together the "Entities") and the central government. The generation, supply and distribution of electricity in the entities, as well as incentives for green energy, fall within the jurisdiction of the Entities. The transmission and exportation of electricity, as well as the supply and distribution of electricity to customers in the Brcko District² falls within the jurisdiction of the central government.

Participants

National Regulatory Authorities

The State Electricity Regulatory Commission ("SERC") regulates the transmission of electricity across the entire territory of BH as well as the exportation of electricity. It has, amongst others, the following responsibilities:

- issuing and revoking licences for the transmission of electricity, the activities of the TSO, and the exportation of electricity;
- issuing criteria for the establishment of prices for connection to, and the use of, the transmission grid, the fee for the services of the TSO, and fees for other ancillary services; and
- approval of the transmission grid codes issued by the TSO.

In the RS, the key regulatory authority in the energy sector is the Regulatory Commission of the Republic of Srpska ("RCERS") which has responsibility for the electricity, oil and gas sectors. In the FBH, unlike in the RS, the Federal Electricity Regulatory Commission ("FERC") has sole authority in the electricity sector. The roles of the RCERS and the FERC in the electricity sector are largely the same, and include:

- regulating relationships between generators, distributors and customers in the electric power sector of the RS;
- issuing and revoking licences for the production, distribution, supply and trade in electric power;
- issuing criteria for the establishment of regulated prices (the supply of tariff buyers, the connection costs and the use of the distribution grid) and the approval of the process; and
- issuing general terms for the delivery of electric energy in the RS/FBH.

Public Companies

The Independent System Operator ("ISO") is in charge of operating the transmission grid, providing ancillary

services, and coordinating cross-border transmission capacities with the operators of transmission grids in neighbouring countries. The Electric Transmission Company of Bosnia and Herzegovina ("ETC") is in charge of the management, maintenance and improvement of the transmission grid. Both ISO and ETC are joint stock companies, owned by the RS and the FBH.

The Mixed Holding Electric Power Company of the Republic of Srpska (*Mjesoviti holding Elektroprivreda Republike Srpske*) ("EPC"), a fully state owned joint stock company, is in charge of the production, distribution and supply of tariff buyers in the RS. The distribution of electricity, management of the distribution system, and supply of tariff buyers are conducted through five subsidiaries of EPC.³

In the FBH, the production, distribution, management of the distribution system, and the supply of tariff buyers is performed by the Electric Power Company of BH (*Elektroprivreda BH*) ("EPBH") and the Electric Power Company of Croatian Community of Herceg Bosnia (*Elektroprivreda Hrvatske zajednice Herceg Bosne*) ("EBCUHB"). The Government of the FBH is a major shareholder in both companies.⁴

Private Sector

There are a number of electricity producing companies registered in RS and FBH (eg Eling MHE, Intrade-Energija), as well as companies which internally trade and export electricity (eg Energy Financing Team ("EFT"), Rudnap). EFT holds the concession for the construction of Thermo Power Plant "Stanari" and the concession for the hydro power plant Ulog on Neretva River.

Regulatory Framework

In accordance with the jurisdictional division in BH, the legal regulatory framework in the electric energy sector is governed by laws and regulations issued at both the level of central government and the Entities. Such laws and regulations include the following:

- at a central government level, the Law on the Transmission of Electric Power, the Regulator and the System Operator together govern the operation of the transmission grid in BH;
- in the RS, the Energy Law sets out the general legal framework for energy activities in all energy sectors and the general principles and goals for energy efficiency and the promotion of energy production from renewable sources. Furthermore, the Law on Electric Energy of the RS governs the terms and conditions for the production, supply and distribution of electric energy, including the construction of energy facilities, and the licensing system for the performance of energy activities in the electric energy sector; and

- in the FBH, the Law on Electric Energy of the FBH sets out the general legal and institutional framework for the production, supply and distribution of electric energy in the FBH, and the construction, use and maintenance of electric energy facilities.

