

THE EU ENERGY POLICY FROM THE  
PERSPECTIVE OF AN EU CANDIDATE COUNTRY:  
THE REPUBLIC OF SERBIA



MARIJA VLAJKOVIC

**Abstract**

The EU energy policy framework, apart from being one of the most complex policy and regulatory endeavours under the EU competences also has a wide outreach outside the territory of the Union. The reason behind this wide territorial scope of implementation is the Union external action, mostly that under the enlargement policy. By using a case-study approach, we focus on the external component of the energy policy framework from the perspective of the Republic of Serbia, a candidate country for Union membership and a member to the Energy Community, in order to demonstrate the implications these policy and regulatory measures have on the reform processes of states outside the territorial scope of their validity and implementation. Conversely, by applying longitudinal analysis together with a comparative method we strive to examine the effect the enlargement policy has on the development of the EU energy policy considering that its effectiveness, as a policy mechanism regulating network infrastructures, is highly dependent on partnerships with immediate neighbouring countries and with the countries where primary energy sources are located. Finally, we aim to provide an overview of the EU energy policy evolution and a multi-sectorial outline of the said policy's impact in the Republic of Serbia, putting an accent on the current harmonization challenges.

**Keywords:** EU energy policy, Energy Law, the Energy Community, Serbia

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Marija Vljakovic (2025) 'The EU Energy Policy From the Perspective of an EU Candidate Country: The Republic of Serbia'. In: János Ede Szilágyi and György Marinkás (eds.) *Maastricht 30: A Central European Perspective*, pp. 585–613. Miskolc–Budapest, Central European Academic Publishing.

[https://doi.org/10.54237/profnet.2025.jeszgymmcep\\_23](https://doi.org/10.54237/profnet.2025.jeszgymmcep_23)

## 1. Introduction

One of the main challenges the EU has been trying to address, especially in the last decade, is the fact that almost all Member States, although not in equal measure, are highly dependent on primary energy sources located outside the Union's territory.<sup>1</sup> Needless to say, some of the states with the highest reserves of primary energy sources have not always been on friendly terms with the Union, its Member States and external partners, which renders the entire contextual setup more complex. Hence, the primary focus of all EU policy mechanisms is mostly on the reduction of such dependence, through the promotion of energy efficiency and the use of energy generated from renewable sources. Without an intention to minimise the contribution achieved through the implementation of these two approaches to solving the issue of energy dependence, the external, geopolitical, component of the Union's energy sector is still a strong factor in shaping other policies and regulatory endeavours. The dominant approach in literature reducing the complexity of the geopolitical aspect to solely territorial and grid-bound energy systems can steer us away from understanding that energy is a factor in international relations,<sup>2</sup> beyond just oil and gas. Energy is shaping relationships between even territorially distant countries as a *sine qua non* of all international exchange of goods and services.

In the case of Serbia, a Union candidate country and party to the Energy Community Treaty,<sup>3</sup> we can observe a myriad of aspects Union energy policy measures have on shaping development, inciting reform, and introducing new concepts in enlargement countries as well as the effects that are taken into account when developing the EU energy policy and regulatory framework. Serbia is also one of the countries that is highly dependent on imported energy, with an underdeveloped approach to the use of energy produced from renewables, and some significant negative effects of energy generation and consumption on the environment. Bordering the Union territory makes it a necessity for a country to take measures to become part of an integrated, systematic approach in order to ensure security of supply. We will demonstrate the effects the Union energy policy has had on a candidate state over the course of almost 20 years on its path to transiting from an absolute state ownership over energy sector toward market liberalization. Territorial aspect is a strong component of Serbia's specific position as an EU candidate country, taking into consideration that any difficulty in supply can only be effectively addressed through assistance from immediate neighbours.

This case study will allow us to observe the effects of the Union's energy policy on states and actors outside their territorial scope and the instruments that allow

1 According to Eurostat and Statista data, in the year 2019 the EU imported 60.46% of the energy it consumed, in 2020 this data was 57.5% and in 2021 the energy dependence rate amounted to 56%. See: Statista, 2024.

2 Sattich et al., 2021, pp. 1–2.

3 The Energy Community Treaty (EnCT), OJ L 198, 20 July 2006, pp. 18–37.

for the extension of such mechanisms. This will be achieved through an analysis of all energy sub-sectors, beginning with electricity, oil and gas, including renewable energy and energy efficiency. While observing the developments in the energy sub-sectors in Serbia, the main drawbacks that contributed to the nonlinear and moderate success in attaining the set goals and the outside factors that make the energy sector reform a genuine challenge, we will also present EU energy policy framework and instruments that form the contextual setup for the said actions.

## 2. EU Energy Policy

The energy policy has undergone a significant legislative transformation following the development of the Union as a political community and contributing to the growth of a complex body of EU law. EU energy policy was equally shaped by the economic and industry advancement, geopolitics, fast technology development in Member States and strong environmental concerns that followed.

### ***2.1. Milestones: What led to the development of the EU Energy Policy?***

The Treaty Establishing the European Coal and Steel Community (ECSC), signed in 1951, did not focus specifically on energy but it did, however, cover industry sectors that are related to the key energy issues that initially brought the founder states together. Subsequent European Communities arose from the European Coal and Steel Community, which indicated that it were energy-related issues that brought the nations of Europe together for the first time and united them in what would later become a unique *sui generis* entity. Soon after, the Treaty establishing the European Atomic Energy Community (EUROATOM) signed together with the Treaty establishing the European Economic Community in 1957 in Rome, introduced the obligation for Member States to develop nuclear energy for peaceful purposes.<sup>4</sup> The provisions of the Treaty encompassed monitoring of the use of atomic energy, within the framework of safety standards but also aimed to create the common market for nuclear materials to be used in a controlled manner. The legislation under the EUROATOM laid the basis for the development of the Communities' energy policy sector in latter stages. A very strong impetus for the development of energy-related secondary legislation within the European Communities had roots in international events at the time, such as the 1973 petroleum crises, that was seen as one of the possible factors for disintegration.<sup>5</sup> It first revealed the issue of energy security but also energy dependence that remains a persistent issue even to this day. When it comes to

4 Articles 2, 52, and 52a of the Treaty establishing the European Atomic Energy Community.

5 Stingelin, 1975, pp. 97–100, 132–134.

energy cooperation, regional connectivity became one of the main goals in the 1980s that resulted in the First Energy Package adopted between 1996 and 1998.<sup>6</sup> The main idea behind this legislative framework was to establish the foundation for market liberalization with two new directives related to gas and electricity that Member States had the obligation to transpose into their national legal systems by the year 2000 at the latest.<sup>7</sup> The provisions of the said directives also included the requirement to unbundle national transmission system operators (TSOs).

