



Montenegro

Energy and Water Regulatory Agency

# **REPORT ON THE SURVEILLANCE OF WHOLESALE ELECTRICITY MARKET IN 2022**

Podgorica, July 2023

## CONTENTS

<b>INTRODUCTION .....</b>	<b>1</b>
<b>1 LEGAL FRAMEWORK.....</b>	<b>4</b>
<b>2 REGISTRY OF PARTICIPANTS IN THE WHOLESALE ELECTRICITY MARKET.....</b>	<b>6</b>
<b>3 INSIDE INFORMATION .....</b>	<b>9</b>
<b>4 SURVEILLANCE OF THE WHOLESALE ELECTRICITY MARKET.....</b>	<b>11</b>
<b>5 CHALLENGES IN THE SURVEILLANCE OF THE WHOLESALE ELECTRICITY MARKET</b>	<b>22</b>
<b>6 INTER-INSTITUTIONAL AND INTERNATIONAL COOPERATION .....</b>	<b>27</b>
<b>7 SUMMARY .....</b>	<b>30</b>

## List of graphics

<b>Graph 2.1</b>	Participants in the wholesale electricity market in Montenegro .....	8
<b>Graph 4.1</b>	Share of electricity sold by market participants based in Montenegro to the participants based in other countries .....	16
<b>Graph 4.2</b>	Share of electricity purchased by market participants based in Montenegro from the participants based in other countries .....	17
<b>Graph 4.3</b>	Weighted average price at which CGES purchased electricity to cover losses in the transmission system in the period 2020-2022 .....	18
<b>Graph 4.4</b>	Weighted average weighted price at which CEDIS purchased electricity to cover losses in the distribution system in the period 2020-2022 .....	19
<b>Graph 4.5</b>	Average electricity prices in the European day-ahead markets in the period 2019-2022 .....	21

## List of Figures

<b>Figure 4.1</b>	Value of NTC at the borders of the Montenegrin electricity transmission system and neighboring systems in 2022 .....	14
<b>Figure 4.2</b>	Physical flows between the Montenegrin energy system and the system of neighboring systems .....	15
<b>Figure 4.3</b>	Electricity sold by market participants based in Montenegro to participants based in other countries .....	16
<b>Figure 4.4</b>	Purchase of electricity by market participants based in Montenegro from participants based in other countries .....	17

## List of acronyms

- ACER – Agency for the Cooperation of Energy Regulators
- BELEN – „Berza električne energije“ LLC Podgorica
- CEDIS – „Crnogorski elektrodistributivni sistem “ LLC Podgorica
- CGES – „Crnogorski elektroprenosni sistem “ JSC Podgorica
- COTEE – „Crnogorski operator tržišta električne energije “ LLC Podgorica
- ECRB – Energy Community Regulatory Board
- EPCG – „Elektroprivreda Crne Gore “ JSC Nikšić
- EU – European Union
- REGAGEN – Energy and Water Regulatory Agency
- REMIT – Regulation (EU) No 1227/2011 of the European Parliament and of the Council on wholesale energy market integrity and transparency (*Energy Market Integrity and Transparency*)
- SEE CAO – Coordinated Auction Office for South East Europe



## **INTRODUCTION**

According to Article 14, paragraph 2 of the *Law on Surveillances of Wholesale Electricity and Natural Gas Market* ("Official Gazette of Montenegro", No 1/22) (from now on *Law on Market Surveillances*), the Energy and Water Regulatory Agency (from now on REGAGEN) is obliged to prepare an annual report on the activities of surveillance of the wholesale electricity and natural gas market and publish it on its website. The law above transposed *Regulation (EU) No 1227/2011 of the European Parliament and the Council on wholesale energy market integrity and transparency* (from now on REMIT) into the Montenegrin legislation.

Given that the Law on Market Surveillances entered into force at the beginning of 2022 and that this is the first report on REGAGEN's activities regarding the surveillance of the wholesale electricity and natural gas market that it carries out under the law above, below is a brief reminder of why REMIT was adopted and what is the purpose of this regulation.

The adoption of the REMIT Regulation was preceded by a comprehensive analysis of the European Electricity and Natural Gas Market, initiated in 2005, which resulted in the publication of the *European Commission's Report on Competition in the Energy Market*<sup>1</sup> in 2007.

The importance of market development and strengthening the competition in the European Natural Gas and Electricity Market is recognized through the European energy policy, which aims to achieve three closely related goals: a competitive and efficient energy sector, security of supply, and sustainability. It is in the interest of all European customers of electricity and natural gas (households and industry) to have a reliable and secure supply of these energy products at competitive prices, which can be provided through strengthening competition in the energy markets and creating a single European energy market.

The market opening process significantly changed the functioning of the market, provided new market opportunities, and led to the introduction of new products and services. The competition at the beginning of this process resulted in reduced energy prices in Europe. However, even though progress has been made, the goals of market opening have not been achieved at the desired speed, so in 2005, the European Commission initiated a study of the functioning of the European Natural Gas and Energy Market to identify barriers to the achievement of set goals and measures that need to be taken to achieve the objectives.

The Findings of the *European Commission Report on Energy Sector Competition* from 2007 (from now on text: the European Commission Report) were as follows:

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<sup>1</sup> European Commission, "DG Competition Report on energy sector inquiry", 2007.

[https://competition-policy.ec.europa.eu/sectors/energy-environment/sector-inquiry-energy-2005\\_en](https://competition-policy.ec.europa.eu/sectors/energy-environment/sector-inquiry-energy-2005_en)

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- The wholesale electricity and natural gas markets maintain a high degree of concentration, similar to the period before the liberalization, which leaves room for the abuse of market power and is one of the biggest concerns for the success of the liberalization process and market development;
- Insufficient separation of the interests of transmission and distribution system operators (natural monopolies) from the supply activity, which is a market activity, has negative consequences on the functioning of the market and on investments in networks, which represents a significant obstacle to the entry of new participants into the market, and thus to the security of supply;
- Market division between dominant companies engaged in market activities is recognized as one of the most severe obstacles to market development and integration;
- Insufficient cross-border capacities or their unavailability and different market designs across Europe hinder market integration;
- Insufficient market transparency, i.e., lack of reliable and timely information necessary for market functioning;
- Many customers have limited confidence in price formation mechanisms at the wholesale level, while regulated supply prices to end customers that are below market prices discourage new suppliers from entering the market, so more efficient and transparent price formation is needed to provide end customers with all the benefits of market opening;
- Competition at the retail level is often limited. The duration of retail contracts for industrial customers can significantly impact the development of the retail market and the emergence of new suppliers.

The European Commission has defined the measures that need to be taken to overcome the mentioned obstacles to market development, namely:

- Strengthening of powers of the European Commission and the full use of powers regarding the application of antimonopoly rules, control of the concentration of the market participants, and control of state aid;
- Prevention and sanctioning of abuses wherever it is observed that the vertical integration of production and supply, as well as the insufficient separation of network and market activities, disrupts, prevents, or limits competition in the market;
- Solving the systemic conflict of interest inherent in the vertical integration of supply and network activities results in a lack of investment in transmission and distribution infrastructure and discrimination, i.e., unequal treatment of all market participants. The above is recognized as particularly significant since Europe needs major investments to ensure the security of supply and create integrated and competitive markets;

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- The application of antimonopoly measures and the fight against collusion between leading companies is marked as a priority since benefits for customers cannot be ensured when companies engaged in market activities do not compete but coordinate with each other;
- Enhancing powers of independent regulatory bodies and improving international cooperation;
- Improving transparency, that is, providing access to information relevant to the functioning of the market (essential data should be published continuously and promptly);
- Adoption of guidelines and regulations aimed at improving transparency in the natural gas and electricity markets, which would define and strictly limit exceptions regarding the publication of information to minimize the risk of collusion that distorts the functioning of the market.
- Establishing a system for monitoring trading on the wholesale markets of natural gas and electricity to increase the confidence of market participants and limit the risk of abuses in the markets;
- The authorization of independent regulatory bodies to collect and mutually exchange relevant information about the behavior of market participants, to give recommendations, and to implement measures to prevent and sanction market abuses.

Many stakeholders supported the measures presented in the European Commission Report. Vertically integrated companies did not support the implementation of the measures. In contrast, customers, traders, and competent authorities supported the initiative to adopt new regulations to ensure the implementation of the proposed measures.

Therefore, in the described report, it is concluded that there is a significant potential for wholesale energy market abuse in the EU. The energy legislative packages adopted after this report emphasized the importance of strengthening competition through market liberalization, ownership unbundling of vertically integrated companies, ensuring the independence and unbundling of transmission and distribution system operators from companies engaged in market activities, establishing independent regulatory bodies, and strengthening their powers.

The financial crisis has additionally directed the focus on the necessity of market surveillance, and practice has shown that the various national frameworks and financial regulations that take place under the auspices of the directives on markets of financial instruments and prohibition of their abuse (MiFID<sup>2</sup> and MAD<sup>3</sup>) are not sufficient to establish an effective energy market surveillance system. Those above conditioned the adoption of REMIT, a regulation that entered into force on December 28, 2011, with an implementation deadline of January 7, 2015.

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<sup>2</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014L0065>

<sup>3</sup> [https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=uriserv:OJ.L\\_.2014.173.01.0179.01.ENG](https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=uriserv:OJ.L_.2014.173.01.0179.01.ENG)

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REMIT is designed on the model of the regulations governing financial markets and the behavior of participants in these markets and is based on the following principles:

- transparency - through the obligation of participants to submit and publish inside information;
- integrity – through an explicit prohibition of abuse of the wholesale energy market;
- surveillance - through an effective framework for surveillance and centralized data collection;
- cooperation - through the establishment of cooperation and coordination between the Agency for the Cooperation of Energy Regulators (ACER), which supervises the market at the EU level, and the National Regulatory Authorities (NRAs), which supervise, investigate, and implement decisions at the national level.

REMIT prohibits trade based on inside information, dissuades market participants from market abuse, encourages open and fair competition among market participants, lays the foundation for improving market transparency and integrity, strengthens confidence in market functioning, promotes market integration, and ultimately protects the interests of companies and end customers.

## **1 NORMATIVE FRAMEWORK**

In November 2018, the Ministerial Council of the Energy Community adopted *Decision No. D/2018/10/MC-EnC* related to the REMIT adapted for the Energy Community Contracting Parties. This decision introduced an obligation for Energy Community Contracting Parties to harmonize their normative frameworks with this regulation. The main difference between the adapted version of this regulation and the one applied in the EU members is the lack of jurisdiction of ACER in terms of supranational supervision of the wholesale electricity and natural gas markets of the Energy Community Contracting Parties and the absence of the centralized data collection on trade in wholesale energy products.