In addition to the above, governments, the independent regulatory agencies referred to above and system operators in relevant jurisdictions have issued numerous regulations to regulate the details of the various aspects of electric energy activities. In addition to the specific energy regulations, laws and regulations governing spatial planning, concessions, environmental protection and water management significantly impact upon the electricity sector and the construction and operation of generation facilities.

Liberalisation

The electricity market in BH is currently only partially liberalised. There are two categories of final electricity consumers in the BH: qualified buyers and tariff buyers. Tariff buyers may purchase electricity only from a public supplier at regulated prices. Qualified buyers are allowed to purchase electricity from any supplier at market prices.

As of 1 January 2008 all consumers, with the exception of households, have qualified buyer status. All consumers of electricity (including households) will have qualified buyer status starting from 1 January 2015. Even though all industrial consumers currently have qualified buyer status, regulations provide for a transitional period until 1 January 2012 in which entities eligible for the status of qualified buyer may opt to be supplied by tariff buyer suppliers at regulated prices. Given that regulated prices of electricity in BH are significantly lower than market prices, the vast majority of industrial consumers have elected to retain the status of tariff buyer.

One of the key aspects of the liberalisation of energy markets under the Energy Community Treaty (“**EC Treaty**”) is efficient and non-discriminatory access to grids for the transmission and distribution of energy. This should be ensured, amongst other things, by the unbundling of DSOs and TSOs. Different public enterprises have the legally separate functions of transmitting and distributing electric energy. Generation and supply/distribution are legally separate in the RS, but not in the FBH. Nonetheless, the supply and distribution of electricity are operated together by state owned entities in both the RS and in the FBH.

Finally, BH has given exclusive jurisdiction over deciding the tariff criteria used to regulate prices to independent regulatory bodies including the SERC at the level of central government, RESRC in the RS, and FERC in the FBH. The tariff criteria issued by these bodies generally comply with the requirements imposed by the relevant European directives.

Even though there has been certain progress in implementation of the Second Energy Package (as required by the EC Treaty), BH has not yet implemented the Second Electricity Directive.

A.2 Electricity trading

Trade in the market

BH does not have an organised, institutionalised electricity market. On the contrary, electricity is traded on a bilateral wholesale market using bilateral agreements. Participants in the wholesale electricity market are generators, traders, suppliers and importers/exporters.

All participants have to comply with the Market Rules, issued by the ISO. Market Rules define the rights and obligations of market participants, the scope of their activities on the wholesale market, and the type and scope of activities on the balancing market of electricity.

Electricity trading within BH may only be conducted by companies incorporated in BH and supplied with a Licence for the Sale and Trade in electricity (“Trade Licence”). Trade Licences are issued by the appropriate Entity’s NRA⁵ for a period of five years and are subject to numerous requirements. A Trade Licence issued by the NRA in one Entity is recognised for the purposes of trade in the other Entity.⁶

Only companies which have a licence for international trade in electricity (“Export Licence”) issued by the SERC and which have won capacities in auctions organised by the ISO may import/export electricity. Companies will only be granted an Export Licence if they are incorporated in BH and have previously been given a Trade Licence or licence for the generation of electricity.

Balancing market

The balancing model in BH is based on balance responsible parties acting on a common balancing market operated by the ISO. Under the Market Rules, a Balance Responsible Party is a market participant that takes financial responsibility for the net imbalance (balancing generation, consumption and exchange) or for the net imbalance of a group of market participants. Currently, the only Balance Responsible Parties are public companies (EPC, EPBH and EPCCHB). Balancing energy is provided by these three public companies. According to the Grid Code there is an obligation for power generators to provide balancing energy. Ancillary service and balancing energy providers are appointed on an annual basis by the regulator.

A.3 Third party access regime

Connection and access to the distribution grid is regulated by the Entities, whilst connection and access to the transmission system is regulated at the level of central government. Connection and access to the distribution/transmission systems is subject to appropriate fees, determined on the basis of tariff criteria.

Distribution grid

Relevant regulations in both Entities prescribe similar key principles in this area, most importantly the principle of non-discriminatory access to the distribution grid, which may be denied only due to lack of capacity and/or for technical reasons.