Following the Big Bang enlargement and its geopolitical perspectives, the EU decided to build upon the First Energy Package and to reform the energy sector by introducing a new set of legislative measures. In addition, the EU broadened the focus of energy policy framework to “new horizons” encompassing environmental sustainability, renewable energy, climate action and the reduction of greenhouse gas emissions. The Second Energy Package legislation aimed to prevent monopolies in all Member States, by opening gas and electricity markets and by integrating them into one liberalised market. The Second Energy Package, adopted in 2003, preceded the establishment of the Energy Community which for the first time extended the EU’s internal energy market and EU energy acquis to non-EU countries including potential candidate countries such as those in the Western Balkans. The goal was to ensure proper integration of the energy-related Second Energy Package acquis in the countries that are part of the Eastern neighbourhood and enlargement as well as to promote energy market integration. The two Directives, the second Electricity Directive,<sup>8</sup> the second Gas Directive<sup>9</sup> and the Regulation on conditions for access to the network for cross-border exchanges in electricity,<sup>10</sup> became the backbone of the Second Energy Package. The emphasis was on further market liberalization which was to be achieved by ‘enabling, for instance, industrial and domestic consumers to choose their own gas and electricity suppliers freely,’<sup>11</sup> but also by unbundling the TSOs and creating independent national regulatory agencies. Moreover, the Second Energy Package, besides enhancing competition, emphasised the protection of end-consumers. With the introduction of these core comprehensive measures intended to strengthen the internal energy market, the EU also adopted the Energy Taxation Directive (ETD) 2003/96/EC setting the maximum rates for the taxation of electricity and heating fuels in Member States to protect the environment. The key achievements within the Second Energy Package framework, besides liberalization, were market transformation and the restructuring, enabling access and competition and encouraging cross-border trade and consumer-friendly approach.

6 Ciucci, 2024.

7 Electricity Directive 96/92/EC was adopted in 1996 and the first gas Directive 98/30/EC was adopted in 1998.

8 Directive 2003/54/EC, OJ L 176, 15.7.2003.

9 Directive 2003/55/EC, OJ L 176, 15.7.2003.

10 Regulation (EC) No 1228/2003, OJ L 176, 15.7.2003.

11 The Clean Energy for all Europeans Package. See: Florence School of Regulation, 2023b.

The Third Energy Package continued in the same direction as it pursued further liberalization of the internal energy market. It was adopted in 2009, around the same time as the Lisbon Treaty. Under the primary legislation, the Treaty on the Functioning of the EU (TFEU) determined that energy is among the shared competences that were for the first time regulated by the system of enumeration.<sup>12</sup> Secondly, the provisions of the Treaty established a nexus between the principle of solidarity and EU energy policy.<sup>13</sup> In that spirit, article 194 TFEU lays down the principles of the functioning of the internal market by setting the objectives of the Union policy on energy that address the functioning of the energy market, the aim of ensuring security of energy supply, the promotion of energy efficiency and renewable sources of energy as well as energy networks' interconnection. The pillars of the Third Energy Package can be summed up in the following: unbundling of the energy market by separating the production of gas and electricity from the transmission and distribution networks, therefore ensuring competition, free market, and third-party access as well as ensuring that independent regulatory bodies are monitoring the implementation of energy legislation, discouraging discrimination. The most important legislative measures were introduced with the following regulations: Regulation establishing an Agency for the Cooperation of Energy Regulators,<sup>14</sup> Regulation on conditions for access to the network for cross-border exchanges<sup>15</sup> and Regulation on conditions for access to the natural gas transmission networks;<sup>16</sup> and directives, namely: Directive concerning common rules for the internal market in electricity,<sup>17</sup> and Directive concerning common rules for the internal market in natural gas.<sup>18</sup> Union legislators introduced another innovation: the EU network codes, enabling the development of the Third Energy Market.<sup>19</sup> One of the most important contributions of the Third Energy Package was the creation of the European Networks for Transmission System Operators for electricity and gas (ENTSO-E and ENTSO-G).<sup>20</sup> The aim of these European Networks was to facilitate cooperation between national gas and electricity transmission system operators (TSOs), in order to ensure the development of a coordinated pan-European transmission system.<sup>21</sup> Furthermore, the EU Agency for the Cooperation of Energy Regulators (ACER) was established in 2011 with the aim of enhancing cooperation of National Regulatory Authorities (NRA), supporting integration of Member States energy markets in the EU Integral Energy Market and ensuring implementation of the EU *acquis* related to electricity and natural gas.

12 Article 4 of the Treaty on the Functioning of the EU, OJ C 326, 26.10.2012.

13 Articles 122 and 194 TFEU.

14 Regulation (EC) No 713/2009, OJ L 211, 14.8.2009.

15 Regulation (EC) No 714/2009, OJ L 211, 14.8.2009.

16 Regulation (EC) No 715/2009, OJ L 211, 14.8.2009.

17 Directive 2009/72/EC, OJ L 211, 14.8.2009.

18 Directive 2009/73/EC, OJ L 211, 14.8.2009.

19 Four network codes and a set of Guidelines have been adopted, see: Florence School of Regulation, 2023a.

20 Regulation (EC) 715/2009, OJ L 211, 14.8.2009.

21 Available at: <https://www.entsog.eu/> (Accessed: 16 October 2023).

One of the processes under the EU Energy Framework was the gradual shift of focus on renewable energy and energy efficiency that coincided with the development of the Third Energy Package. The milestones were set during the previous packages, with the first Renewable Energy Directive (RED) in 2001<sup>22</sup> which determined the first ever targets for renewable sources and promoted the incentivization of the use of energy from renewable sources. This Directive was upgraded in 2009,<sup>23</sup> as it expanded the legislative framework dealing with renewables and promoted goals such as higher renewable energy consumption and binding targets by 2020 adjusting them to each Member State. The introduction of renewable energy consumption as one of the priorities of the EU policy framework was a result of an evolving process that reflected the expansion of the Union's goals and policies. It also depicted the first stage of the reorientation of the EU policies towards sustainability, climate action, technological neutrality and clean energy. Moreover, this was accompanied by the strengthening of climate action and emission reduction. Thus, the multiplication of legislative acts, such as the Energy Efficiency Directive,<sup>24</sup> announced new direction of the EU energy policy priorities as energy market transformation, research, and innovation.

## 2.2. Shift of focus – sustainability and security as key goals

Energy security and energy dependency continued to be the number one challenge for the EU energy sector. Therefore, on the initiative of the heads of states and governments of Member States, in 2015 the Commission presented the Energy Union Strategy that focused on the sustainability and security of energy. The Strategy rests on five pillars: energy security, integrated energy market, energy efficiency, decarbonisation of the economy and, last but not least, research and development.<sup>25</sup> This was an introduction to the Commission's Communication "Clean Energy for All Europeans" introduced in 2016, reflecting the fact that energy was in the ten priorities of Juncker's Commission. Following the Energy Union initiative, this Communication confirmed the change of focus to enable an efficient response for the above-mentioned challenges and to boost the role of the Energy Union and climate change in the modernization of the economy.

That same year, on October 4<sup>th</sup>, the EU ratified the Paris Agreement, an international treaty on climate change *en bloc*. The EU vouched to be an important actor

22 Renewable Energy Directive (2001/77/EC), OJ L 283, 27.10.2001.

23 Renewable Energy Directive (2009/28/EC), OJ L 140, 5.6.2009.

24 Energy Efficiency Directive (EED) – 2012 (2012/27/EU) together with Ecodesign Directive (2009/125/EC) and Directive (EU) 2010/31 (the Energy Performance of Buildings Directive).