With the adoption of the *Law on the Surveillance of Wholesale Electricity and Natural Gas Market* in January 2022, which transposed REMIT into the Montenegrin legislation, the Montenegrin normative framework was harmonized with the EU regulation governing the surveillance of wholesale electricity and natural gas market. The aforementioned was also noted in the *2022 European Commission Report for Montenegro*.<sup>4</sup> The main goal of the law is to create conditions for the proper functioning of the wholesale electricity and natural gas market through:

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<sup>4</sup> European Commission, „2022 Report on Montenegro“, October 2022

<https://neighbourhood-enlargement.ec.europa.eu/system/files/2022-0/Montenegro%20Report%202022.pdf>

- Establishment of an effective wholesale market surveillance system to prevent, detect, and sanction market abuses,
- Improving transparency in the wholesale electricity and natural gas market to increase confidence in the market, increase the number of market participants in the market, and establish a reliable price signal,
- Providing additional customer protection through the supervision of the behavior of market participants.

Adopting the mentioned law is particularly important for the adequate functioning and development of the electricity market, especially in the context of market integration and price formation at the regional level, not at the national level. Ensuring the reliability and transparency of the wholesale electricity market is a priority in the market integration process because market abuses in one country affect wholesale prices and, consequently, retail prices in another country.

The Law on Market Surveillance prescribes the prohibition of abuses on the market, penalty policy, new obligations for wholesale market participants, and powers of REGAGEN as an institution that supervises the wholesale electricity and natural gas market, thus making a significant improvement of the legal framework and fulfilling one of the obligations in the process of European integration.

The law also regulates international cooperation in market surveillance. Harmonized application of REMIT at the Energy Community level is provided through participation in the activities of the working group within the Energy Community Regulatory Board (ECRB).

Proceeding from the obligation prescribed by the Law, in 2022, REGAGEN adopted several by-laws necessary for the implementation and enforcement of REMIT:

- Decision on determining the application form for an entry in the register of the wholesale electricity and natural gas market participants („Official Gazette of Montenegro“, No 17/22);
- Decision determining the notification form about the delay in disclosure of inside information in the wholesale electricity and natural gas market and a list of electronic systems for publishing inside information („Official Gazette of Montenegro“, No. 17/22).

Also, in 2022, REGAGEN adopted:

- Internal instruction on keeping participant records in the wholesale electricity and natural gas market, No 22/824-1 of 17<sup>th</sup> February 2022.

- Notification form on exemption from trade prohibition based on inside information and abuse report form in the wholesale market, based on the forms from the Procedural Act No 01/2020 of the Energy Community Regulatory Board.<sup>5</sup>

Harmonizing the Montenegrin legal framework with the EU legislation is a continuous process since the EU legal framework is continuously upgraded. Given that on March 14<sup>th</sup>, 2023, the European Commission published proposals for the electricity market reforms, which include amendments to REMIT<sup>6</sup>, it is already certain that in the coming period, there will be a need for further harmonization of the Law on Market Surveillance with EU acquis. This proposal also includes harmonization of penalty policies, which is crucial for preventing and sanctioning market abuse. REMIT which is currently applied in the EU has not elaborated on the penalty policy. It defined the obligation of the countries applying this regulation to determine penalty policy by the national legal system. The above has led to the definition of different penalty policies, which makes sanctioning difficult in cases of market abuses that have a cross-border dimension. Learned from that experience, in its proposal, the European Commission more closely defined the improvements in this regulation.

The following is of primary importance for effective surveillance of the wholesale market:

- Preserving the independence of the regulatory body and providing the necessary authorizations so that abuses can be detected and sanctioned promptly and
- A penalty policy must be „ *proportionate, effective and dissuasive, and reflect the gravity of the infringements, the damage caused to consumers and the potential gains from trading based on inside information and market manipulation*“.<sup>7</sup>

## **2 REGISTRY OF PARTICIPANTS IN THE WHOLESALE ELECTRICITY MARKET**

According to Article 7, paragraph 1 of the Law on Market Surveillance, REGAGEN shall keep electronic records of participants in the wholesale electricity and natural gas market. On the other hand, in accordance with Article 7, paragraph 2 of the Law on Market Surveillance, participants in the wholesale market shall, before placing an order to trade or entering into a transaction of purchase and/or sale of electricity or natural gas in the wholesale market, submit to REGAGEN an application for entry in the register of participants in the wholesale market. According to Article 22

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<sup>5</sup> <https://www.energy-community.org/legal/procedural-acts.html>

<sup>6</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52023PC0147>

<sup>7</sup> Regulation (EU) No 1227/2011 of the European Parliament and of the Council on wholesale energy market integrity and transparency

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of this law, participants in the wholesale market were obliged to submit to REGAGEN an application for entry in the register within three months from the date of entry into force of this law, i.e. until April 18<sup>th</sup>, 2022.

The law also prescribes a fine for a legal entity (from 5.000 EUR to 40.000 EUR) and for a responsible person in that legal entity (from 500 EUR to 4.000 EUR) if, as a participant in the wholesale market, they have not, before issuing an order to trade or realization of a transaction of purchase and/or sale of electricity or natural gas in the wholesale market, submitted an application to REGAGEN for entry in the register of wholesale market participant.

Since the Law on Market Surveillance came into force, REGAGEN has been continuously communicating and informing the wholesale market participants regarding the new obligations arising from the Law on Market Surveillance. Communication with market participants is also enabled through a unique e-mail address - [remit@regagen.co.me](mailto:remit@regagen.co.me).

Namely, after the entry into force of the Law on Market Surveillance, REGAGEN informed all relevant entities in the Montenegrin wholesale electricity market, including „Berza električne energije“ LLC Podgorica (from now on: „BELEN“), the „Crnogorski operator tržišta električne energije“ LLC Podgorica (from now on: „COTEE“), the „Coordinated Auction Office in South East Europe“ (from now on: „SEE CAO“), the „Crnogorski elektroprenosni sistem“ JSC Podgorica (from now on: „CGES“), on the application of this law, and requested that they inform other participants in the market who use their services about the new obligations arising from the Law on Market Surveillance.

The deadline for registration of existing market participants in the register of participants in the wholesale market of Montenegro was April 18<sup>th</sup>, 2022. In March 2022, REGAGEN reminded the market participants who did not send registration applications, namely CGES, „Elektroprivreda Crne Gore“ JSC Nikšić (hereinafter: „EPCG“) and „Crnogorski elektrodistributivni sistem“ LLC Podgorica (hereinafter: „CEDIS“). The notice on the necessity of registration and fulfillment of other obligations arising from the Law on Market Surveillance was also sent to market participants registered with COTEE in March 2022.

Additionally, in December 2022, REGAGEN informed COTEE about persons registered in COTEE's register who are still not included in the REGAGEN's register of participants in the wholesale electricity market, requesting COTEE to inform these persons, as well as all persons who will be registered in the COTEE's register in the future, about the necessity of registration in the REGAGEN records.

REGAGEN has established a *Register of participants in the wholesale electricity market*, which is available on the REGAGEN website (<https://regagen.co.me/remit/evidencija-ucesnika-na-veleprodajnom-trzistu/evidencija/evidencija-ucesnika-na-veleprodajnom-trzistu-elektricne->

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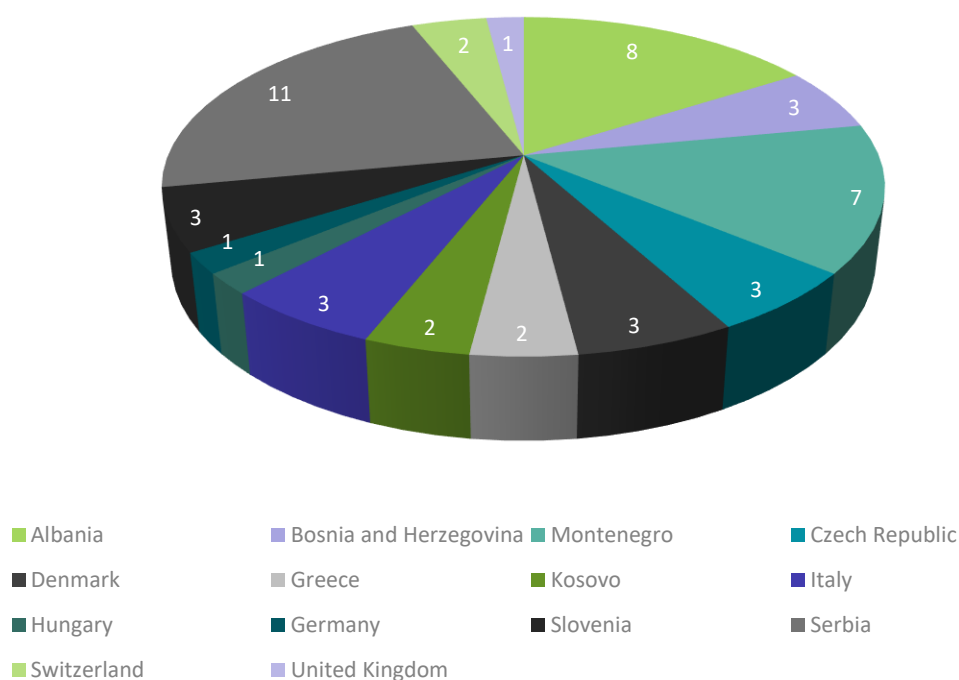
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[energije-u-crnoj-gori/](#)). There is still no wholesale natural gas market. Therefore, there is no register of participants in this market.

As of December 31<sup>st</sup>, 2022, 50 participants were registered in the *Register of Participants in the wholesale electricity market of Montenegro*, and their number increased to 64 in the first half of 2023. Participants are legal entities registered in Montenegro, the EU, and the Energy Community countries.

Trading in wholesale energy products in Montenegro does not require a trading license issued by REGAGEN. Out of the 50 registered participants in the wholesale market, seven are based in Montenegro, 11 are based in Serbia, eight in Albania, three participants each in Bosnia and Herzegovina, the Czech Republic, Denmark, Italy, and Slovenia, two each in Kosovo, Greece, and Switzerland, and one each in Hungary, Germany and Great Britain, which is shown on the following graph.



