

How far is Macedonia in fulfilling the requirements under chapter 15 from the acquis



## Introduction

Macedonia's progress under Chapter 15 from the *EU Acquis* has been inconsistent over the past few years. Even though the reforms in the energy sector started quite late (around 2005/2006), at the beginning the pace was going on well up until 2008 when major setbacks occurred, such as the amendments of the Energy Law adopted that year, the understaffing of the responsible energy bodies, etc. Macedonia's energy potential is not well balanced, since it does not have any natural gas or oil resources. This makes the country import dependent. However, this does not undermine Macedonia's possibility of having sustainable energy production from other alternative energy sources, such as hydro, wind, biomass or solar energy, which have high potential for exploitation and energy production.

The reforms of the energy sector are high on Macedonian's government agenda, and they have become even more popular after the formation of the Energy Community of South East Europe (ECSEE) in 2005. ECSEE's rules enforce that member countries, and Macedonia as a member state, have to align their legislation in energy according to EU's regulations. The reform process started in 2005 and in some parts it was more successful, in some less, but most importantly it is still on the agenda and will most likely increase its pace in the following years.

This report will investigate the positive developments and setbacks of the reform path in the energy sector in Macedonia, in light of the Annual Progress Reports of the European Commission. This will serve as a guidance into what has been done by now, where the progress has been slower or even failed/reversed, what areas have great potential of development and what lays ahead in development of the country's energy market.

### Review of the Chapter 15 in EC Progress Reports (2005-2009)

There are several components of the overall energy sector that are of main importance to the EC in the assessment of the Progress Report, such as:

- Internal energy market – most progress 2007, least in 2009;
- State aid – no real progress in over 4 years;
- Renewable energy – most progress 2007, only slightly improved in 2008 and 2009;
- Energy efficiency – good in 2007 and 2008, deteriorated in 2009;
- Nuclear energy and safety and radiation protection – steadily improving since 2005, the best progress has been noticed here.

While carefully analyzing the EU Progress Reports of the past 5 years, the uneven progress in the Energy Chapter is clearly visible. First example is the reforms in the internal energy market. This part assesses the opening up of the electricity and gas markets i.e. allowing competition in a previously state regulated field. The most important element of the implementation of free energy market is the Law on Energy which regulates that market and the unbundling of the production from the distribution and supply. This law was adopted in 2006, as one of the requirements resulting from the membership in the Energy Community. It got fairly good remarks from the foreign community, stating that it "...has made notable progress in the energy sector, in particular as regards internal energy market related legislation."<sup>1</sup> Also included are the privatization of the state-owned distribution company and the unbundling of the gas transmission and distribution, as well as the clearance of the ownership of the gas system. However, instead of developing and practicing the open market, things have gone the other way. Three years after the grounds for open energy market were laid down, the

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<sup>1</sup> European Commission, Commission Staff Working Document, The Former Yugoslav Republic of Macedonia Progress 2006 Report, Brussels 8.11.2006, page 37.

country got lot of criticism of the slow pace of reforms and in some areas of the regress that it had (ex. the amendments to the Law on Energy in 2008 – besides electricity Production Company ELEM was granted with a license for trade with electricity on the regional market).

The proper implementation of the legislation is just one of the problems. The capacity of the Regulatory Energy Agency is far from fulfilling the requirements under the ECSEE. Also, proper energy prices that correspond to the market demand and supply are still not in place. Over the years, these issues have been mentioned in every progress report published by the Commission. For instance, in 2006 it was stated that: “administrative capacity should be significantly strengthened...”<sup>2</sup>, furthermore in 2007: “there is...insufficient independence with regard to the process of defining the regulated prices on other markets where there is little or no competition. The prices are based on government decisions and are lower than those recommended by the ERC.”<sup>3</sup> Furthermore in 2008: “...collection rates are still not sufficient to ensure viability of the system. The ERC does not have proper regulatory authority over the operations of all independent power producers...”<sup>4</sup> At the end, last year’s report brings nothing new to the stage, even more, the situation has worsened due to several disputes the country has regarding energy issues. “The Secretariat issued a reasoned opinion for noncompliance of the country with the Energy Community Treaty pointing...the position and structure of the state-owned generating company that discriminates against nondomestic electricity and forecloses the regulated market to the detriment of consumers, and the fact that regulated distribution tariffs breach the principle of cost-reflectivity.”<sup>5</sup>

Macedonia also has issues with implementing proper measures on state aid, and energy efficiency. For years the country has struggled with the ownership of the thermal power plants and it still has not adopted proper legislation that will divide the management of the coal (lignite) reserves from the electricity generation company. The situation is not much better with energy efficiency. Concerning legislation, among other documents, there is an Energy Efficiency Strategy adopted in 2004, and a Rulebook on the energy efficiency performance of buildings that was adopted in 2008, both of which are due to be amended this year. Separate law about energy efficiency does not exist and the Energy Agency that is supposed to deal with this area is being understaffed and uncoordinated in its work. Some municipalities in the country are working on raising the awareness for this important issue in their respective municipalities<sup>6</sup>, however on national level the country is still at early stage for proper development of the energy efficiency.