25 European Council, 2023a.

in the implementation of the Paris Agreement to combat climate challenges through economic and social transformation. The main aim of the transition toward clean energy was to boost economic growth by reducing greenhouse emissions to become climate-neutral by the year 2050.<sup>26</sup> Some of the most important legislative acts that depict the new “going-green era” in the clean energy policy are: the 2018 RED II Directive setting a target of 32% for the overall share of energy from renewable sources by 2030,<sup>27</sup> and the Directive on energy efficiency,<sup>28</sup> of the same year, which set a goal of 32.5% reduction results and the Regulation on the Governance of the Energy Union and Climate Action which set ‘necessary legislative foundation for reliable, inclusive, cost-efficient, transparent and predictable governance of the Energy Union and Climate Action (governance mechanism).’<sup>29</sup> The following year, the Regulation on the internal market for electricity<sup>30</sup> and the Directive on common rules for the internal market for electricity<sup>31</sup> accentuated integration of renewable energy in the electricity market and upgraded market rules and integrated cooperation.<sup>32</sup> This was also part of an ambitious project by the EU titled The European Green Deal presented by the Commission in 2019. It seemed that the underlying motto for the interconnection<sup>33</sup> between transformed energy sources and the economy was sustainability. With the COVID-19 pandemic, the European Green Deal became the ‘lifeline out of the COVID-19 pandemic and part of the Next Generation EU Recovery Plan’,<sup>34</sup> establishing a network of solidarity among Member States, with the goal of developing sustainable energy sources. Under this Deal, a set of initiatives were presented as part of the Fit for 55 package in order to revise European energy legislation in line with climate goals, with special emphasis on the revision of the Energy Efficiency Directive, Renewable Energy Directive and Emission Trading System.<sup>35</sup> Moreover, the Council adopted five key laws ‘that will enable the EU to cut greenhouse gas emissions within the main sectors of the economy and reduce its net greenhouse gas emissions by at least 55% by 2030.’<sup>36</sup> Additionally, renewable sources of energy and clean energy transition were at the heart of the EU’s goal to become the world’s first carbon neutral continent by 2050.<sup>37</sup>

26 European Council, 2023c.

27 Directive (EU) 2018/2001, OJ L 328, 21.12.2018.

28 Directive (EU) 2018/2002, OJ L 328, 21.12.2018.

29 Regulation (EU) 2018/1999, OJ L 328, 21.12.2018.

30 Regulation (EU) 2019/943, OJ L 158, 14.6.2019.

31 Directive (EU) 2019/944, OJ L 158, 14.6.2019.

32 A part of this framework package was also Regulation EU 2019/941 on risk preparedness in the electricity sector.

33 On 23 June 2022, the revised TEN-E Regulation laying down new EU rules for cross-border energy infrastructure entered into force.

34 European Commission, 2023b.

35 European Council, 2023b.

36 Ibid.

37 Stojanović, 2022, p. 112.

Considering that the previous years had been challenging with regard to security in the European continent *en général*, the EU put energy policy in the top priorities of every new strategy. The ultimate goal was diversification of the EU's energy supplies and sources. The aim was to address the energy crisis and to strengthen the European response. Thus, there was a strong geopolitical component in the growing importance of the renewables' presence on the EU map.<sup>38</sup> Hence, the targets set in the legislative framework, gained more importance and became crucial for overall progress. REPowerEU,<sup>39</sup> presented by Von der Leyen, outlined EU's strategic plan to reduce dependency on Russia's fossil fuels focusing on saving energy, production of clean energy, and diversification. Ambitious goals set in the energy efficiency and renewable energy legislation are at the core of EU efforts not only in terms of economic measures but also political initiatives, such as the European Political Union.<sup>40</sup> Interestingly, the European Political Community, which has already had three political summits,<sup>41</sup> gathered the contracting countries of the Energy Community as well, underlining energy security as an issue of paramount importance for the political discourse in order to build resilience and have a better geostrategic response when it comes to energy in the region.

### 2.3. Energy before the Court of Justice of the EU

The decisions of the Court of Justice of the EU (CJEU) are important for numerous reasons, mostly because they provide legal interpretation, ensure further implementation and compliance with the EU legislative framework. By means of interpretation of important regulations and directives, i.e., the EU energy acquis, and consequently by enforcing the established rules, the CJEU contributes to the functioning of the internal energy market. The CJEU has played an important role in disciplining Member States and interpreting the EU energy rules thus securing better clarity and uniformity. The decisions impacted Member States' national policies and contributed to enhanced protection of consumers' rights, ensuring competition and the functioning of the energy market in accordance with not only EU energy framework, but the general principles of Union law. Furthermore, the decisions of the CJEU form so-called *quasi* precedents, meaning the principles and interpretations given by the Court become binding not only for Member States, but for the EU as a whole. Moreover, the CJEU energy policy case-law is important for candidate

38 Ibid., p. 109.

39 REPowerEU at a glance, available at: [https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/european-green-deal/repowereu-affordable-secure-and-sustainable-energy-europe\\_en](https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/european-green-deal/repowereu-affordable-secure-and-sustainable-energy-europe_en) (Accessed: 16 October 2023).

40 This Intergovernmental forum was a proposition by the French president Emmanuel Macron at the Conference on the Future of Europe on 9 May 2022.

41 Meeting of the European Political Community, 6 October 2022, Meeting of the European Political Community, 1 June 2023 and Meeting of the European Political Community, 5 October 2023.

countries, striving to properly harmonise their energy policy with the EU energy framework during the negotiation process.

One of the most prominent decisions in relation to the Second and Third Energy Packages are cases *PreussenElektra AG v Schleswag AG* from 2001,<sup>42</sup> where the Court decided on the state aid and the compatibility with the free movement of goods in the electricity market and *Essent Netwerk B.V./TenneT TSO B.V.* from 2008,<sup>43</sup> regarding competition rules and indiscriminatory access to electricity market; case of *E.ON Földgáz*,<sup>44</sup> concerning preliminary questions referred to the CJEU by the Hungarian Court regarding the application of the EU rules when it comes to TSOs and capacity allocation at the entry point of a gas interconnector between Austria and Hungary; cases *Commission v Bulgaria*<sup>45</sup> and *Moravia Gas Storage*,<sup>46</sup> both related to the interpretation of third-party access. What stands out in CJEU's practice is that, on several occasions, the Court had to strike a balance between enforcing EU state aid rules, on one side, and implementation of renewable energy support mechanisms by Member States, on the other. In case of *Ålands Vindkraft AB*,<sup>47</sup> the CJEU insisted that it supports the promotion of the use of renewable energy but in a way that state aid granted by Sweden for promoting renewable energy meets necessary criteria, such as proportionality, and it does not lead to overcompensation. More specifically, after analysis, the Court allowed discriminatory green energy support schemes in this case which was groundbreaking. Similarly, in the case of *Essent and Others*,<sup>48</sup> the Court in Luxembourg decided on the Dutch green certificate that required that a certain percentage of electricity delivered by suppliers should come from renewable energy sources. The Court reminded, yet again, that state aid rules, including those aimed at promoting renewable energy sources and boosting clean energy, should respect the principles of proportionality and nondiscrimination. In both cases the EU Court confirmed support for local renewable energy schemes. Another case regarding state aid is *Commission v Mol Hungary* from 2013,<sup>49</sup> where the General Court of the EU annulled the Commission decision that considered the state aid given by the Hungarian state to Mol illegal. At times, the Court is criticised for a too strict

42 Case C-379/98, *PreussenElektra AG v Schleswag AG*, in the presence of *Windpark Reußenköge III GmbH* and *Land Schleswig-Holstein*, ECLI:EU:C:2001:160.

43 Case No COMP/M.5467 – *RWE/ Essent*, Notification of 29 April 2009 pursuant to Article 4 of Council Regulation, No 139/2004.