**Graph 2.1.** Participants in the wholesale electricity market of Montenegro

A special section for REMIT has been created on the REGAGEN's website (in Montenegrin and English) to inform market participants and other stakeholders about issues important for the proper wholesale market functioning. Helpful information on how to trade electricity and cross-border capacity in Montenegro has also been published (<https://regagen.co.me/remit/o-remit-u/>, <https://regagen.co.me/en/about-remit/>).

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The REGAGEN's website provides access to:

- Relevant regulations governing the surveillance of the wholesale electricity market at the level of the EU, Energy Community, and Montenegro,
- Forms and decisions of REGAGEN, which facilitate the implementation of the Law on Market Surveillance,
- Register of participants in the wholesale electricity market,
- Clarifications regarding the application of REMIT and answers to market participants' most frequently asked questions.

### **3 INSIDE INFORMATION**

Article 8 of the Law on Market Surveillance prescribes the concept of inside information and the obligation of market participants to publish inside information in accordance with Article 9 of this law to ensure the proper functioning of the wholesale market.

Article 9, paragraph 1 of the Law on Market Surveillance, defines that inside information can be published exclusively by using electronic systems, that is, centralized platforms for the publication of inside information that are on the list of the Agency for Cooperation of Energy Regulators (ACER). In this regard, REGAGEN has established and published a list of electronic systems for the publication of inside information that participants can use (<https://regagen.co.me/remit/kako-objaviti-insajdersku-informaciju/>).

The REMIT currently applied in the EU does not require the use of centralized platforms to publish inside information. However, it is recognized as a practice in the *ACER Guidance on applying REMIT*<sup>8</sup>. Based on experiences in the implementation of REMIT in the EU, the need to improve this regulation in this regard was also recognized, so on March 14<sup>th</sup>, 2023, the European Commission published proposals for the reform of the electricity market, which includes amendments to REMIT. These proposals aim to improve „tools“ available to regulatory bodies for monitoring REMIT implementation, expand the role of ACER as a supranational institution, and harmonize penalty policies. Regarding the obligation of market participants to publish inside information, it is proposed

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<sup>8</sup> ACER, „Guidance on the Application of Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency“, 2021

[https://www.acer.europa.eu/sites/default/files/REMIT/Guidance%20on%20REMIT%20Application/ACER%20Guidance%20on%20REMIT/ACER\\_Guidance\\_on\\_REMIT\\_application\\_6th\\_Edition\\_Final.pdf](https://www.acer.europa.eu/sites/default/files/REMIT/Guidance%20on%20REMIT%20Application/ACER%20Guidance%20on%20REMIT/ACER_Guidance_on_REMIT_application_6th_Edition_Final.pdf)

to use centralized platforms for the transparency and publication of inside information registered with ACER. In this way, it is ensured that inside information is made public in a way that enables prompt access and a complete evaluation of the information by the public.

Considering the above, the Law on Market Surveillance has already incorporated the European best practice into the national legal framework.

According to Article 9, paragraph 2 of the Law on Market Surveillance, a market participant may delay the public disclosure of inside information in order not to jeopardize its business if by delaying the public disclosure of that information the public is not misled, and if the market participant can ensure the confidentiality of that information and does not make transactions on the wholesale market based on that information. In this case, the participant is obliged to notify REGAGEN within 24 hours of the occurrence of inside information by submitting a completed and signed *Notification Form on the delay of the public disclosure*, which was adopted and published by REGAGEN<sup>9</sup>.

The Law on Market Surveillance prescribes a fine for a legal entity (from 5.000 EUR to 40.000 EUR) and a responsible person in the legal entity (from 500 EUR to 4.000 EUR) if as a participant in the wholesale market.

- Does not publish inside information referred to in Article 8 of this law using electronic systems of organizations that are on the ACER list within 24 hours from the occurrence of inside information, or
- Has disclosed part of the inside information related to a certain wholesale energy product during the daily performance of its activity and has not published the complete inside information using the electronic systems of organizations that are on the ACER's list within 24 hours from the occurrence of the inside information, or
- Fails to notify REGAGEN within 24 hours of the occurrence of inside information or the delayed publication of inside information and fails to submit inside information whose publication is delayed.

In addition to above, Article 20 of the Law on Market Surveillance prescribes fines for the market participants, in the amount of 5% to 10% of the total annual income in the financial year preceding the year when the misdemeanor was committed, including the possibility of prohibition to perform activities for a period of 30 days to six months, if they use inside information when buying or selling, or attempting to buy or sell wholesale energy products, or transfer inside information to another legal or natural person, or encourage another natural or legal person to buy or sell a wholesale energy product to which that inside information refers.

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<sup>9</sup> <https://regagen.co.me/remit/kada-ucesnik-na-trzistu-moze-odloziti-objavljivanje-insajderske-informacije/>

A market participant may be exempted from trading based on inside information in the cases prescribed by Article 10, paragraph 2 of the Law on Market Surveillance, whereby he is obliged to notify REGAGEN within 24 hours of executing the transaction. The Law on Market Surveillance prescribes a fine for a legal entity (from 5.000 EUR to 40.000 EUR) and responsible person in a legal entity (from 500 EUR to 4.000 EUR) if, as a participant in the wholesale market, does not notify REGAGEN of the execution of the transaction referred to in Article 10 paragraph 2 of the law within 24 hours from the execution of the transaction.

Clarifications regarding the obligation to publish inside information were sent in May 2022 to companies registered in the register of participants in the wholesale market, whereby the mentioned clarifications are also published on the REGAGEN website (<https://regagen.co.me/remit/najcesca-pitanja/>). Namely, REGAGEN accepted requests for registration of subjects in the register of participants in the wholesale electricity market if the field „Publication of inside information“ or some other field, which is not of decisive importance for the registration procedure, was not filled out such as, e.g. the absence of an official website of the company. However, market participants are informed that, in accordance with Article 9 of the Law on Market Surveillance, inside information can only be published by using electronic systems listed by ACER (<https://www.acer-remiteu.com/portal/list-inside-platforms>), as well as that non-disclosure of inside information, including the publication of info on the website of market participants, or publication of any other website that is not on the ACER list, are grounds for initiation proceedings and imposing a fine in accordance with Article 19 of the Law on Market Surveillance. In 2022, no misdemeanor proceedings were initiated before the competent court.

In addition to the above obligations, market participants are, according to Article 11 of the Law on Market Surveillance, obliged to compile a list of persons who have access to inside information, keep the list regularly updated, and submit it to REGAGEN. Based on this, in September 2022, REGAGEN informed registered market participants about their obligation regarding the submission of the list of persons who have access to inside information. In 2022, 20 market participants submitted a response to REGAGEN, whereby five participants responded that they did not have inside information related to Montenegro and that no specific persons had access to inside information.

## **4 SURVEILLANCE OF THE WHOLESALE ELECTRICITY MARKET**

Article 4 of the Law on Market Surveillance prescribes that REGAGEN performs the surveillance of the wholesale electricity market, while Articles 14 and 16 of the Law more closely define its powers in carrying out surveillance and eliminating irregularities. When supervising the wholesale market, REGAGEN can cooperate with the competent body for the protection of competition, the competent body for the capital market, the competent bodies of the Energy Community, and ACER.

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On the other hand, market participants are required to submit monthly data to REGAGEN on executed transactions in wholesale energy products, namely:

- Purchased and sold wholesale energy products;
- Price and amount of purchased and sold wholesale energy products;
- Participants in executed transactions;
- Date and time of execution of transactions.

Market participants must also keep records of disclosed inside information referred to in Article 8 of the Law and records of executed transactions in wholesale energy products.

During 2022, REGAGEN collected monthly data on executed transactions in the electricity wholesale market in Montenegro. The transactions were related to:

- Purchase and sale of electricity between market participants, which were the subject of bilateral contracts,
- Purchase and sale of electricity to cover losses in the Montenegrin transmission and distribution system for electricity, which were realized at the long-term exchange market, i.e., through BELEN,
- Allocation of cross-border transmission capacities at the borders of the Montenegrin electricity transmission system with neighboring electricity transmission systems.

During 2022, the electricity price trend in the wholesale market of Montenegro followed the electricity price trend in the European electricity market. The wholesale electricity market has changed drastically in Europe and globally in the past three years. The coronavirus pandemic and the measures introduced globally to suppress its spread have reduced demand for energy products, leading to low prices on the power exchanges across Europe during 2020. This crisis was followed by economic recovery and an increase in energy demand, which gradually led to an energy crisis due to the discrepancy between supply and demand for energy products on a global level. The situation was further complicated by adverse weather conditions (cold winter season, floods, droughts...), which affected the increased demand for natural gas and electricity. During 2021, energy prices in Europe reached an unprecedented level. The crisis continued in 2022, taking on the dimension of a major humanitarian crisis due to the war in Ukraine, which disrupted supply and demand patterns and long-standing trade relations.

The increase in electricity prices in the wholesale market was also recorded in Montenegro. In the Montenegrin wholesale electricity market, trade in electricity was mainly carried out bilaterally. In contrast, on the organized market, i.e., power exchange, electricity was procured only to cover losses in the system by CGES and CEDIS.