RS

Access to the grid is obtained on the basis of the Agreement on Access to the Grid. The first step toward grid access is for a generator to obtain the Electricity Consent for connection to the grid which outlines the location and technical conditions for the connection. Then, the generator should conclude the Agreement on Connection with the DSO, which governs, among other things, payment of the costs of connection, title over the connection facilities, and the deadline for construction and connection, etc. Finally, the generator has to conclude the Agreement on Access with the DSO, which governs, among other things, payment of the fee for use of the distribution grid.

FBH

Investors have to obtain preliminary connection consent. The preliminary connection consent which is valid for one year and may be extended in the event that construction lasts for a longer period. The generators are finally connected to the grid on the basis of the Agreement on Connection and Use of the Grid with the relevant DSO and subject to the conditions established by the consent for the connection to the distribution network ("**Connection Consent**"). The Connection Consent is valid for a maximum of three years.

Transmission grid

The procedure for connection to the transmission grid is comprised of the following:

- issuing the conditions for connection to the transmission grid by the ETC, before the start of construction;
- concluding the Agreement on Connection to the Grid between the generator and the ETC after the issuance of the conditions for connection to the grid; and
- the ETC granting connection to the grid after the finalisation of construction. The approval will be issued only if all conditions set out in the Agreement on Connection to the Grid are fulfilled.

The regulations provide general principles on which access to the grid should be based rather than detailed rules. All entities involved in the generation of electricity are entitled to access the transmission grid on a non-discriminatory basis. Accordingly, a request for use of the transmission grid may be refused only if access to the grid is not allowed for technical reasons.

A.4 Market entry (supply and generation)

Regulation of the supply and generation of electricity is within the jurisdiction of the Entities. The supply and generation of electricity are both regulated activities, ie, they may be conducted upon the issuance of an appropriate licence by the relevant NRA: RCERS in the RS and FERC in the FBH. Licences to conduct activities in the electricity sector, including the Generation Licence and Supply Licence, may be granted only to entities incorporated in BH. In addition, licences will be issued only if the Entities applying for them fulfil the prescribed requirements. These requirements primarily relate to:

- the technical characteristics of the electricity facilities;
- the qualifications of staff; and
- the financial position of the applicant.

The issuance of a licence is subject to payment of the appropriate regulatory fees. The Generation Licence is issued for a period of 30 years, and the Supply Licence is issued for a period of five years. Once supplied with the licence, the holder must continue to meet the requirements for its issuance throughout the licence periods. In addition to the requirements set out by the specific energy regulations, entry to the electricity market, in particular as a generator, is subject to additional requirements imposed by regulations governing the areas of concessions, spatial planning, water management and environmental protection.

A.5 Public service obligations and smart metering**Public Services**

Public services in the electricity sector include the transmission and distribution of electricity, generating electricity for tariff buyers and supplying tariff buyers. Public services are available to all customers on a non-discriminatory basis at prices established in accordance with tariff criteria approved by the relevant NRA.

Transmission of electricity and operation of the transmission system are regulated at the central government level. They are performed by the ETC and the ISO. Other public services (distribution, generation for tariff buyers and supply of tariff buyers) are regulated at the Entities level. In the RS, public services are provided by public companies (companies where the Government has a 50% or more direct or indirect shareholding) and other companies will be required to perform public services if required to by the concession agreement concluded with the Government. In the FBH, however, public services must be performed by all licence holders if their FERC issued licence so provides.

Smart metering

Currently, all users of the transmission grid are required to install meters to record their consumption of active and reactive energy every 15 minutes and such values must be outlined on the display. Meters of active energy have to comply with the standards IEC 60687 and 61036, while meters of the reactive energy have to comply with the standard IEC 6128. Meters for users of the distribution grid must comply with the appropriate IEC or EN standards. There are no smart metering initiatives at the moment in BH.

A.6 Cross-border interconnectors

BH has cross-border interconnectors with Serbia and Croatia. Only entities which hold an Export Licence may engage in the export or import of electricity. Moreover, electricity may only be effectively exported or imported by holders of an Export Licence who have obtained cross-border transmission capacities ("**CBTC**"). The CBTCs are awarded in public auctions conducted

by the TSO on an annual, monthly, weekly and daily basis in accordance with the rules set out in the SERC's Rulebook for the Allocation of Rights to Use Cross-border Transmission Capacities.