44 ECJ 19 March 2015, Case C-510/13, *E.ON Földgáz Trade Zrt v Magyar Energetikai és Közmű-szabályozási Hivatal*.

45 ECJ 5 June 2014, Case C-198/12, *European Commission v Republic of Bulgaria*.

46 ECJ 26 March 2015, Case C-596/13P, *European Commission v Moravia Gas Storage a.s., formerly Globula a.s.*

47 Joined Cases C-204/12 to C-208/12, *Essent Belgium NV v Vlaamse Reguleringsinstantie voor de Elektriciteits- en Gasmarkt*.

48 C-573/12 Judgment of the Court (Grand Chamber) of 1 July 2014, *Ålands vindkraft AB v Energimyndigheten*.

49 General Court 12 November 2013, Case T-499/10, *MOL Magyar Olaj- és Gázipari Nyrt. v European Commission*.

approach toward Member States in order to ensure new tendencies in the EU energy policy<sup>50</sup> are to be respected and properly implemented. This was especially noted in the cases that involved national measures and incentives for energy infrastructure projects or the limits to national sovereignty when it comes to the implementation of the *acquis*. In addition, the interconnection between state aid, energy projects, and environmental standards has been in the Courts's focus in many recent cases. In some more recent cases, the Court provided a "fresh wind",<sup>51</sup> when it comes to determining whether Member States' renewable energy support measures involved state aid. In the case EEG 2012, the CJEU set aside a General Court judgment that confirmed a finding of the EU Commission that a German renewable energy support mechanism constituted state aid. This more flexible approach shown by the Court, even though praised to some extent, made more difficult for the Commission to determine whether particular measures by Member States fall within the scope of EU state aid rules<sup>52</sup> in similar cases, *pro futuro*.

State aid in the electricity market generated from renewable energy sources and environmental protection was touched upon in the General Court's decision *Achema et Lifosa/Commission* from 2021,<sup>53</sup> where the Court annulled the Commission's decision on state aid concerning an aid scheme implemented by the Republic of Lithuania in support of producers of electricity from renewable energy sources. Finally, the environment-friendly orientation was confirmed in the judgment of the General Court *ClientEarth v European Investment Bank* of 2021, where the Court even analysed the Aarhus Convention and the access to justice in environmental matters.<sup>54</sup>

Lastly, numerous infringement procedures have been initiated by the Commission for the failure of Member States to comply with EU energy legislation. One of the prominent examples took place in the aftermath of the transposition deadline for the Third Energy Package. More than 19 Member States failed to meet the deadline, and proceedings were initiated against Ireland and Romania for failure to transpose, while the former Member State was referred to the CJEU.<sup>55</sup> Recently, Poland was referred to the CJEU for incorrect transposition of Directive 2012/27/EU on energy efficiency. In the same manner and having in mind the main focus of EU energy policy and the importance of the unified approach to sustainability, the EU Commission have had a stricter approach when it comes to the transposition of the Renewable Energy Directive 2018/2001. Having in mind that Member States were obliged to transpose the said Directive by 30 June 2021, on 15 February 2023 the Commission

50 As it was the case in the Judgment of 1 July 2014 in *Ålands Vindkraft*, C-573/12. For more information, see: Sanchez-Graells, 2014.

51 Vasbeck, 2019.

52 *Ibid.*, p. 640.

53 Case T-300/19, Judgment of the General Court (Tenth Chamber) of 14 April 2021 *Achema AB and Lifosa AB v European Commission*.

54 Judgment of the General Court (Second Chamber, Extended Composition) of 27 January 2021 *ClientEarth v European Investment Bank*. This decision is being appealed before the CJEU.

55 European Commission, 2023a.

referred Croatia, Hungary, and Portugal to the CJEU with a request to impose financial sanctions in accordance with Article 260(3) TFEU.<sup>56</sup>

Taking into consideration that the Court of Justice ensures proper application of the EU law including EU energy policy and measures, adequate interpretation and a legal stance taken by the CJEU in these cases is of utmost importance for legal consistency and alignment in the EU Member States. However, the CJEU decisions are instrumental for shaping the legal landscape outside of the EU as well. In its external integrative circles, such as the Energy Community, the Court's interpretative influence is also taken into consideration. The CJEU decisions ensure certain level of legal certainty and predictability is already ensured and thus facilitate proper harmonization and implementation of the EU energy acquis.

### **3. EU Energy Policy outside the EU and its importance for candidate countries**

#### ***3.1. The Evolution of the Energy Community***

A milestone with regard to the expansion of the validity of EU law in the field of energy outside its territory took place just before the adoption of the Second Energy Package. At the time of the discussions leading to the adoption of these directives, it became apparent that sustainable internal energy market will not be attainable unless the external cooperation with immediate neighbouring countries is institutionalised. As early as in the year 2000, the Memorandum of Understanding for the establishment of a competitive Regional Electricity Market (REM) in South-eastern Europe was signed in Athens by Albania, Bosnia and Herzegovina, Bulgaria, Romania, FYROM, and the Hellenic Republic. This document expresses the commitment of the signatories to facilitate phased development of the regional electricity market. The document remained open for all countries of Southeastern Europe to join. Integration in the field of energy should only be observed together with the overall intent of the EU to expand to the South-East European region which was initiated by the Stability Pact for Southeastern Europe (subsequently replaced by the Regional Cooperation Council in 2008) and reaffirmed with all Western Balkan states present in 2003 with the adoption of the Thessaloniki Declaration which confirmed the Union's 'unequivocal support to the European perspective of the region and declared that the 'future of the Western Balkans is within the European Union.'<sup>57</sup>

56 Full list of infringement procedures before the CJEU related to Energy can be available at: [https://ec.europa.eu/atwork/applying-eu-law/infringements\\_proceedings/infringement\\_decisions/?lang\\_code=en](https://ec.europa.eu/atwork/applying-eu-law/infringements_proceedings/infringement_decisions/?lang_code=en). (Accessed: 16 October 2023).

57 Prifti, 2013, p. 15.

With the circumstances allowing for all states of the region to participate in these initiatives and discussions, a document that is considered a true milestone in the establishment of the Energy Community was adopted and it is known as the Athens Memorandum of 2002.<sup>58</sup> This document suggested the establishment of an integrated regional electricity market, the establishment of state energy authorities at the national level, the proposition for the transmission systems to be independent at least in terms of their legal form, organization and decision-making from other activities not related to transmission, if not fully independent in terms of ownership, and also set rules for the distribution systems and operationality of the regional market, created an institutional setup consisting of the Ministerial Council, a Permanent High Level Group, the Electricity Forum, and a Secretariat which will go on to become the Energy Community. The Memorandum was subsequently amended in 2003 as to include the gas market.

In order to be able to effectively bring to life all goals set out in the Athens Memoranda, a necessity for a major institutional shift inevitably imposed itself. In 2004, the Union started negotiations on the establishment of the Energy Community as an international organization established by the European Community on one side and Albania, Bosnia and Herzegovina, Bulgaria, Croatia, FYROM, Montenegro, Serbia, Romania, Turkey and UNMIK on behalf of Kosovo<sup>59</sup> on the other. The Treaty Establishing the Energy Community was signed in October 2005 and entered into force in July 2006 for a time period of 10 years. Since then, the Energy Community has expanded in all directions. Namely, the Ministerial Council extended the duration of the Treaty,<sup>60</sup> the number of contracting parties has increased, whereas some former contracting parties in the meantime became EU members (Romania, Bulgaria and Croatia), and the scope of the Treaty has been redefined to allow the Energy Community to expand its operations from electricity and gas to include security of supply, oil, climate action, the environment, renewable energy, energy infrastructure, energy efficiency and competition in the energy markets.