Things are little better concerning renewable energy (RE). Some progress has been noticed over the years. A new Strategy on Renewable Energy should be published earliest in 2010. The field of RE has seen biggest progress in 2007, where “within the framework of the programme for promotion of sustainable energy, the tenders for construction of 60 small hydroelectric plants have been concluded and the government published a

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<sup>2</sup> Ibid., page, 36.

<sup>3</sup> European Commission, The Former Yugoslav Republic of Macedonia, 2007 Progress Report, accompanying the Communication from the Commission to the European Parliament and the Council, Enlargement Strategies and Main Challenges 2007-2008, Brussels 6.11.2007, page 41.

<sup>4</sup> European Commission, The Former Yugoslav Republic of Macedonia, 2008 Progress Report, accompanying the Communication from the Commission to the European Parliament and the Council, Enlargement Strategies and Main Challenges 2008-2009, page 47.

<sup>5</sup> European Commission, The Former Yugoslav Republic of Macedonia, 2009 Progress Report, accompanying the Communication from the Commission to the European Parliament and the Council, Enlargement Strategies and Main Challenges 2009-2010, Brussels 14.10.2009, page 49.

<sup>6</sup> See Municipality Karpos:

[http://www.karpos.gov.mk/index.php?option=com\\_content&view=article&id=369&Itemid=126](http://www.karpos.gov.mk/index.php?option=com_content&view=article&id=369&Itemid=126) and Municipality Aerodrom: <http://www.momee.org.mk/infomacef/2009/81%20InfoMACEF.pdf>

tender for sale of land in four locations intended for construction of windmills.”<sup>7</sup> In 2008 the government adopted the legislation on renewable energy sources and in 2009 the first photovoltaic solar power plant was opened, the Rulebook for obtaining the status of preferential producer for those who will opt for producing energy from renewable sources was also adopted. The plans for building 60 small hydro power plants, ended in just one concession agreement for construction of 16 plants. The tender for the large hydroelectricity plants has not been successful and therefore the government hired foreign consultants to help the authorities in the construction of a viable tender documentation that will result with success.

Significant progress the country had in nuclear safety and radiation protection over the past four-five years. It started moderately with having barely any measurements in place that are dealing with this highly sensitive issue. However things gradually improved and in 2008 for instance, “...the Law on Radiation was amended to include provision on nuclear safety. The administrative capacity of the Radiation Safety Directorate has been reinforced...efforts have been made to prevent and combat illicit trafficking of radiation sources...the administrative capacity to enforce...radiation protection regulations has improved, but requires further strengthening.”<sup>8</sup> This process is successfully moving forward.

The overall conclusion would be that Macedonia’s progress in the energy sector has been slow, positive in some areas, but with overall unsatisfactory assessment. Same problems have prevailed throughout the years, such as the capacity of the Energy Regulatory Commission; the proper functioning and professionalism of the Energy Agency and the departments in the Ministry of Economy in charge of the energy sector; the improper implementation of the legislation; changing of the legislation without following EC’s or ECSEE’s rules; lack of proper strategies; etc. These issues need to be urgently addressed and solved, or at least improved as the country’s energy position in the region is weakened. In the next part of the paper, these current issues and prospects in the energy field for the year ahead will be discussed.

## Energy Challenges facing the Republic of Macedonia.

### I. New Energy Law

Macedonia adopted the Energy Law in 2006 in order to adjust its legislation according to the criteria set by the Energy Community and the EC. As it was mentioned before this Law was positively welcomed and set to establish the gradual opening of Macedonia’s energy market. However, the government in 2008 introduced amendments to the law, which threatened to hinder the free trade with electricity and the market competition. With these changes, the main producer of electricity (state owned Electrani Makedonija – ELEM) also became the main supplier for the big consumers (factories, etc.). As it says in article 19 of the law: the words “supplier of electricity for the big tariff consumers” from the previous law are replaced with ‘the regulated producer of electricity’.<sup>9</sup> With these and other amendments, ELEM got advantage on the electricity market over other companies such as EVN which only deal with electricity supply and not electricity generation. It was justifiably feared that the new law will establish a monopoly of ELEM in the electricity market.