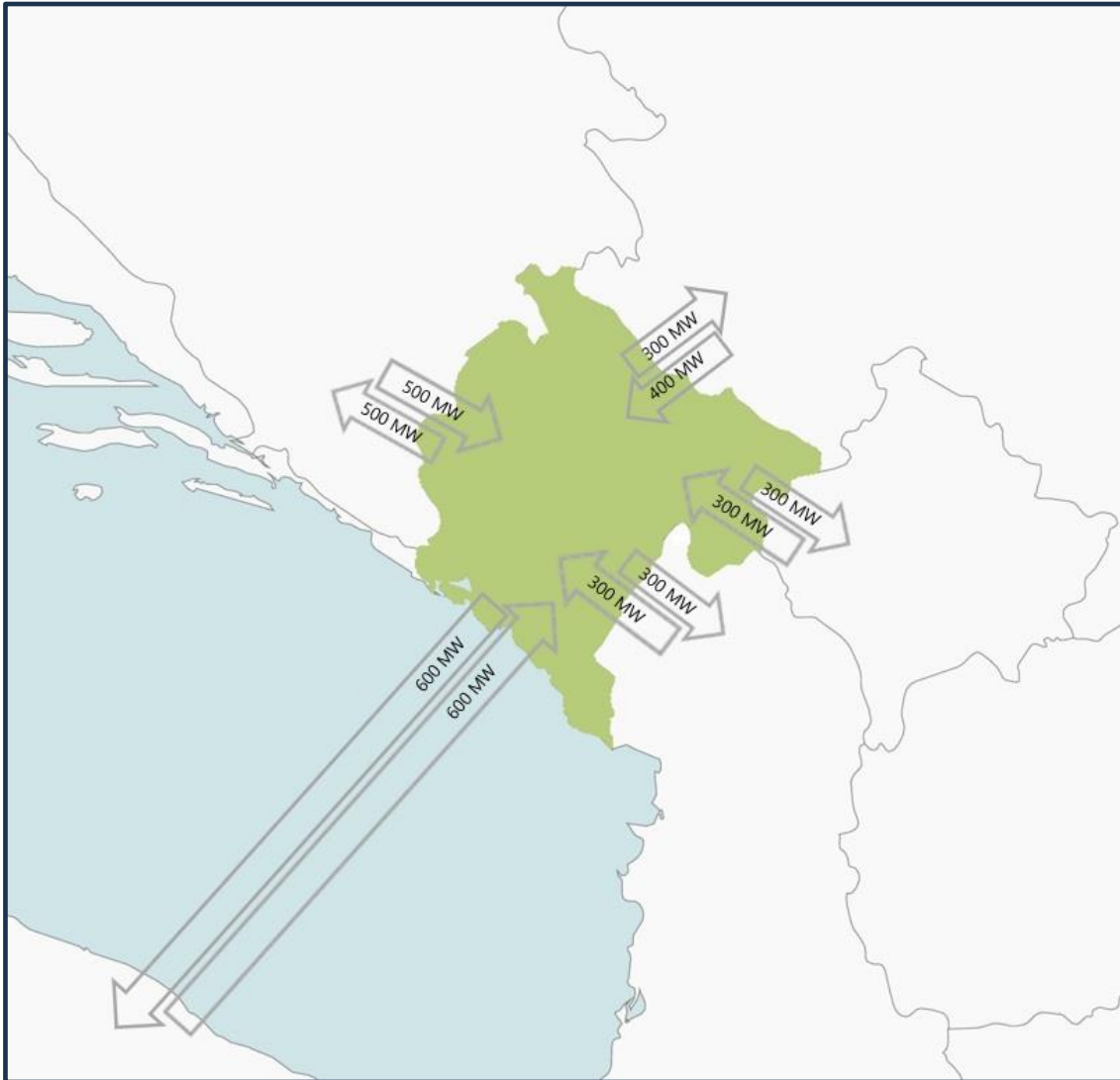
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The following figure shows data on the transmission capacity on the borders of the Montenegrin electricity transmission system with neighboring electricity transmission systems, represented by the maximum net transmission capacity (NTC) achieved in 2022, which sets the upper limit for cross-border electricity trade.



**Figure 4.1** Values of NTC on the borders of Montenegrin electricity transmission system and neighboring systems in 2022

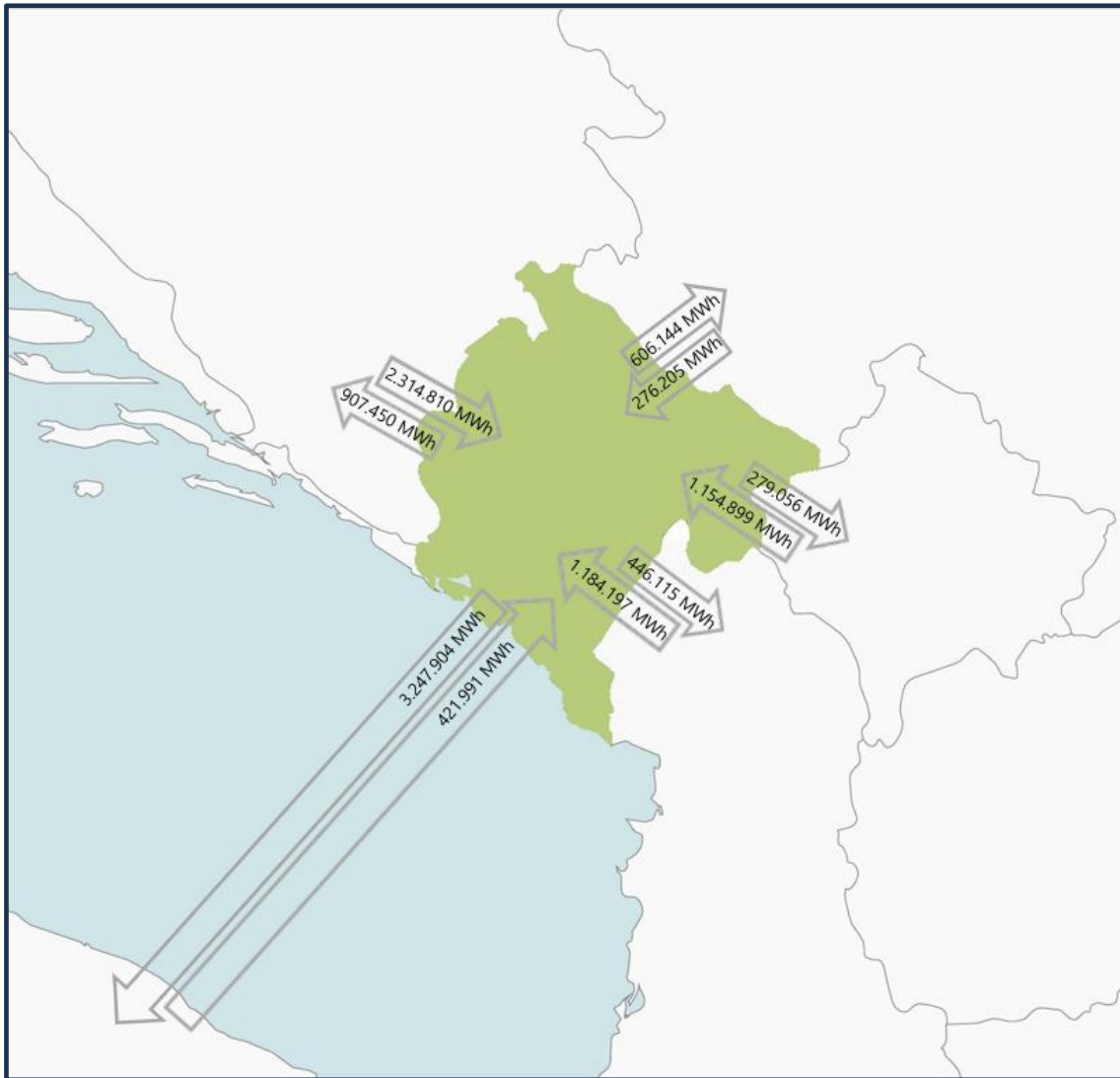
Trade, that is, electricity exports and imports, which are carried out to minimize system costs and maximize the security of supply, cannot exceed the NTC value in any hour. The physical exchange of electricity between Montenegro and neighboring countries in 2022 is shown in the following figure.

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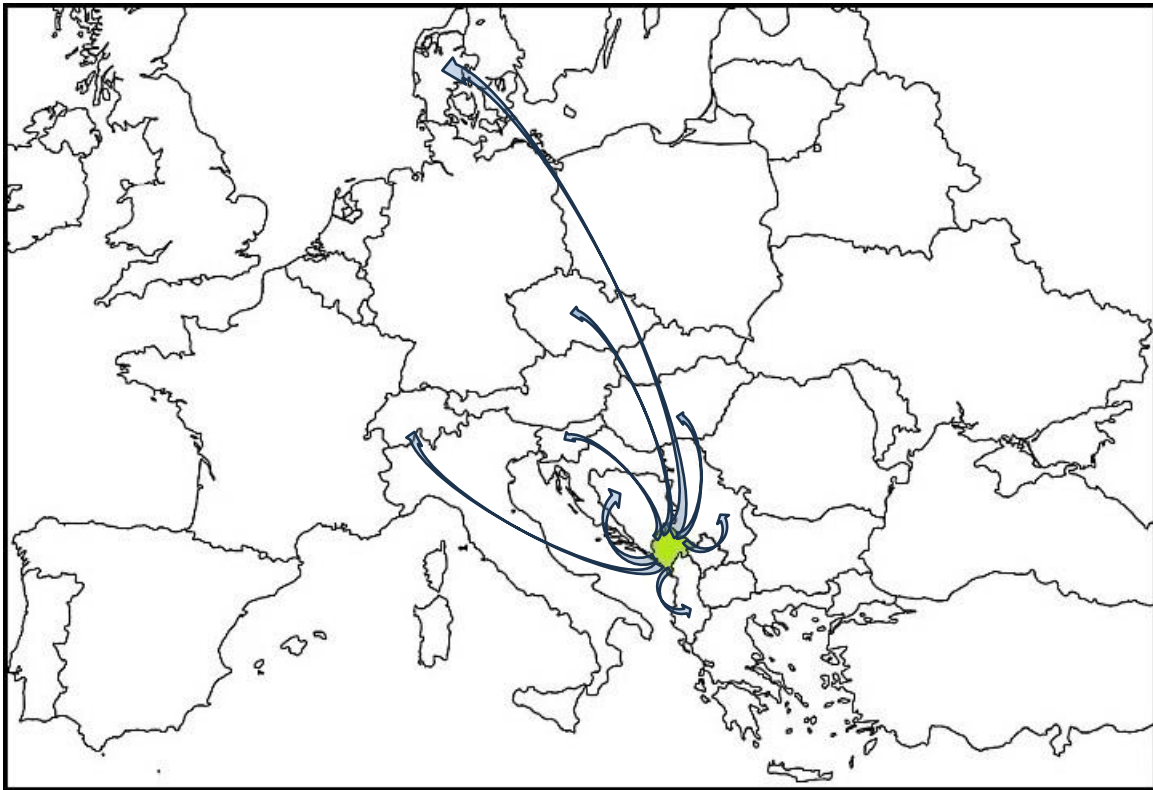
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**Figure 4.2** Physical flows between the Montenegrin energy system and the system of neighboring countries

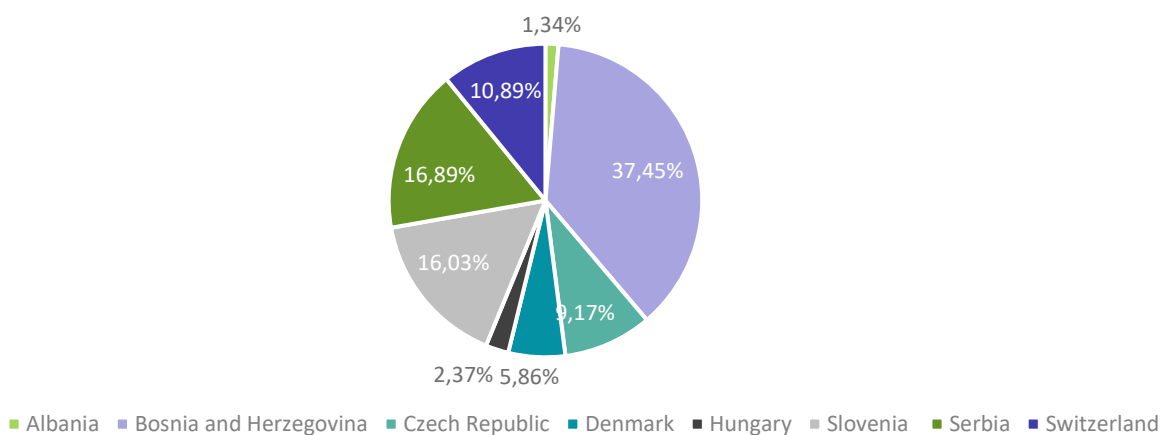
The most significant amount of electricity entered the Montenegrin electricity system from Bosnia and Herzegovina, a net exporter, and then from Albania and Kosovo. In contrast, the most significant amount of energy was sold to the Italian energy system. By connecting the transmission systems of Italy and Montenegro, the Montenegrin system became an energy hub, resulting in doubled transit compared to the period before the submarine interconnection was put into operation. Italy, whose energy import dependence is high and where the electricity prices in the wholesale market are among the highest in Europe (Graph 4.5), gained access to cheaper electricity from the Western Balkans countries through submarine interconnection.