Serbia has also changed significantly over the course of the years, from initially not participating in the processes leading to the establishment of the Energy Community to engaging in the initiatives first as the Federal Republic of Yugoslavia, then as Serbia and Montenegro, and eventually as the Republic of Serbia, to become an EU candidate state. Throughout all these years, Serbia has undergone numerous legislative reforms of its energy sector, burdened by a complex geopolitical dimension, all governed by three related but different instruments: the obligations under the Energy

58 The Athens Memorandum, 2002.

59 In line with UNSCR 1244 and the ICJ Opinion on the Kosovo declaration of independence.

60 According to Ministerial Council Decision 2013/03/MC-EnC on extending the duration of the Energy Community Treaty, the duration of the Treaty is extended for a period of 10 years.

Community Treaty, the obligations pertaining to EU membership negotiations, and the obligations pursuant to the Stabilization and Association Agreement.<sup>61</sup>

### ***3.2. The Energy Community: Institutional Structure and the Acquis***

The Energy Community was constituted on the basis of the institutional setup established by the Athens Memorandum on Electricity. To this day, the organization is governed by the Ministerial Council consisting of each contracting party's minister responsible for energy, including two representatives of the EU, usually the commissioner for energy and a high-level representative of the Council.<sup>62</sup> This active governing of the organization divided between all its members and in some aspects resembling the Council of the EU, allows for the much needed political steer and equal participation in the creation of the Energy Community objectives and specific obligations. The decision-making in the Ministerial Council requires different majorities depending on the measure to be implemented. Ideally, decisions should be made unanimously. The work of the Ministerial Council is supported by the Permanent high-level group. It consists of a representative from each contracting party and two senior officials of the European Commission.<sup>63</sup>

The Energy Community also operates on the work of the fora. The Electricity forum and the Gas forum are the continuation of the same entities envisioned under the Athens Memoranda and are established as such by the Energy Community Treaty, whereas the Oil Forum was established by a decision of the Ministerial Council.<sup>64</sup> In addition, there are other fora that convene upon the initiative of the Secretariat such as the Law Forum or the Dispute Resolution Forum. One of the most organizationally independent Energy Community institutions is the Regulatory Board. It operates under the auspices of the Energy Community Treaty as an independent regional body of energy regulators tasked with advising the Ministerial Council and the Permanent High Level Group.<sup>65</sup>

All the activities of various committees, task forces, and coordination groups are supported by the permanent Secretariat as the only permanently active institution performing daily work, headquartered in Vienna. The Secretariat is headed by a director appointed by the Ministerial Council,<sup>66</sup> and performs their duties impartially and in the interest of the Energy Community.

61 Stabilisation and Association Agreement between the European Communities and their Member States of the one part, and the Republic of Serbia, of the other part, OJ L 278, 18.10.2013, pp. 16–473.

62 Article 48 of EnCT.

63 Article 54 of EnCT.

64 Decision No. 2008/03/MG-EnC of 11 December 2008 concerning the implementation to the oil sector of certain provisions.

65 Article 58 of EnCT.

66 Article 69 of EnCT.

The institutional setup is undoubtedly the most elaborate and advanced as opposed to other regional initiatives of the Union in the Western Balkans and beyond. This clearly indicates the importance of the region in maintaining the stability of the Union's internal market and the role of energy in coordinating different processes of interest for further development. This set up allows for greater accountability of each contracting party, secures active involvement in the reform processes and guarantees participation of various stakeholders. As the initiator and the main stakeholder, the EU can most certainly dominate the situation, with additional representatives in the decision-making institutions such as the Ministerial Council and Permanent High Level Group<sup>67</sup> and certain measures adopted by the Ministerial Council requiring a positive vote of the European Union<sup>68</sup> or others can be taken solely on the ground of a proposal from the European Commission.<sup>69</sup> This is nevertheless disproportionate to the financial contributions of each party considering that the European Union's share for 2022-2023 for the budget is at almost 95%.<sup>70</sup>

Apart from a highly developed organizational structure, the Energy Community Treaty imposes obligations for the contracting parties with regard to the implementation of relevant EU law. Each contracting party has the obligation to take measures aimed at transposition, implementation and application of the EU acquis in the relevant field and according to the set timetable. The Energy Community Treaty therefore allows for the extension of the EU acquis beyond the EU territory in a way that constitutes a legally binding obligation under international law. Accession negotiations bear similarity in this regard, however, the legislative alignment is performed on a voluntary basis. In contrast, the stabilization and association agreements also stipulate the harmonization of laws on a gradual basis, nevertheless less strictly and without an adjusted timeframe. Having all this in mind, we can conclude that the obligation of the harmonization of laws for the Western Balkans was first formulated in the field of energy and under the auspices of the Energy Community Treaty.

The Energy Community acquis is framed under Title II of the Treaty, and it consists of the acquis on energy, competition, environment, and renewables. It is extended by a unanimous decision of the Ministerial Council both for the need to keep track of the developments at EU level and to expand to other related areas.<sup>71</sup> For instance, in 2009 by its decision,<sup>72</sup> the Ministerial Council expanded the Treaty so as to include the energy efficiency acquis with set deadlines for its implementation. This approach to amending certain provisions of the Treaty allows for the Energy Community acquis to be dynamic and to be adapted to the developments in the EU.

67 Article 64 of EnCT.

68 Article 83 of EnCT.

69 Article 79 of EnCT.

70 Procedural Act 2021/01/MC-EnC on adoption of the Energy Community budget for the years 2022-2023.

71 Article 100 of EnCT.

72 Decision 2009/05/MC-EnC implementing certain directives on energy efficiency.

Furthermore, the deadlines for adoption formulate the obligation of law harmonization in a very concise manner. Supplemented by the implementation mechanism in case of failure to comply, the contracting parties not fulfilling their obligations under the Treaty may face suspension of rights deriving from the application of the Treaty, suspension of voting rights, or exclusion from meetings.<sup>73</sup> Unlike other instruments under which the territorial expansion of EU law is secured, the mechanism envisioned in the Energy Community Treaty enables strict adherence and determines consequences for failure to comply.

### ***3.3. The EU Energy Policy and Enlargement: Introducing Reforms in Candidate Countries***

The main course of action regarding the implementation of the EU energy policy outside its territory is most certainly under the auspices of the Energy Community Treaty. For the Western Balkans and Serbia, as a region that has been under the enlargement policy, in addition to the Energy Community membership, there have been other instruments securing transposition and implementation of EU energy policy. Nevertheless, the Energy Community Treaty establishes the most stringent obligation to align with the requirements of the EU energy acquis with implementation deadlines and a set of measures that can be taken in case of failure to adhere.