B. Gas

B.1 Industry structure

BH does not produce its own natural gas. Accordingly, all gas for BH is transported from the Russian Federation via the Ukraine, Hungary and Serbia, in the direction of Beregovo – Horgoš – Zvornik. The gas infrastructure in BH is not very developed and includes only 191km of gas pipelines. There are only two urban areas with a gas supply network. Currently, there is no gas infrastructure developed in BD.

Participants

National Regulatory Authorities

As outlined above, the key regulatory authority in the energy sector of the RS is the RCERS, which is responsible for the electricity, oil and gas sectors. In the gas sector, the role of the RCERS includes:

- the determination of the methodology for the calculation of regulated prices in the sector (transport, distribution, storage, supply of tariff consumers, connection to the infrastructure) and approval of prices calculated on the appropriate basis;
- the issuance of licences in the natural gas sector;
- the establishment of the minimum annual consumption of natural gas to be granted eligible customer status; and
- the approval of the operational rules of the system operator and issuance of general conditions for the supply of natural gas.

Unlike the RS, where regulatory powers are entrusted to an independent authority, the main regulator of the gas sector within the FBH is the Ministry of Mining and Energy which is responsible for the following:

- issuing licences for performance of activities in the gas sector;
- monitoring the relationship between supply and demand on the gas;
- planning and development of additional capacities in gas sector; and
- proposing measures in crisis situations.

These roles will be transferred to the FBH Agency once it is established. According to unofficial information, this agency is unlikely to be established in the near future.

Public Companies

The major importer of gas to BH is Energoinvest d.d.⁷ ("Energoinvest"). Energoinvest distributes gas to BH GAS and the joint stock company "Gas Promet" Srpsko Sarajevo. BH GAS is a limited liability company incorporated in the FBH by the Government of the FBH. The core activities of BH GAS are the importation, distribution and sale of natural gas to large customers

in BH, as well as the design and development of gas pipelines. BH GAS also acts as TSO and is in charge of the operation, maintenance and development of transport systems and connection of BH gas infrastructure with those of neighbouring countries. "Gas Promet" Srpsko Sarajevo (legal successor of ODP "Gas Transport" Srpsko Sarajevo), is a company which was established by the RS Government. Core activities of Gas Promet include importing natural gas, transporting natural gas across BH and the trade and supply of natural gas.

Private Sector

A major player in the private sector is "Sarajevo gas a.d", a gas supplier incorporated in Eastern Sarajevo, which is listed on the Banja Luka Stock Exchange.

Regulatory Framework

The two Entities have distinct legislative frameworks. The RS has recently adopted the Law on Gas. The FBH does not have a specific law but has issued a Decree on the Organisation and Regulation of the Gas Sector Economy.⁸ Regulations enacted by the entities include the following:

- in the RS, the Law on Gas governs the terms and conditions for the supply, transportation, and distribution of natural gas, including the construction of gas facilities, and the licensing system for the performance of gas activities. Moreover, the General Conditions for the Supply of Natural Gas regulate the supply of natural gas to customers, the rights and obligations of suppliers, and the conditions under which a discontinued or limited supply of natural gas can be applied to certain customers;
- in the FBH, the Decree on the Organisation and Regulation of the Gas Sector Economy sets out the general legal and institutional framework for the supply and distribution of natural gas.

Liberalisation

In the RS there are two types of consumers: qualified and tariff consumers. A qualified consumer is a natural gas consumer that has the right to choose from whom it will buy gas. Qualified consumers buy natural gas on the free market. All natural gas consumers, save for households, have had qualified consumer status since 1 January 2008. All natural gas consumers within the household category will have the status of qualified consumers from 1 January 2015.

In the FBH there are three types of consumers, as follows:

- a privileged consumer is either (i) a consumer which uses gas for the production of electricity, regardless of the annual consumption, or (ii) a final consumer that consumed more than 150 million m³ of gas in the previous year;
- a tariff consumer is any consumer that does not have the status of a privileged consumer and is supplied with gas at regulated prices; and
- a protected consumer is a consumer that is entitled to a sufficient amount of gas in the event of a partial disruption to gas supply or in the event of extremely low weather temperatures.