Commercial electricity flows in 2022 are shown in the following figures.



**Figure 4.3** Electricity sales from the market participants based in Montenegro to participants based in other countries

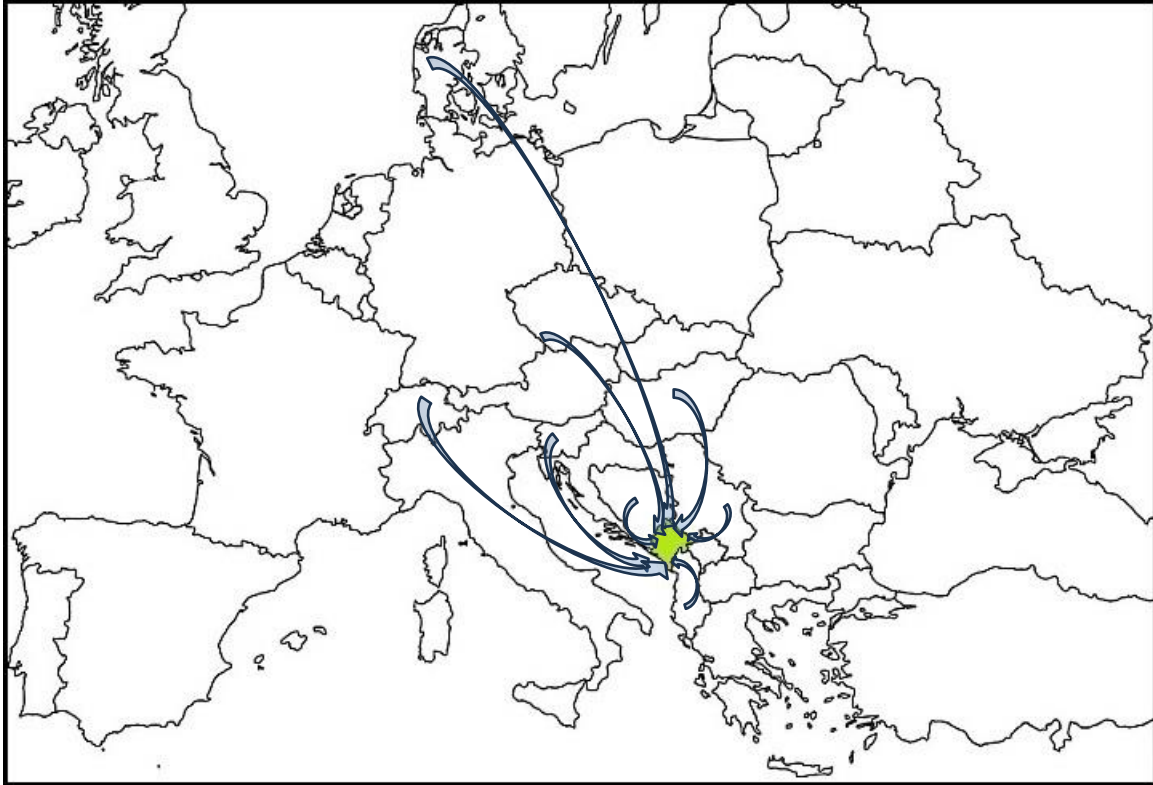
During 2022, market participants in the wholesale electricity market of Montenegro sold 883.767 MWh to market participants based in other countries, namely Albania, Bosnia and Herzegovina, Denmark, Czech Republic, Hungary, Slovenia, Serbia, and Switzerland. An overview of the share by countries is shown in the following graph.



**Graph 4.1** Share of electricity sold by market participants based in Montenegro to participants based in other countries

Graph 4.1 shows that the most significant amount of electricity is sold by market participants in Montenegro to those in Bosnia and Herzegovina and then in Serbia and Slovenia.

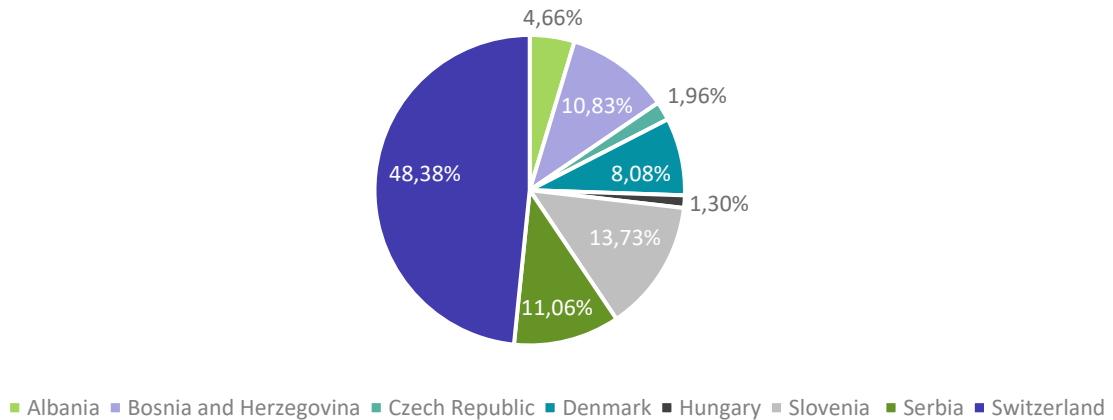
The following figure shows commercial flows, which refer to the purchase of electricity by the market participants based in Montenegro from participants based in other countries.



**Figure 4.4** Purchase of electricity by the market participants in Montenegro from participants based in other countries

During 2022, participants in the wholesale electricity market that are based in Montenegro purchased 700.261 MWh from market participants based in other countries, namely in Albania, Bosnia and Herzegovina, Denmark, Check Republic, Hungary, Slovenia, Serbia, and Switzerland.

An overview of the share by countries is shown in the following graph.

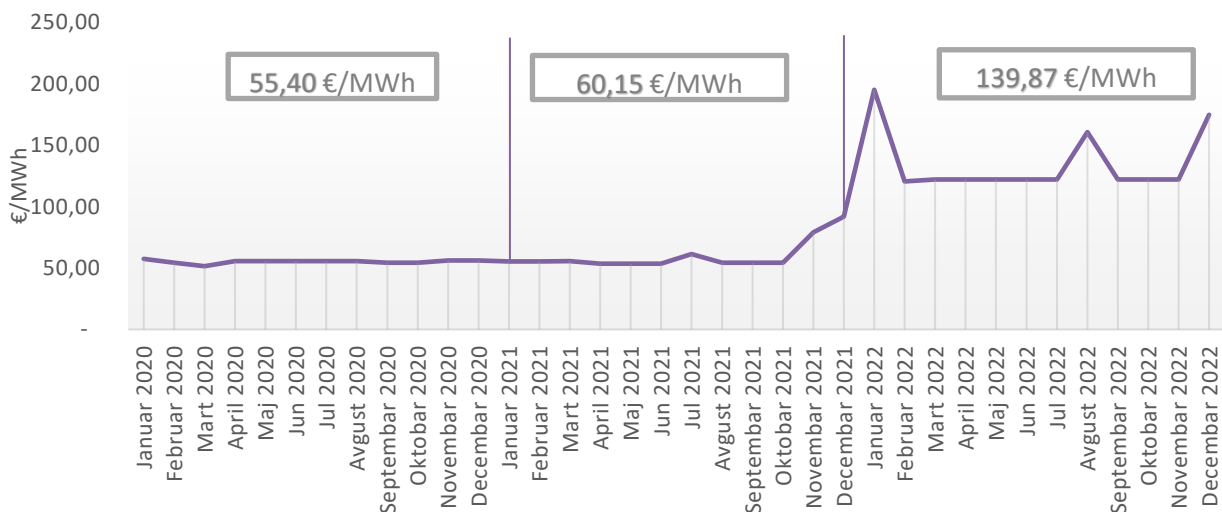


**Graph 4.2** Share of electricity purchased by market participants based in Montenegro from participants based in other countries

In graph 4.2, it can be seen that market participants based in Montenegro have the most significant amount of electricity purchased from participants based in Switzerland, Slovenia, and Serbia.

During 2022, in the long-term power exchange market, electricity was purchased only by CGES and CEDIS to cover losses in the system. BELEN was established in 2017, and at the end of 2020, it started to organize long-term auctions for electricity procurement by system operators.