For the enlargement countries, another source of obligation to align with certain EU policies are the so-called stabilization and association agreements<sup>74</sup> and association agreements.<sup>75</sup> Although these policy instruments cover almost all areas under the competences of the EU, they normally contain provisions dealing with energy policy as well. For instance, the Stabilization and Association Agreement with Serbia<sup>76</sup> refers to the Energy Community Treaty as the basis for cooperation in the field.<sup>77</sup> Article 109 of the SAA with Serbia also requires cooperation in terms of establishing a framework for the restructuring of energy companies which is a clear indication of reaffirmed obligation of EU energy acquis implementation considering that both the Second and the Third Energy Packages are developed based on the concept of energy sector unbundling, i.e., the separation of energy generation, supply, and transmission operators. In addition, pursuant to Article 72 of the SAA, Serbia needs to make sure its existing legislation is gradually made more compatible with the EU acquis. The SAA also has an institutional framework that allows for monitoring the implementation

73 Article 99 of the Energy Community Treaty.

74 Framework agreements concluded with the Western Balkan countries, envisioned as policy instruments with a view of establishing free trade area and leading to eventual EU membership.

75 Framework agreements regulating relationships between the EU and pre-accession states aimed at achieving economic integration, enhancing political association, creating a free trade area, and promoting legislative alignment.

76 Stabilisation and Association Agreement (SAA) between the European Communities and their Member States of the one part, and the Republic of Serbia, of the other part, OJ L 278, 18.10.2013.

77 Article 109(1) of the SAA with Serbia.

of obligations. The developments in the field of energy under the SAA are annually monitored through the work of the Stabilization and Association Committee and the subcommittee on energy and other network infrastructures. Unlike the Energy Community Treaty, the SAA does not have a set of penalties in case of failure to comply with the obligations, the issue of breach is normally handled under the dispute resolution mechanism. Unlike the Energy Community Treaty, the SAA is concluded for an unlimited period.<sup>78</sup>

Another process enabling the effect of EU law outside its territorial scope is the accession negotiations. This process is focused on three main elements, one of which is of direct relevance to the development of the energy policy in Serbia and in the Western Balkans: the ability to assume membership obligations. Energy is negotiated under Chapter 15 as part of the Green Agenda and Sustainable Connectivity cluster. In essence, the negotiation consists of the modalities and the quality of transposition of EU energy acquis. Aside from regulations, directives, and decisions, the accession negotiations also require alignments to be made with regard to relevant policy instruments and taking into consideration the most relevant CJEU decisions. Unlike the previous two processes, the accession negotiation is a voluntary process not determined by any kind of agreement. It may develop at any pace depending on the swiftness and the quality of legislative reforms. The Commission monitors the process on behalf of the Union and its Member States although most measures are of political nature and the annual assessment is presented in the EU Commission's Annual Progress Reports.<sup>79</sup> Adequate level of harmonization of laws in a specific chapter will be rewarded by a temporary closure of the chapter.

In essence, all enlargement countries, especially EU candidate countries, like Serbia, take measures to introduce reforms of their respective energy sectors under three pillars: the Energy Community Treaty, the stabilization and association or association agreements and under the accession negotiation framework. Effectively, they may lead to different outcomes and are theoretically not interdependent, however, they all allow for the EU energy law to become effective outside the EU territory and are the main factors that inspire legislative and policy reforms in all enlargement policy countries with the aim of creating a single regulatory space and integrated market.

78 Article 133(1) of the SAA with Serbia.

79 For Serbia, the latest Report is published in 2023 which stated that 'Serbia is moderately prepared in energy'. See: Commission Staff Working Document Serbia, 2023, pp. 129–134.

## 4. EU Energy Policy and the Republic Of Serbia

### *4.1. An Overview of Serbia's Energy Policy*

Serbia has been a candidate for EU membership since March 2012 and it concluded the Stabilization and Association Agreement in 2008 which entered into force on 1<sup>st</sup> September 2013. In addition, as previously mentioned, Serbia is a contracting party to the Energy Community Treaty. The most significant legislative reforms of the energy sector have taken place under the umbrella of Serbia's relationship with the EU. There have been many circumstances over the course of almost two decades that hampered the development of the three processes. In the case of Serbia, the field of energy presented itself in its entire complexity, with the course of events being driven by foreign policy, economic factors, the transition into new concepts, and the intricacy of the legislative reform.

The first law in this field, aligned with the trends of EU legislative measures, was adopted in 2004,<sup>80</sup> which replaced the existing legal framework consisting of the Law on Electricity Industry,<sup>81</sup> and the Law on Transport, Distribution and Use of Natural Gas,<sup>82</sup> both being in force since 1991. The 2004 Energy Law that paved the way for all the developments that ensued is a radical break with the established fundamentals of the energy sector. First and foremost, this law provides for the establishment of the Serbian Energy Agency,<sup>83</sup> an independent, regulatory body mandated with performing tasks in relation to the development of energy markets. The concept of independent regulatory bodies is often a requirement in the accession negotiations in many other areas, however, to this day it encounters certain difficulties in implementation considering that it had not been previously known in the region. In addition, the first rules establishing the functioning of the energy markets were introduced and the performance of energy activities required mandatory authorisation. Although some of the main concepts of the 2004 Energy Law were modelled based on the Second Energy Package of 2003, their main feature, which is the unbundling of transmission systems operators, was only partially implemented. Finally, this law introduced the term “energy policy”, defined long-term policy goals, and envisioned the formulation of the Energy Strategy as a long-term policy document adopted for the time in a period of at least 10 years. It is interesting to note that the law, although mainly focusing on electricity, oil and oil derivatives and natural gas, established the first Serbian Energy Efficiency Agency, which was in fact founded in 2002 with the

80 Energy Law, no. 84/2004.

81 Law on Electricity Industry, OG RS, no. 45/91, 53/93, 67/93, 48/94, 69/94 and 44/95.

82 Law on Transport, Distribution and Use of Natural Gas, OG RS, no. 66/91, 53/93, 67/93, 48/94 and 12/96.

83 Founded on June 16, 2005.

financial help of the European Agency for Reconstruction<sup>84</sup> and later abolished in 2012 as a result of a decision to reduce the number of government agencies.

The second legislative step toward further development of energy markets took place in 2011 when a new Energy Law<sup>85</sup> was adopted, following the adoption of the Third Energy Package. The primary focus and the main objectives of the Union at that time pertained to the unbundling of the gas sector, considering that the unbundling of the electricity sector has already taken place to a considerable extent. In order to prepare to meet the requirements of the Energy Community Treaty<sup>86</sup> and align with the new 2009 Gas and Electricity Directives, Serbia prepared a new law based on the principles of the 2004 Energy Law, i.e., the inclusion of energy licensing, the horizontal unbundling of system operators, the expansion of the mandate and the competences of the Energy Agency, and a guarantee of its functional, organizational and financial independence. The Law refers to the use of renewable energy sources and regulates incentives for the generation of energy from renewable sources, third-party access, market liberalization in terms of regulating prices and stipulates provisions dealing with energy poverty. The second Energy Law represents a major regulatory shift encompassing all the development trends taking place in the EU.

However, the difficulties pertaining to the implementation and application of the law inspired the recommendations from the EU Commission and the Energy Community to adopt a new Energy Law covering all aspects of the Third Energy Package that had previously been left out. In this regard, the third Energy Law<sup>87</sup> was adopted in 2014 in order to achieve further alignment with the Third Energy Package. This law has been amended three times, in 2018, 2021, and 2023, respectively. The 2014 Energy Law was the subject of alignment with Directive 2009/73/EC, Directive 2009/72/EC, Regulation 714/2009, Regulation 715/2009, and Directive 2009/28/EC. Subsequent amendments dealt with network code on demand connection, capacity allocation, congestion management, and are harmonised with the most recent EU legislation, i.e., Regulation 2019/941 on risk-preparedness in the electricity sector<sup>88</sup> and Directive 2019/944 on common rules for the internal market for electricity.