BH has not yet implemented the Second Gas Directive.

B.2 Gas trading

In the RS, gas may be traded only by entities which hold a Trade and Supply Licence issued by the RCERS. The licence is issued for a period of five years with the possibility of renewal for an additional five years. This licence may be issued only to an entity incorporated in the RS. A significant number of documents are required to be submitted with a licence request and the RCERS is authorised to request further documents it believes to be important, even though such documents are not explicitly required by the regulations.

In the FBH, entities engaging in the trade and supply of natural gas must hold a supply licence issued by the Ministry of Energy. This licence may only be issued to entities incorporated in the FBH which fulfil requirements in relation to technical capacity, the employment of qualified staff and financial capability to conduct these activities.

B.3 Third party access regime to gas transportation networks

Relevant regulations in both Entities contain similar key principles, most importantly the principle of non-discriminatory access to the gas transportation networks at regulated prices established in line with appropriate methodologies. Generally, the transport system operator may deny third party access to the transportation systems only in the case of lack of capacity and/or for other technical reasons.

In addition to these general rules relating to the denial of access to the transportation system, the FBH regulations provide for the exemption of transmission gas infrastructure from the non-discriminatory access rules in certain circumstances. Such exemptions are permitted in the following situations:

- exemption for “take-or-pay” agreements: if the entity is facing, or expects to face, financial difficulties relating to obligations assumed under “take-or-pay” agreements it may file a request for a temporary exemption from the access rules; and
- exemption for new infrastructure: new infrastructure (inter-connection LNGs and gas storages) of significant value and significant revitalisation of existing infrastructure may be exempted from the access rules, subject to the fulfilment of numerous requirements. These requirements include, *inter alia*, that the particular investment increases competition in the sector, the investment risk is so significant that the investment would not be approved without exemption, and that users of new infrastructure pay for use of the infrastructure. Approval for an exemption is granted by the Ministry of Energy.

B.4 LNG and gas storage

There are no LNG terminals or gas storage facilities in BH.

B.5 Market entry

Activities in the gas market may only be conducted by entities holding an appropriate licence issued by the RCERS in the RS or the Ministry of Energy in the FBH. Licences in the gas sector may be awarded only to companies incorporated in one of the Entities and registered as performing the appropriate activity. In order to be supplied with the appropriate licence, the applicant has to fulfil numerous requirements imposed in relation to the technical characteristics of the facilities, the qualification of staff engaged and its financial position. In addition to the requirements set by the specific energy regulations, entry to the gas market is subject to numerous requirements imposed by laws and regulations governing, in particular, concessions, spatial planning and environmental protection.

B.6 Public service obligations

In the RS, transporting natural gas, the management of the transportation system of natural gas, distribution and operation of the distribution system of natural gas, and the supply of natural gas to tariff consumers are required to be performed as public services by licence holders. In the FBH, public services in the gas sector include the supply, transportation, distribution and storage of gas as well as the operation of the LNG facilities.

B.7 Cross-border interconnectors

The only cross border interconnection in the gas sector is with Serbia. According to unofficial information, there are plans for the development of an interconnection with Croatia. However, there is no information as to when the development of this interconnection is expected to commence.

C. Climate change and sustainability

C.1 Climate change initiatives

Climate change and sustainability are directly or indirectly addressed through environmental law and regulations. Regulatory powers in the area of environmental protection in BH are divided between the Entities and the BD. Additionally, in the FBH, cantons have their own environmental protection legislation.

Accordingly, the regulatory framework governing environmental protection in BH consists of the environmental laws at the levels of the Entities and cantons, including the following main environmental laws:

- in the RS: the main law governing environmental protection in the RS is the RS Environmental Protection Law. In addition, there are other laws which govern certain specific areas of environmental protection such as the Law on the Protection of Nature and the Law on the Environmental Fund. These laws are supplemented by numerous bylaws issued by the RS Government for implementation; and

- in the FBH: the main law governing environmental protection on the territory of the FBH is the Law on Environmental Protection of the FBH. In addition, there are laws governing specific areas of environmental protection, very similar to those enacted in the RS, including the Law on Protection of Nature, the Law on Protection of Air and the Law on Environmental Fund.