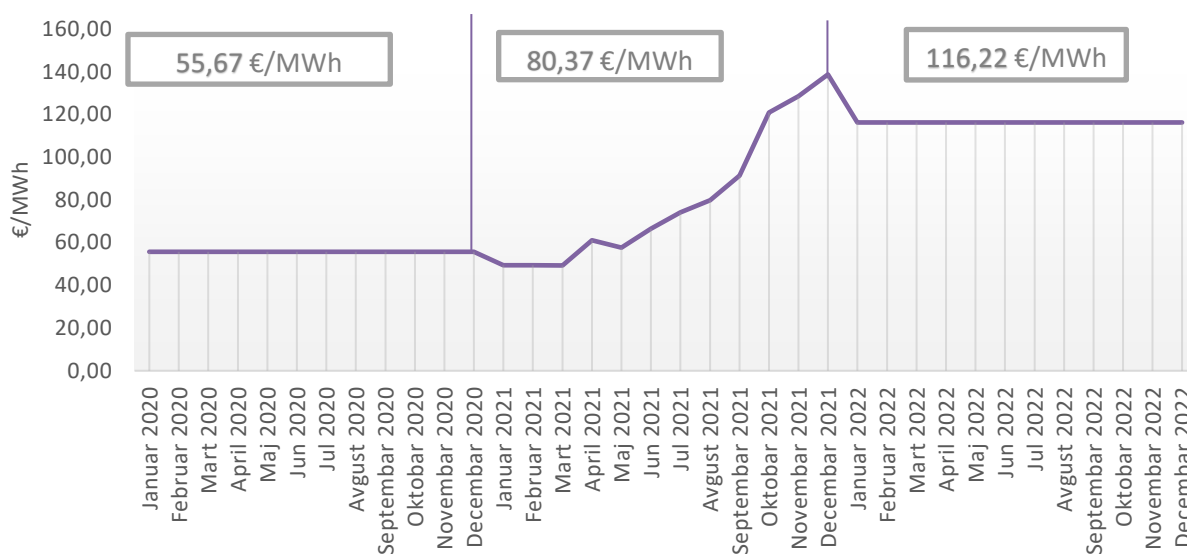
The following graphs show the weighted average prices in 2020-2022, at which the system operators realized electricity purchases to cover losses in the system in transparent procedures, i.e., through BELEN, from the end of 2020.



**Grafik 4.3** Weighted average price at which CGES purchased electricity to cover losses in the transmission system in the period 2020-2022

Graph 4.3 shows that the weighted average electricity price to cover losses in the transmission system, formed in 2022, on the long-term organized market in Montenegro, was doubled compared to the price in 2021 and two and half times higher than in 2020.

In 2022, energy to cover losses in the transmission system was purchased entirely from EPCG, while in 2020 and 2021, it was predominately purchased from the participants in the Montenegrin market, which are based in other countries.



**Grafik 4.4** Weighted average prices at which CEDIS purchased electricity to cover losses in the distribution system in the period 2020-2022

Graph 4.4. shows that the weighted average electricity prices to cover losses in the distribution system, formed in 2022 on the long-term organized market in Montenegro, was 45% higher compared to the price in 2021 and twice as high as the price in 2020. During 2022, 2021, and 2022, energy to cover losses in the distribution system was fully purchased by EPCG.

The burden of the increase in electricity prices in 2022 was born by CGES and CEDIS as the transmission and distribution system operators. Given that the prices for the use of transmission and distribution systems for 2022, which also cover the costs of electricity purchase to cover technical losses, were defined at the end of 2019, they could not reflect the increase in electricity prices in the wholesale market. The above means that the increase in the electricity price in the wholesale market during 2021 and 2022 was not transferred to the retail market, i.e., transmission and distribution system users did not feel the burden of the mentioned increase during 2022. Additionally, a legal limit on the rise in electricity prices formed by a supplier for customers from the category of households and small customers was in force until the end of 2022, so a significant increase in the prices at which these customers pay for the consumed electricity could not even emerge.

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Due to the increase in prices on the Montenegrin wholesale electricity market, no special measures were introduced in 2022, which is not the case with countries in the region and the EU. Namely, a state of emergency was introduced in the following countries: Albania, Kosovo, North Macedonia, and Moldova. These countries have introduced mechanisms of direct financial assistance to customers through suppliers. Universal electricity supply service prices have been raised in Kosovo, North Macedonia, and Moldova. High electricity prices affected net electricity importers (Albania, North Macedonia, Moldova, and Kosovo). In contrast, net exporters, such as Bosnia and Herzegovina, achieved significant revenues from the export of electricity.<sup>10</sup>

Each member of the EU has also introduced specific measures to reduce the risk to the energy supply's security and to support citizens and the economy. Of the introduced measures, 36% aimed to ensure the security of supply and 64% affordability to final customers, while almost half of the introduced measures represented direct financial support to final customers.<sup>11</sup> The European Commission has adopted an act that defines short-term and medium-term measures that can be submitted to reduce the adverse effects of the energy crisis.<sup>12</sup>

In its analysis of the impact of high electricity prices on the EU countries, ACER concluded that high gas prices at the global level, together with LNG as the primary cause, are the key drivers of the drastic jump in electricity and gas prices in Europe and that the most affected countries are those that use natural gas to meet their needs and are poorly connected with neighboring energy systems. The EU countries are divided into three groups, namely:

- Countries with a high dependence on gas and limited connection with other electricity systems (Italy, Ireland, Portugal, and Spain), in which the average electricity price on the day-ahead market in 2021 amounted to 167 €/MWh,
- Countries with a medium dependence on gas and good connection with other electricity systems (Austria, Belgium, Bulgaria, Check Republic, Estonia, France, Greece, Netherlands, Croatia, Latvia, Lithuania, Luxembourg, Hungary, Germany, Romania, Slovakia, and Slovenia), in which the average electricity price at the day-ahead market in 2021 amounted to 132 €/MWh,

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<sup>10</sup> ECRB Electricity Working Group, „Impact of the electricity price surge in Energy Community Contracting Parties and measures undertaken”, April 2022, <https://www.energy-community.org/documents/ECRB.html>

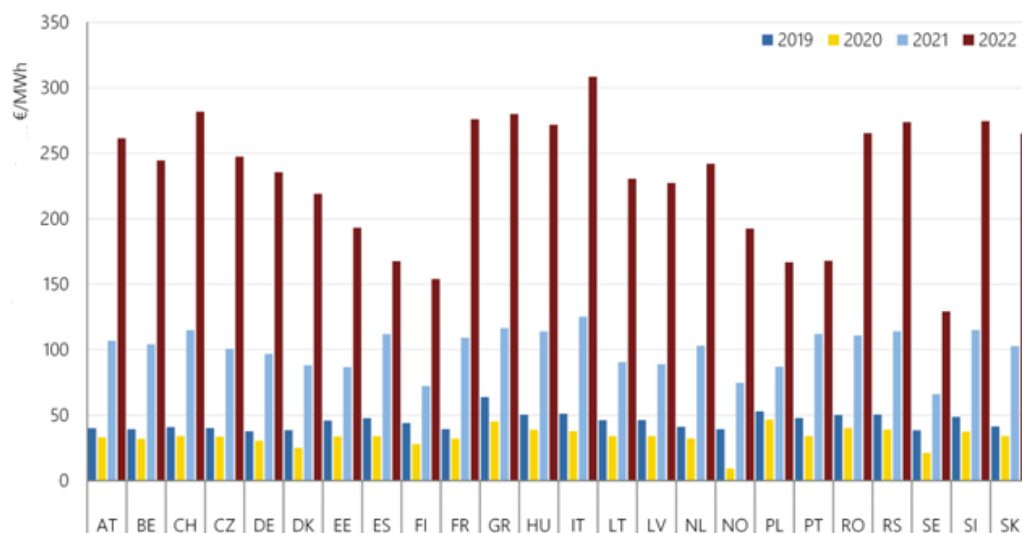
<sup>11</sup> ACER, „Wholesale Electricity Market Monitoring 2022”, March 2023, <https://euagenda.eu/upload/publications/electricity-mmr-2022-emergency-measures.pdf>

<sup>12</sup> [https://ec.europa.eu/commission/presscorner/detail/en/qanda\\_21\\_5202](https://ec.europa.eu/commission/presscorner/detail/en/qanda_21_5202)



- Countries with low dependence on gas and good connection with other electricity systems (Finland, Norway, Poland, Sweden), in which the average electricity price at the day-ahead market in 2021 amounted to 89 €/MWh.<sup>13</sup>

The following graph shows the average electricity prices in the European day-ahead market from 2019 - 2022.<sup>14</sup>



**Grafik 4.5** Average electricity prices in the European day-ahead market in the period 2019 - 2022

Electricity producers who do not use gas across Europe made record profits during the energy crisis because they could sell electricity at much higher prices with stable operating costs. The average price in the electricity day-ahead markets in 2022 was around 235 €/MWh<sup>15</sup>, while the reference exchange HUPX amounted to 272 €/MWh<sup>16</sup>. Based on the above, in October 2022, the European Commission adopted *Regulation (EU) 2022/1854 on an emergency intervention to address high energy prices*<sup>17</sup>, which limited the income that can be retained (180 €/MWh) by electricity producers which produce it by using renewables, lignite, and nuclear energy. The surplus these producers achieve (from 180€/MWh to the market price) is transferred to electricity customers so that the

<sup>13</sup> ACER, "ACER's Preliminary Assessment of Europe's high energy prices and the current wholesale electricity market design", November 2021,

<https://acer.europa.eu/sites/default/files/2022-05/ACER's%20Preliminary%20Assessment%20of%20Europe's%20high%20energy%20prices%20and%20the%20current%20wholesale%20electricity%20market%20design.pdf>

<sup>14</sup> <https://www.ffe.de/en/publications/european-day-ahead-electricity-prices-in-2022/>

<sup>15</sup> <https://www.ffe.de/en/publications/european-day-ahead-electricity-prices-in-2022/>

<sup>16</sup> [https://hupx.hu/uploads/Piaci%20adatok/DAM/%C3%A9ves/HUPX\\_Spot\\_2022.pdf](https://hupx.hu/uploads/Piaci%20adatok/DAM/%C3%A9ves/HUPX_Spot_2022.pdf)

<sup>17</sup> <https://eur-lex.europa.eu/eli/reg/2022/1854>

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member states collect the income and redistribute it to the customers and companies most affected by the energy crisis. EU members are also invited to support each other in solidarity by sharing revenues from electricity producers.<sup>18</sup>

As already stated, in 2022, no special measures were introduced in Montenegro due to the increase in prices in the wholesale electricity market, nor were customers affected by the energy crisis. When we analyze the state of the wholesale electricity market in Montenegro in the light of essential factors that determined the extent to which countries were affected by the energy crisis in Europe – the use of natural gas to meet energy needs and the connection of energy systems; it is clear why our country was not drastically affected. Namely, natural gas is not a part of the Montenegrin energy mix. Natural gas is not used to meet energy needs or produce electricity. Therefore, the effects of the European energy crisis started to be felt only in the second half of 2021 and only by the transmission and distribution system operators, which are obliged to purchase energy to cover losses in the system in the Montenegrin power exchange market.