In addition, the processes evolving under the auspices of the Energy Community Treaty and accession negotiations inspired the adoption of a number of laws regulating specific energy sectors such as the Law on Energy Efficiency and the Rational

84 Kovačić, 2008, p. 118.

85 Energy Law, no. 57/2011.

86 Decision of the Ministerial Council of the Energy Community D/2011/02/MC-EnC: Decision on the implementation of Directive 2009/72/EC, Directive 2009/73/EC, Regulation (EC) No 714/2009, and Regulation (EC) No 715/2009, and amending Articles 11 and 59 of the Energy Community Treaty.

87 Energy Law, no. 145/2014.

88 Regulation (EU) 2019/941, OJ L 158, 14.6.2019.

Use of Energy<sup>89</sup> and the Law on the Use of Renewable Energy Sources.<sup>90</sup> Maintaining mandatory stocks of crude oil and petroleum products is also one of the activities initially undertaken to fulfil the obligations under the Energy Community Treaty and to align with Council Directive 2009/119.<sup>91</sup> Based on domestic consumption,<sup>92</sup> according to the data available for 2022, Serbia had a stock for 36 days instead of the minimum requirements of 61 days.

Taking into consideration that the energy sector consists of a number of sub-sectors that have been developing simultaneously but also independently, with their own obstacles and driving mechanisms behind each stepping stone, in order to get a clearer overview of the effect of the above-mentioned development process of Serbian energy law, we need to address in a nutshell some major energy sectors individually.

#### ***4.2. The Reform of the Electricity Sector***

The entire process of securing the implementation of EU law outside its territory began with the electricity sector and the first Athens Memorandum. Over the course of the years, Serbia has amended its legislation and incorporated a completely new approach to energy-related matters, including unbundling of transmission and distribution system operators, the liberalization of the market, the operation of the wholesale market through the organised day-ahead market, the establishment of the competitive retail market, and as of recently intraday market opening.<sup>93</sup>

Serbia has been under examination for potential breach of the Energy Community Treaty on several occasions since 2008. The first such procedure against Serbia was initiated by the Secretariat,<sup>94</sup> and was resolved by a Ministerial Council Decision in 2016.<sup>95</sup> Serbia has failed to comply with Article 6 of Regulation 1228/2003 by not using the revenues resulting from the allocation of interconnection capacity on the interconnectors with Albania, FYROM and Montenegro in terms of the purposes specified in Article 6(6) of Regulation 1228/2003, the Republic of Serbia, to which actions and non-actions of its state-owned transmission system operator are imputable.<sup>96</sup> The Ministerial Council determined that Serbia had taken appropriate measures to rectify the breach and hence closed this case. However, the Secretariat considered the measures taken by Serbia inefficient and initiated another case<sup>97</sup> in 2017 citing a lack of implementation under Article 91 of the Treaty and a serious

89 Law on Energy Efficiency and the Rational Use of Energy, OG RS, no. 40/2021.

90 Law on the Use of Renewable Energy Sources, OG RS, no. 40/2021 and 35/2023.

91 Council Directive 2009/119/EC, OJ L 265, 9.10.2009.

92 Serbia Annual Implementation Report, 2022, Energy Community Secretariat, p. 9.

93 SEEPEX, 2023.

94 Case ECS-03/08 against Serbia.

95 Ministerial Council Decision 2016/02/MC-EnC.

96 Ibid., Article 1.

97 Case ECS-03/08S.

and persistent breach.<sup>98</sup> The case is considered closed, following the adoption of the Connection Agreement between KOSTT<sup>99</sup> and transmission system operators from Continental Europe.<sup>100</sup>

As for the future, Serbia and other contracting parties are required to continue to implement the EU electricity acquis adopted in 2019. By 1st January 2024, alignment is needed with Regulation 2019/942, Regulation 2019/943, Directive 2019/944, Commission Regulation 2016/1719, Regulation 2015/1222, Commission Regulation 2017/2195, Commission Regulation 2017/1485, and Commission Regulation (EU) 2017/2196. Serbia, as mentioned above, has already taken measures in 2021 and 2023 to make further improvements in accordance with the newest electricity acquis. In terms of security of supply, Regulation 2019/941 on risk-preparedness in the electricity sector<sup>101</sup> also needs to be transposed by the afore-mentioned date in order to introduce the concept of risk-assessment in terms of identification of regional and national electricity crisis scenarios and development of plans for risk preparedness. This was all summed up in the latest EU Commission's 2023 Progress Report which stated that one of the primary goals for Serbia in the following period was to align and implement the Electricity Integration Package adopted by the Energy Community Ministerial Council in December 2022.<sup>102</sup> Furthermore, in order to make further progress in establishing integrated electricity market, which is one of the key factors for the development of the electricity sector, Serbia should equally 'determine net transmission capacities and capacity allocation on all cross-border interconnections.'<sup>103</sup>

### ***4.3. The Reform of the Gas Sector***

The reforms of the gas sector in Serbia have been the most complex and have taken the longest amount of time to achieve progress. It is still one of the major setbacks and a sector that is labelled as highly vulnerable to Russian ownership of assets and a major stumbling block in the EU–Serbia relations. Although the legislative alignment with the relevant EU acquis has been achieved, the implementation of the unbundling of transmission system operators has come to a halt since moderate steps forth were made with the adoption of the Government action plan in 2021. Substantial drawback in the gas sector reform is on the account of Serbia's

98 Case ECS-03/08: Serbia/electricity Case Summary. Available at: <https://www.energy-community.org/legal/cases/2008/case0308SRS.html> (Accessed: 25 October 2023).

99 Transmission system operator headquartered in Pristina.

100 Connection Agreement KOSTT to Continental Europe – improving contractual clarity in the South-East European electricity system [Online]. Available at: <https://docstore.entsoe.eu/news-events/announcements/announcements-archive/Pages/News/Connecting-Kosovo-to-Continental-Europe--deepening-ENTSO-E%E2%80%99s-relationship-with-South-East-European-TSOs.aspx> (Accessed 27 October 2023).

101 Regulation (EU) 2019/941, OJ L 158, 14.6.2019.

102 Commission Staff Working Document Serbia, 2023, p. 129.

103 Ibid.

benevolent participation in the construction of Nis-Sofia gas interconnector which is an infrastructure project of major importance for the EU.

There have been several cases in relation to Serbia's failure to transpose certain provision of the EU gas acquis over the course of the years. With regard to failure to secure independent decision-making, i.e., the functional unbundling of the gas transmission system operators, the Secretariat initiated a case<sup>104</sup> against Serbia in 2013 that was subsequently resolved by the decision of the Ministerial Council confirming failure to comply.<sup>105</sup> The Secretariat subsequently established failure to comply with the Ministerial Council decision and initiated a case<sup>106</sup> against Serbia under Article 92 of the Treaty which ended in another Ministerial Council decision<sup>107</sup> confirming failure to comply but postponing the adoption of measures. This was the only time since the establishment of the Energy Community that measures under Article 92 are requested to be taken against a contracting party for failing to comply. Even though to this day no measures have been imposed on Serbia, the request of the Secretariat with this regard remains unchanged. The Secretariat initiated another case<sup>108</sup> against Serbia for failing to comply with the EU acquis on gas sector unbundling because Yugorosgaz-Transport<sup>109</sup> was certified under the Independent System Operator model without fulfilling the requirements. The request to take measures against Serbia under Article 92 for failing to rectify the breach were requested but due to lack of unanimity, this case remains open.