After the suggestions coming from the Energy Community Secretariat and the EC, the government has agreed to change the law. What has been suggested is a new comprehensive law that will address varieties of issues in the energy sector. One of them is the openness of the energy market as the other issue which the Energy Community Secretariat pointed out to the energy authorities. The suggestion was ELEM to only produce and

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<sup>7</sup> 2007 Progress Report, page 42.

<sup>8</sup> 2008 Progress Report, page 48.

<sup>9</sup> Official Gazette of the Republic of Macedonia, Zakon za izmenuvanje i dopolnuvanje na zakonot za energetika, no. 106, 27.08.2008, page 8.

not to import electricity.<sup>10</sup> An incentive for these changes to take place could be the market competition which will eventually, in time, lower the electricity price, and without the current government protection electricity producers will work on their maximum to make profit. "The new law should motivate ELEM to produce as much electricity as possible, if it wants to earn more money...For now, smaller companies purchase electricity from ELEM and from 2012 they will import it on their own. Thus the country will abolish the double role that ELEM has on the market, as a producer and supplier of electricity."<sup>11</sup>

According to the Minister of Economy, the new law will be adopted in June 2010, as perceived in the Action Plan, created by all involved parties (the Ministry of Economy, the European Community, the energy companies: EVN, MEPSO, ELEM, the Regulatory Commission for Energy and other experts).<sup>12</sup>

Aside of the new energy law, there is a range of missing secondary legislation that needs to be drafted and adopted. Without the secondary regulations and directives that will accompany the new law it cannot be properly implemented. Therefore it is essential that the government pays attention to this part as well, and after the adoption of the new law the authorities should begin drafting the necessary secondary legislation on energy that is provided in the law.

## II. Electricity prices.

Prices for energy consumption have been a burning issue for the authorities since the privatization of the energy sector and liberalization of the energy market. The gradual opening of the market should be completed by 2015 when all households in the country can purchase electricity directly on the market. For this to happen Macedonian authorities were advised by the international and European energy community to start with the preparations for amending the electricity prices as soon as possible. Therefore, the Government began with preparations of a plan for price liberalization, which should be adopted by mid 2010. In this respect the Regulatory Energy Agency is receiving substantial financial and technical assistance from the EC with two Twinning projects that should strengthen its capacity regarding the price policy, preparation of the methodology (non-tariff or tariff) for the rulebooks. Since this issue also has a strong social dimension, the authorities should be more cautious and have the overall political, economical and social situation in the country while dealing with it.

## III. Recommendations from Vienna.

Delegation of the European Energy Community brought the Government the remarks from Vienna about the changes in the Energy Law. EEC is very pleased that the authorities have changed their attitude towards the necessity of having new Law on Energy, since the one in force has certain articles that are against the European legislation. The official position of EEC is that: "the draft of the new Law on Energy is good and it

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<sup>10</sup> Silvana Jovanovska, "Delegacija na Energetskata Zaednica doaga vo Makedonija, Strujata ke prostrui po evropski terk", Bpemeonline, 20.01.2010, <http://www.vreme.com.mk/DesktopDefault.aspx?tabindex=0&tabid=1&EditionID=1919&ArticleID=131552>

<sup>11</sup> Ibid.

<sup>12</sup> "...the Action Plan estimated that there will be changes in four areas of the law, and also several rulebooks will be additionally adopted. These changes should secure the supply and transmission of electricity and gas in the country and wider region...the plan also estimates that an analysis for modernizing the tariff system should be adopted, as well as different social measures for the poor categories of citizens, which do not have funds to pay for the electricity they use." Yeni Balkan, Noviot Zakon za Energetika vo Juni, 20<sup>th</sup> October 2009, [http://www.yenibalkan.net.mk/mk/index.php?option=com\\_content&view=article&id=219:2009-10-20-07-26-33&catid=49:2009-08-19-23-08-46&Itemid=55](http://www.yenibalkan.net.mk/mk/index.php?option=com_content&view=article&id=219:2009-10-20-07-26-33&catid=49:2009-08-19-23-08-46&Itemid=55)

fulfills all set conditions and demands.”<sup>13</sup> Furthermore, the Director of the Secretariat of EEC Slavco Nejkov stated that the changes in the law are not made in favor of any energy company but they are proposed for the interest of the country at whole and its energy development. For now, the Government still works on these amendments together with the concerned parties but there are no details as to what they think of the proposed changes. Another important notion that the Director of the Secretariat of EEC made was about the independence of the Regulatory Commission. “...It is most important to separate the authority of the government from the other institutions’ authority that regulate the energy market and at the same time the regulator of the market to function separately. ”<sup>14</sup> Apart from these two recommendations, the EEC seemed pleased with the progress on the draft proposal and will also send its own experts to help the Macedonian authorities in the finalizing of the proposal for new energy law.