Being a non-Annex 1 member of the United Nations Framework Convention on Climate Change (“UNFCCC”), BH is eligible to implement the Clean Development Mechanism (“CDM”). However, given that BH has not yet established the necessary authority⁹ for the implementation of the CDM, such eligibility for CDM is yet to have a positive effect in practice.

According to the 2010 Progress Report of the European Commission “in the field of climate change, the plan to phase out ozone-depleting substances (“ODS”) is being implemented. Licences, annual quotas and permits for importing and exporting ODS are being issued in accordance with the existing Entity and State-level legislation that are implementing the Montreal Protocol. Consequently, Bosnia and Herzegovina phased out the use of ODS and banned imports, except hydro-chlorofluorocarbons. The country associated itself with the Copenhagen Accord”.¹⁰

C.2 Emission trading

Being a non-Annex I country, BH has not implemented the emission trading mechanism.

C.3 Carbon capture and storage

BH has not implemented a carbon capture and storage mechanism.

C.4 Renewable energy

Regulation of the RES sector in BH is divided between the Entities.

RS

The RES regulatory framework in the RS is far from complete. General principles established by the Energy Law are further elaborated in the RES Decree (issued in March 2011). The RES Decree establishes the incentives available to generators of electricity from RES and efficient cogenerations (“CHP”), including the mandatory take-off of electricity generated in eligible facilities at guaranteed prices, priority of access to the grid, and favourable treatment regarding connection. Under the RES Decree, the target for production of energy from RES by 2020 is set at 35.98% of the total consumption of energy.

The incentives operator is a new entity, established by the RES Decree, in charge, inter alia, of the conclusion of PPAs with eligible generators. The guaranteed price level should be established on the basis of the guaranteed purchase price. The RESRS prepared the draft proposal of the rulebook and decisions which were published for

public debate in spring 2011. However, the rulebook has not yet been issued. According to unofficial information, this is due to anticipated regulatory changes that are expected to affect the RES sector.

The RES Decree sets the limit for the mandatory take-off of electricity at the feed-in tariff so that the RES Operator will only conclude PPAs with eligible producers until the value of installed capacities and quantity of electricity reaches the targeted thresholds. The thresholds are established separately for each type of facility for every year until 2020 in separate schedules to the RES Decree.

Even though the framework provides for various incentives, due to incompleteness of the RES regulatory and institutional framework, eligible generators cannot effectively use the incentives. Under the Energy Law, generators from RES and CHP may be granted certificates of origin (“Green Certificates”) for the electricity produced in their facilities. However, a key requirement is that the facility is certified as “environmentally friendly” in line with the regulations. The granting of Green Certificates is not regulated in detail by any other law or regulation.

According to unofficial information, the RES regulatory framework is to undergo significant changes in the next few months. Most importantly, RES incentives are to be regulated by law and not by governmental decree. This is a major step forward which is likely to be of great importance to investors and financiers.

FBH

The RES sector in the FBH is regulated by the 2010 FBH RES Decree (amended in 2011). Electricity generators from RES and CHP are granted the right to mandatory take-off the entire quantity of electricity produced under 12-year PPAs and priority access to the grid. Under the FBH RES Decree, the Government is to issue an action plan which will set out the minimum targets for energy produced from RES and CHP until 2020. By 2012, the minimum amount of electricity produced from RES is to be 5% of total consumption and for electricity produced from CHP the minimum target is 0.5% of total consumption.

The key body in this sector is the RES Operator. The most important responsibility of the RES Operator is the purchase of electricity produced from RES and CHP at the fixed prices guaranteed under the Decree. Qualified generators may be granted Green Certificates, confirming that the electric energy is produced from RES or CHP. The Green Certificates will be issued by the RES Operator subject to conditions and procedures to be prescribed by the RES Operator. However, these rules have not yet been issued. According to the Progress Report prepared by the European Commission for 2010¹¹, BH has not fulfilled its commitments under the EC Treaty regarding the promotion of renewable energy.