In the meantime, the EU adopted new acquis such as the Gas Storage Regulation<sup>110</sup> which imposes more stringent measures with regard to gas storage certification which is expected to render the issue of certification in the gas sector contrary to the EU rules even more challenging for Serbia in the near future.

#### ***4.4. Renewable Energy and Energy Efficiency***

It is important to note that apart from the complete overhaul of the electricity and gas sectors, the integrative processes with the European Union lead to the introduction of the renewable energy and energy efficiency into Serbian legislation. The use of renewable energy was first regulated by the Energy Law and, as of 2021, relevant legal framework is provided for by the Law on the Use of Renewable Energy Sources (RES),<sup>111</sup> mostly focusing on various incentives and support schemes for the

104 Case ECS-09/13.

105 Decision 2014/03/MC-EnC.

106 Case ECS-09/13.

107 Decision 2016/17/MC-EnC.

108 Case ECS-10/17.

109 This was noted in the Commission Staff Working Document Serbia, 2023 in addition to the obligation of providing effective third-party access at all gas entry points certifying UGS Banatski Dvor in line with the Gas Storage Regulation, pp. 129–130.

110 Regulation (EU) 2022/1032, OJ L 173, 30.6.2022.

111 Law on the Use of Renewable Energy Sources, OG RS, no. 40/2021 and 35/2023.

production of energy from renewable sources. Under the Energy Community Treaty, full alignment with the Directive on the promotion of the use of energy from renewable sources<sup>112</sup> is expected. Serbia still needs to fully transpose the RED II Directive by simplifying permit-granting process and ensuring more contact points for guiding the applicants.

Energy efficiency is mentioned for the first time in the 2004 Energy Law with the establishment of the Energy Efficiency Agency which was later abolished. The first law<sup>113</sup> regulating exclusively the issue of energy efficiency was adopted in 2013. The new Law on Energy Efficiency and the Rational Use of Energy was adopted in 2021,<sup>114</sup> and in addition to several by-laws regulating the energy performance of buildings and energy labelling it constitutes the legal framework in this field in the Republic of Serbia mostly aligned with the relevant EU acquis. In July 2023 the Ministry of Mining and Energy presented the Integrated National Energy and Climate Plan, setting RES targets for the period to 2030 with projections until 2050 and accompanying the Strategic Environmental Impact Assessment Report<sup>115</sup> with projections of positive as well as and negative impacts that could be located and thus limited.<sup>116</sup>

Overall, Serbia made progress in further alignment with the EU acquis when it comes to renewable energy sources.<sup>117</sup> However, Serbia needs to put more effort into aligning with the Energy Performance of Buildings Directive and ‘set up an implementing legislation framework for the renovation of building stock.’<sup>118</sup> The EU Commission also noted that Serbia needs to provide national calculation methodology for energy performance of buildings as well as standards for all new public and commercial buildings, ‘and a legislative framework for the increased use of renewable energy’ in accordance with that.<sup>119</sup>

## 5. Conclusion

Since the first steps taken toward the integration of the Western Balkans in various EU initiatives and policies, energy has been one of the pillars of this cooperation.

112 Directive (EU) 2018/200, OJ L 328, 21.12.2018.

113 Law on Energy Efficiency and the Rational Use of Energy, OG RS, no. 25/13.

114 Official Gazette of the Republic of Serbia, no. 40/21.

115 Serbia presents draft National Energy, Climate Plan, see: Balkan Green Energy News, 2023.

116 Ibid.

117 The EU Commission noted that ‘Serbia made no progress in introducing a national scheme to verify the sustainability criteria for biofuels, bioliquids and biomass fuels. The share of RES in the transport sector is still below 1% while the target for 2020 was 10%.’ Commission Staff Working Document Serbia, 2023, p. 132.

118 Commission Staff Working Document Serbia, 2023, p. 132.

119 Ibid.

The prospective membership, the main objective and motivating force behind the energy sector reforms in Serbia, has been the primary catalyst for the regulatory shifts that have taken place. In terms of alignment, we can conclude that the legislative framework is mostly in place, whereas implementation and application is often stalled or hampered by numerous factors outside the scope of what can be achieved through regulatory measures. Although, over the course of the years, Serbia has received a lot of criticism for failing to comply with a series of obligations under the legal framework of EU accession and enlargement with the Western Balkans, specifically those deriving from its relationship with Kosovo and the functioning of the gas market, that in nature are related to numerous external factors such as the distribution of primary energy sources and the remnants of the conflicts of the 90s in the region, it is worth noting that some of the core concepts of EU law have been transposed and implemented. Unbundling in the electricity and gas sectors, a series of measures allowing for the establishment of energy markets, the introduction of the concept of energy efficiency, and the increasing benefits of using energy generated from renewable sources, ensuring security of supply, the establishment of an independent energy regulator all represent major changes in the comprehension of the regulation of the energy sector which delivered results. Although the majority of primary energy production was still from coal with 65,1%,<sup>120</sup> the increase in hydro energy, wind energy, biomass and solar photovoltaic by 2020 is worth to be mentioned as well. The improvements achieved were recognised and rewarded when the EU agreed to open the Green Agenda and Sustainable Connectivity Cluster including Chapter 15 on Energy during the 13<sup>th</sup> Intergovernmental Conference in December 2021. Some key issues remain unresolved, having an impact on the accession process for years. The alignment with Energy Community 2030 targets, the finalisation of the unbundling of the gas system operators, the reduction of the country's exposure to Russian-owned key energy assets, and enabling third-party access to all gas entry points continue to be principal issues to be addressed.<sup>121</sup>

Serbia as part of the Western Balkans will inevitably continue to pursue further activities in relation to the energy sector reform in line with the obligations assumed under the Energy Community membership, pertaining to the accession negotiations and the implementation of the Stabilization and Association Agreement. With the Russian aggression against Ukraine, the outside factors that have been hampering the ongoing processes are bound to increase, however, the interest of the European Union and its Member States in the energy sector in Serbia is bound to follow. The developments with regard to EU energy policy will remain to have effect outside its territory with the tendency to expand beyond the solely potential members. With the most recent encompassing policy initiative, the European Green Deal confirms the need for clean, affordable and secure energy, also finding its way outside the territory of the Union through the Sofia Declaration on Western Balkans

120 Statisticki kalendar Republike Srbije, 2023, p. 52.

121 Commission Staff Working Document Serbia, 2023, pp. 152–153.

Green Agenda adopted on 20 November 2020. It allows for the targets and main pillars of the energy policy developments to be understood as precursors of national and regional policy initiatives. Although these policy changes have been criticised of being myopic, long-term goals are rarely reflected in the ensuing decision-making process,<sup>122</sup> and the set goals may appear to be out of reach for struggling Western Balkan economies, they are an indication of the direction of all future developments in the region. In the case of Serbia, we can conclude that the reform process has been lengthy, demanding and some radical changes are required as to how energy is perceived, however, it has undoubtedly contributed to securing the sustainability of energy supply in years to come.

122 Gheuens and Oberthur, 2021, p. 339.

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