Furthermore, Montenegro's electric power system is very well connected with the neighboring systems. The regional power systems were a part of the same electricity power system of the former state – the Socialistic Federal Republic of Yugoslavia. Also, with the commission of the interconnection between the transmission systems of Italy and Montenegro at the end of 2019, the connection of our power system with neighboring systems has significantly strengthened. The Montenegrin power system is connected to the systems of Albania, Bosnia and Herzegovina, Italy, Kosovo, and Serbia.

Additionally, although the hydrologic situation in 2022 was worse than in 2021, electricity production in Montenegro in 2021 and 2022 was higher than the total needs at the annual level (electricity consumption and losses in the transmission and distribution system). Specifically, in 2022, the annual production was 134,34 GWh higher than electricity consumption and losses. The country's nominal capacity of power plants amounted to 1.053,044 MW in 2022. On the other hand, the maximum consumption load was 545 MW, and the minimum was 168 MW. Although the needs of the Montenegrin consumers on an annual level were less than the total domestic production, this does not mean that in specific periods during the year, there was no need for imports to meet the consumers' needs at all times.

Bearing in mind the above and the fact that Montenegro does not use natural gas to meet its energy needs and that there are no gas power plants, the energy crisis in Europe can be perceived for Montenegrin producers as an opportunity to achieve higher revenues from sales, and consequently, a higher profit than in ordinary circumstances. This opportunity can be used through adequate management of production resources during the year, considering winter and summer periods when

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<sup>18</sup> <https://www.consilium.europa.eu/en/infographics/eu-measures-to-cut-down-energy-bills/>

consumption in the country is high, as well as cost efficiency, i.e., maintaining stable operating costs. The price rise of prices in the wholesale electricity market has encouraged many privileged producers to leave the incentive mechanisms and enter the market. This trend was noticed also in the region, and Montenegro started in the first quarter of 2023.

## 5 CHALLENGES IN THE SURVEILLANCE OF THE WHOLESALE ELECTRICITY MARKET

The Montenegrin electricity system still faces certain challenges recognized in the 2007 *European Commission Report* as obstacles to achieving benefits for end customers through liberalization and market development. With the opening of the market, the implemented reforms of the electricity sector (unbundling of activities that were carried out within the vertically integrated company into regulated network activities, i.e., natural monopolies and non-regulated market activities), and the harmonization of the legal framework with the EU acquis in the field of energy, the conditions were created for market development and improvement of competition. Nevertheless, the Montenegrin market is still characterized by the dominant position of EPCG in all market activities – generation, trade, and supply of electricity.

According to EUROSTAT data on the market shares of the largest producer of electricity in European countries<sup>19</sup>, the share of the dominant producer in Montenegro in 2021 was 86,44%, while the average share in European countries, including countries of the Western Balkans, was 48,70%. When only the Western Balkans countries are considered, the average share was 75,51%, and the share in European countries, excluding the Western Balkans, was 43,12%. The above data indicate a high concentration in the Montenegrin electricity market. As stated in the introduction of this report, the European Commission concluded that a high concentration rate leaves room for the abuse of market power and is one of the biggest concerns for the success of the process of liberalization and market development. In addition to the high concentration rate in the market and the abuse of a dominant position, the European Commission pointed out that the insufficient unbundling of electricity transmission and distribution activities from supply and generation, which are market activities, has negative consequences on the functioning of the market and on investment in the networks, which

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<sup>19</sup> *“The indicator shows the market share of the largest electricity generator in each country. To calculate this indicator, the total net electricity production during each reference year is taken into account. It means that the electricity used by generators for their own consumption is not taken into account. Then, the net production of each generator during the same year is considered in order to calculate the corresponding market shares. Only the largest market share is reported under this indicator.”*

<https://ec.europa.eu/eurostat/databrowser/view/ten00119/default/table?lang=en>

represents a significant obstacle for the entry of new participants in the market, and thus for the security of supply.

Agreements that prevent, limit, or distort competition, abuse of a dominant position, and concentrations that contain, limit, or distort competition or the free development of an open market economy, and especially the creation or strengthening of a dominant position in the market are within the competence of the Agency for the Protection of Competition<sup>20</sup>. Therefore, it is essential to strengthen the cooperation between REGAGEN and the Agency for the Protection of Competition in surveilling the wholesale electricity market.

In the previous two years, the Montenegrin electricity sector faced challenges in preserving the independence of the Distribution System Operator – CEDIS, which EPCG owns. *The Energy Law* ("Official Gazette of Montenegro ", No. 5/16, 51/17, 82/20, 29/22, and 152/22) prescribes how the independence of the distribution system operator, which is part of vertically integrated undertakings, is ensured, aligned with the EU *acquis* in this field.

In 2021, REGAGEN conducted monitoring regarding the independence of the Electricity Distribution System Operator, i.e. carried out control at CEDIS and EPCG. Related to the monitoring of EPCG, a Report was prepared, in which it is indicated that there is an inconsistency between the EPCG Statute and the CEDIS Statute with the provisions of the Energy Law, which prescribed the obligation of these legal entities to ensure the independence of the Distribution System Operator, as well as non-compliance of the decisions of the EPCG Board of Directors, adopted in May 2021, with this law. In the mentioned report, EPCG was also informed that, in accordance with the Energy Law, CEDIS is legally guaranteed functional independence, which implies its right to make decisions without external influences from the owner - EPCG, that, therefore, the independence of CEDIS, in that sense, is defined *de jure*, and that the decisions of the EPCG Board of Directors *de facto* violate it. Based on the above, EPCG was ordered to eliminate the inconsistency of the EPCG Statute, the CEDIS Statute, and the decisions of the EPCG Board of Directors with the Energy Law, which was done at the beginning of January 2022. Due to the previously described violations, a request to initiate misdemeanor proceedings was submitted against EPCG and the responsible person, based on Article 231 paragraph 1 item 81 of the Energy Law, on which the Misdemeanors Court in Podgorica issued a decision in March 2023 declaring EPCG and its responsible person guilty.

This monitoring was also the basis for conducting surveillance at CEDIS. Since CEDIS failed to provide the required information needed for the surveillance, misdemeanor proceedings were also initiated. Related to this case, the Misdemeanors Court in Podgorica issued a decision in January 2023 declaring CEDIS guilty. According to REGAGEN, these decisions of the Misdemeanors Court

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<sup>20</sup> Law on Protection of Competition ("Official Gazette of Montenegro", No. 44/12, 13/18 and 145/21)

preserved the sectoral organization prescribed by the Energy Law, which is in line with the *“Third Energy Package”* of the European Union.

According to REGAGEN, the independence of the distribution system operator is not achieved by a one-time act: the decision by which EPCG established CEDIS on June 23<sup>rd</sup>, 2016. It implies the continuous obligation of EPCG to refrain from violating Article 135 of the Energy Law, as an article that is a sublimation of numerous other provisions of the Law, which impose on both the supplier (EPCG) and the distribution system operator (CEDIS) the obligation to respect the principle of non-discrimination to ensure the market development which will provide benefits for end customers. In this regard, compliance with Article 135 of the Energy Law is a prerequisite for ensuring competition in the energy market, i.e. the emergence of new suppliers who will be competition to EPCG, and, ultimately, the choice of end customers if they (new suppliers) offer customers more favorable conditions of supply. Regarding the fact that EPCG made decisions that, contrary to the provisions of the Energy Law, provide advantages for customers who are in a contractual relationship with EPCG but not through the EPCG budget, but through the CEDIS budget, the emergence of new suppliers is highly questionable.

After the decisions mentioned above of the Misdemeanor Court, the Higher Court for Misdemeanors, acting on the appeals of EPCG and CEDIS issued decisions amending them, in such a way that the relevant misdemeanor proceedings were suspended, *“in accordance with Article 196 paragraph 1 point 2 of the Law on Misdemeanors because the procedure was conducted without a request of an authorized person”*. Therefore, the Court did not even go into the evaluation of REGAGEN’s legal argumentation about the violation of the independence of the distribution system operator in the subject matter but stated that REGAGEN is not even authorized to indicate to the Misdemeanor Court that the energy entity violates the provisions of the Energy Law. The conclusion of the Higher Court for Misdemeanors that REGAGEN *“does not have the right to initiate the misdemeanor proceedings”* before the Court is justified by citing the provision of Article 224 of the Energy Law, which stipulates that the supervision of the implementation of this law and other regulations adopted based on this law shall be performed by the Ministry. In contrast, the activities of inspection supervision in line with this law and the law that regulates inspection supervision shall be carried out by electric power inspectors, thermal energy inspectors, and market inspectors. Article 48 of the Energy Law (defines REGAGEN’s monitoring) does not legitimize, according to the High Court for Misdemeanors, REGAGEN as an entity whose competence includes the direct execution or supervision of the implementation of the Energy Law, which provides the authorization to submit a request for initiation of misdemeanor proceedings.

This decision of the Higher Court for Misdemeanors came after a large number of decisions of the misdemeanor courts which imposed misdemeanor sanctions on requests to initiate misdemeanor proceedings, which REGAGEN submitted in the name of the right to supervision from Article 48 of

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the Energy Law. In connection to the decision of the Higher Court for Misdemeanors, REGAGEN submitted to the Supreme State Prosecutor's Office an *Initiative for submitting a request for the protection of legality in misdemeanor proceedings*. If the Supreme State Prosecutor's Office does not raise a request to protect the legality, REGAGEN will initiate an amendment to the Energy Law, which will stipulate that REGAGEN is also an authorized applicant from Article 111 paragraph 2 of the Law on Misdemeanors. If REGAGEN is not an authorized applicant, it is not also the body from Article 27 of the Energy law – „*an independent organization, legally and functionally independent from state bodies and energy undertakings*.” If REGAGEN is not an independent regulator of the energy sector, then the regulation in the field of energy is jeopardized, as well as the fulfillment of obligations undertaken by Montenegro through the ratification of the *Agreement between the European Community and the Republic of Montenegro on the establishment of the Energy Community* and the European integration process (Chapter 15).

REGAGEN believes that its authority to initiate the misdemeanor proceedings before the competent courts due to possible violation of the Law on the Market Surveillance should not be questioned, given that it is the only institution recognized by this law as an authority that carries out surveillance. However, having in mind the legal position taken by the Higher Court for Misdemeanors regarding the Energy Law, at this moment, it cannot be unequivocally concluded what position the misdemeanor courts will take regarding possible requests by REGAGEN to initiate the misdemeanors proceedings due to the violation of the provisions of the Law on Market Surveillance, which may lead to legal uncertainty in the conduct of REGAGEN regarding the surveillance of the wholesale market. Since the Energy Law is the „Umbrella law” in the field of energy, the law's shortcomings consequently impact the Law on Market Surveillance, which can be concluded from the following example.