C.5 Biofuel

In the RS, the target for use of biofuels in transport is set at 10% by 2020. Each supplier of fuel in the RS

must ensure that they reach the targets set by the RES Decree for each year until 2020. In the FBH, the target for use of biofuels in transport by 2020 should be set by the action plan to be issued in accordance with the FBH RES Decree. This action plan has not yet been prepared. Regulations do not provide for any mechanism which would support an increase in the use of biofuels. According to the Progress Report prepared by the European Commission for 2010¹², BH has not fulfilled its commitments made under the Energy Community Treaty regarding the promotion of fuels.

C.6 Energy efficiency

The efficient use of energy is a matter of public interest in the RS, which should contribute to the rational use of energy resources and the continuous effort to decrease negative environmental impact. The RS Ministry of Energy is responsible for the improvement of energy efficiency through the following measures:

- establishing favourable terms for investments which result in an increase in energy efficiency;
- facilitating cooperation between consumers, generators and suppliers of energy;
- implementing new technologies in the public sector, industry, traffic and construction which should lead to a decrease in energy consumption;

- increasing public awareness about the importance of efficient energy use;
- regulatory activity, and
- international cooperation.

In the FBH, the efficient use of energy is required by specific provisions of several laws and regulations.

D. Nuclear energy

BH has ratified three international conventions on nuclear safety (the Convention on Nuclear Safety, the Convention on Early Notification of a Nuclear Accident and the Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency). However, the existing regulations are not in line with the *acquis communautaire*.

Currently, there is a moratorium on the construction of nuclear power plants in BH. The moratorium was established in 1989 by the Law on Ban of Construction of Nuclear Power Plants in the Social Federal Republic of Yugoslavia. After the disintegration of the former Yugoslavia, BH inherited this moratorium which remains effective and no nuclear energy is generated in BH.

footnotes

1. Please note that the FBH Government announced that it plans to completely change the legal framework in energy sector in the FBH by June 2012 (including the adoption of the new framework energy law, new laws on electric energy, renewable sources of energy, energy efficiency, oil and gas). At the moment of finalization of this article, all relevant drafts were not available and have still not been forwarded to the FBH Parliament for the adoption procedure, ie, are still subject to change and therefore have not been elaborated in this article.
2. Brcko District (“BD”) is not a separate entity like RS or FBH, but has a special status and its own legislation and functions under a decentralised system of local government. Unlike the Entities, BD does not have regulatory powers in the energy sector and, accordingly, does not have a separate regulatory authority. Regulation of certain activities in the electricity sector, such as supply to tariff buyers and distribution of electricity is the responsibility of the State Electricity Regulatory Commission.
3. Subsidiaries of EPC are: Elektro distribucija Pale, Elektrohercegovina, Elektro Doboј, Elektro Krajina and Elektro Bijeljina. According to official information from the Central Registry of Securities, EPC has a majority shareholding of some 65% in each of the five distribution companies.
4. The Government holds 90% shares as per information available at the official web site of Registry of Securities of FBH <http://www.rvp.ba>
5. Jurisdiction of a specific NRA for the issuance of Trade Licences depends on the place of incorporation of the trader.
6. Licences issued by the RESRC are recognised in the FBH and vice versa.
7. The Government holds 67% of shares as per information available from the official website of Securities Registry of FBH <http://www.rvp.ba>. The Government announced its intention to privatise this company in the next two years.
8. The Decree on the Organisation and Regulation of Gas Sector Economy (Official Gazette of the FBH no. 83/07)
9. According to the information available at official UFFC website <http://cdm.unfccc.int/CDMMaps/displayDNAsMap>
10. <http://www.delbih.ec.europa.eu/files/docs/2010progress2.pdf>
11. <http://www.delbih.ec.europa.eu/files/docs/2010progress2.pdf>
12. <http://www.delbih.ec.europa.eu/files/docs/2010progress2.pdf>

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