#### IV. Development trends.

The newest developments in the areas of energy, energy efficiency and renewable energies can be found in the National Programme for Adoption of the Acquis Communautaire, Revision 2010<sup>15</sup>. The focus (short, middle and long term) is on the following issues:

- Energy Strategy 2008-2020

This is the strategy that will establish Macedonia’s long term goals in energy development for the purpose of safe energy supply. This document is prepared by the Macedonian Academy for Sciences and Arts. The expectations are that in February 2010 the Government will adopt the Strategy for Development of the Energy Sector for the period of 2008-2020 with a vision up until 2030.

- Strategy for Renewable Energy<sup>16</sup>

This strategy is still in preparation. The earliest date for its adoption is estimated to be end of March 2010. Same as the Energy Strategy, it is being prepared by the Macedonian Academy for Sciences and Arts with the assistance of the relevant institutions and international organizations. In the next period, in accordance with the Energy Law, the authorities plan to adopt all the relevant documentation for aligning Macedonian legislation with EU legislation concerning the usage of renewable energies.

- Focus on building new hydro power plants

The long awaited tender for building the two big hydroelectric plants Cebren and Galishte is going to be open until 31<sup>st</sup> of March 2010, and in the period of 2010 the new constructor should be selected. The estimated time for their completion is 8 years. At the beggig of this year, the international call for building HEP Boshkov Most will also be open. Furthermore, the government plans to open international tender for building 40 to 60 small hydro plants on the territory of the country.

- New Energy Efficiency Strategy and activities

In 2009, the authorities began to update the existing Energy Efficiency Strategy from 2004. The accent in the updated strategy will be put on the objectives to increase energy efficiency in the country and develop the best

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<sup>13</sup> Time.mk “Nejkov: Izmenite vo Zakonot za Energetika se dobri”. 03.02.2010

<http://www.time.mk/read/516af0d44b/403515760d/latin-title.html>

<sup>14</sup> Radio Slobodna Evropa makdenes.org, “Nejkov: Energetskiot Regulator da funkcionira odvoeno od vladata”, <http://www.time.mk/read/516af0d44b/e46b6ee15c/latin-title.html>, 03.02.2010

<sup>15</sup> More info about the NPAA can be found on SEP web page:

<http://www.sep.gov.mk/Default.aspx?ControllID=Npaalzvestai.ascx>

<sup>16</sup> Still not publicly available.

ways to achieve that, such as: decreasing of energy consumption; promoting of new technologies with high degree of energy efficiency; promoting of measures for increasing energy efficiency; promoting public awareness; decreasing the negative impacts on the environment caused by production, transmission, distribution and usage of electricity, etc. Macedonia is also receiving considerable amount of foreign assistance for different energy efficiency activities, such as: the programme for improving the energy efficiency in buildings, which is being implemented together with the Austrian Development Agency and it has several projects included in it. Furthermore, there is the ongoing GEF Project for Sustainable Energy (since 2007), as well as the UNECE Project for energy efficiency which is at its final stage, and the USAID pilot project for energy efficiency in the housing sector for families with low incomes, which was launched in December 2009. Another important event coming in the following year concerning energy efficiency is the adoption of the highly anticipated National Energy Efficiency Action Plan.

## Conclusions/Recommendations

### *Problems identified in Macedonian Energy sector:*

- Current law on energy incompatible with EU regulations and directives
- Range of secondary legislation missing
- Non-cost reflective tariffs
- Weakened regulators autonomy
- Understaffing of the departments, agencies and other bodies dealing with energy issues
- Slow development in energy efficiency and renewable energies

### *Solutions proposed:*

- New law on energy drafted with EEC Guidance
- Adopting the necessary secondary legislation
- Amending the Rulebook on tariffs with the help of EEC and EC
- Allowing other companies bar ELEM (the main electricity production company in the country) to operate as energy suppliers
- Strengthening the role of the Regulatory Commission, keeping the government's authority away from its work
- Strengthening the capacities of the other agencies and departments especially the Energy Agency
- Developing strategies and action plans for increasing the energy efficiency and usage of the energy from renewable energy sources

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