Namely, in addition to the described key challenge for REGAGEN in the supervision of the work and operations of energy undertakings at the end of 2022 and the beginning of 2023, REGAGEN is faced with a new challenge related to the derogation from the norms of the Law on Market Surveillance by the adoption of the Law on Amendments to the Energy Law („Official Gazette of Montenegro”, No. 152/22) and its implementation. For the Law on Market Surveillance to achieve its purpose and strengthen confidence in the market and thus its development, it is necessary to provide legal certainty and continuity. Namely, harmonizing the Montenegrin legal framework with the EU acquis requires that the entire legal system is consistent – meaning that other laws do not violate the compliance achieved through a specific law. By definition, the legal system is a set of mutually harmonized rules valid in one country.

Achievement of the main goal of the Law on the Surveillance of the Wholesale Electricity and Natural Gas Market, which refers to the improvement of transparency in the Montenegrin wholesale electricity market, was undermined by the adoption of *the Law on Amendments to the Energy Law*

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(„Official Gazette of Montenegro“, No. 152/22) at the end of 2022, at the proposal of members of the Parliament, without prior public consultation. Consulting relevant subjects and institutions, according to REGAGEN, was reasonable for the reasons stated in the continuation of the text, although in terms of *the Rules of Procedures of the Parliament of Montenegro* („Official Gazette of Montenegro“, No 81/21) was not mandatory. Namely, this law set the legal basis for the introduction of specific measures by the Government of Montenegro if there is an „*extreme increase in electricity prices in the market*“. In addition to the fact that there are no specified criteria based on which the emergence of this situation can be determined, the prices alone cannot represent a disturbance on the market if there are sufficient amounts of electricity (prices only reflect the relationship between supply and demand). In addition, the mentioned amendment brought into question the consistency of the provisions of the Energy Law since a “new public service” was added, whose status was not specified. Before these amendments, all public services were divided into two groups - licensed or non-licensed activities.

Specific inadequacies of the Law on Amendments to the Energy Law were pointed out by the Government of Montenegro in its Opinion, No 07-8193/2 of December 23, 2022, in which it is stated that: *„the submitted proposal does not define who proposes the prices and methodology, since there are no prescribed criteria or conditions for its determination.“* However, after the entry into force of the Law on Amendments to the Energy Law, despite the opinion above, on January 31<sup>st</sup>, 2023, the Government of Montenegro issued Conclusions, No 07-010/23-375/2, which obliged the *„Board of Directors of „Elektroprivreda Crne Gore“ JSC Nikšić to, by Article 213 paragraph 1 point 2 of the Energy Law („Official Gazette of Montenegro“, No. 5/16, 51/17, 82/20, 29/22 and 152/22) for the period from January 1<sup>st</sup> to February 28<sup>th</sup>, 2023, negotiate special terms of trade for the procurement of losses for CEDIS network at the level of the regulatory allowed price using credit notes“*. The conclusions above mandate a retroactive change in the prices at which the Distribution System Operator - CEDIS, on December 30<sup>th</sup>, 2022, and during January 2023, already purchased electricity to cover losses in the distribution system for January and February 2023 on the Power Exchange according to Article 241 c paragraph 4 of the Energy Law.

Regarding these Government's conclusions, it is essential to emphasize that the current normative framework does not recognize the institute of *„regulatory allowed prices.“* Namely, according to the legal framework in place, REGAGEN does not define the price of electricity procurement to cover losses in the system. Still, it is determined in a transparent procedure in the market according to Article 111 paragraph 4 and Article 115 paragraph 5 of the Energy Law, and by Article 241 c paragraph 4 of this Law on the power exchange after its establishment. In the process of setting prices for the use of the transmission and distribution system, REGAGEN defines the cost of purchasing electricity to cover losses in the system based on the planned data, which is corrected *ex-post*, which means that the price for using the system will ultimately include any price which system operator achieved in the transparent energy procurement procedure for this purpose.

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This kind of normative solution and its implementation threaten the transparency of the Montenegrin wholesale market and provide misleading signals about the prices of wholesale energy products, thereby derogating the Law on Surveillance of Wholesale Electricity and Natural Gas Market provisions. Implementing measures to suppress the negative consequences of crises should not damage the sectoral structure and functioning of the electricity system and market. To avoid those above and to issue optimal normative solutions in the energy field, it is advisable to consult the professional public when establishing or changing the legal framework.

In addition to the aforementioned normative solutions that endanger the proper implementation of REMIT, another concern is related to the possibility of enforcing the decisions of REGAGEN in the proceedings in which the participants are companies that do not have their headquarters in Montenegro. Namely, as stated in this report, 86% of the participants registered in the REGAGEN's Register of Wholesale Market Participants in 2022 do not have their headquarters in Montenegro because the Energy Law and the Law on the Market Surveillance do not prescribe the obligation to establish a company in Montenegro. Although the possibility of initiating proceedings against these entities, by the existing legal solutions, is indisputable, it is questionable whether the decisions of Montenegrin courts can be enforced in other countries where these market participants are established. This issue is not unique to Montenegro but also to other countries, including EU member states and Energy Community Contracting Parties, and therefore, the harmonization of penalty policies will be the subject of a comprehensive reform of the electricity market, as mentioned on page 6 of this report.

Regarding the human and technical capacities needed for the surveillance of the wholesale electricity market, it is worth noting that during the first year of REMIT implementation, REGAGEN was facing challenges due to the lack of appropriate software and other tools for data collection and analysis. Also, further education related to REMIT implementation of REGAGEN's staff is needed.

## **6 INTER-INSTITUTIONAL AND INTERNATIONAL COOPERATION**

In accordance with Article 17 of the Law on Market Surveillance, when performing surveillance of the wholesale market, REGAGEN shall cooperate with the body responsible for the protection of competition, the body responsible for the capital market, the competent bodies of the Energy Community, and the Agency for Cooperation of Energy regulators (ACER)

Regarding inter-institutional cooperation in the country, REGAGEN has concluded the Cooperation Agreement with the Administration for Protection of Competition (now the Agency for Protection of Competition), No 12/1515-2 of 20<sup>th</sup> July 2012. When it comes to international cooperation in the implementation of REMIT, REGAGEN cooperates with the competent authorities of the Energy

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Community and participates in the work of the Working Group of the Energy Community Regulatory Board, which deals with the application of REMIT. During 2022, there was continuous cooperation and data exchange with competent bodies at the international level related to the implementation of REMIT in Montenegro.

Article 17 of the Law on Market Surveillance defines REGAGEN's obligations towards competent international institutions in more detail, namely:

- REGAGEN is obliged to notify the competent body of the Energy Community if it suspects that transactions that endanger the functioning of wholesale markets are performed on the wholesale market in Montenegro or on the wholesale market of another member of the Energy Community;
- At the request of the competent body of the Energy Community, REGAGEN is obliged to take measures to submit information related to transactions that have not been performed in accordance with this Law;
- REGAGEN is obliged to submit to the competent body of the Energy Community data from the register of participants in the wholesale market and annual report on wholesale market surveillance activities.

Exceptionally, REGAGEN may refuse to act upon the request of the competent body of the Energy Community if acting upon the request could endanger the sovereignty and security of Montenegro or proceedings have already been initiated before the competent authorities in Montenegro related to the same actions against the same natural and legal persons, or entrepreneurs to whom the request refers, or a final judgment has been rendered about legal or natural persons, or entrepreneurs to whom the request relates to the same action in Montenegro.

Under Article 17, paragraph 3 of the Law on Market Surveillances, in 2022, data from the register of participants in the wholesale market of Montenegro were submitted to the competent body of the Energy Community. During 2022, there were no requests from the competent body of the Energy Community to take measures to provide information about transactions that were not carried out by the Law.

In addition to the above, in 2022, REGAGEN participated in the activities of the ECRB working group, which deals with the implementation of REMIT, and the result of the work in 2022 was, among other things, the adoption of the *ECRB guidelines on REMIT*<sup>21</sup>, which were also published on the REGAGEN website<sup>22</sup>.

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<sup>21</sup> <https://www.energy-community.org/documents/ECRB.html>

<sup>22</sup> <https://regagen.co.me/remit/o-remit-u/>

Regarding the implementation of REMIT, during 2022, no cooperation was achieved with ACER since, in 2022, this institution did not have competencies in this area in the Contracting Parties of the Energy Community. Cooperation with ACER was exclusively related to participation in seminars and workshops, which aimed to transfer the knowledge and experience of this institution in the implementation of REMIT.

## 7 SUMMARY

*The Law on Surveillance of the Wholesale Electricity and Natural Gas Market („Official Gazette of Montenegro”, No 1/22), entered into force, in January 2022. It transposed REMIT into the Montenegrin legislation. Adoption of the aforementioned law is of particular importance for the adequate functioning and development of the electricity market, especially in the context of market integration and price formation at the regional, rather than at the national level.*

*Fulfilling obligations prescribed by the Law on Market Surveillance, in 2022, REGAGEN adopted a set of acts for the implementation of REMIT: An application form for an entry in the register of wholesale market participants, Decision on determining the list of electronic systems (Inside Information Platforms) for disclosure of inside information by participants in the wholesale market, Notification form on delay in disclosure of inside information, Internal guideline on how to keep register of participants in the wholesale electricity and natural gas market, Notification form on exemptions related to insider trading and Notification on the suspected breach in the wholesale energy market in Montenegro or other Energy Community Contracting Party.*

*REGAGEN has established a register of participants in the wholesale electricity market, which is available on the REGAGEN website. As of December 31<sup>st</sup>, 2022, 50 participants were registered, and their number increased to 64 in the first half of 2023. Participants are legal entities registered in Montenegro, EU countries, and the Energy Community Contracting Parties.*

*In accordance with the current legal framework, inside information can be published exclusively by using an electronic system, which is a centralized platform for the publication of inside information that are on ACER's list. REGAGEN has defined and published a list of Inside Information Platforms that participants may use. The Law on Market Surveillance has already incorporated the European best practice into the national legal framework related to the publication of inside information.*

*In 2022, REGAGEN collected data on a monthly level about the transactions of participants in the wholesale electricity market to conduct surveillance over the wholesale market. The increase of electricity prices in the wholesale market was recorded in Montenegro during 2022. In the Montenegrin wholesale market, electricity trade is mostly carried out on a bilateral basis, while on the organized market – PX electricity was procured only to cover losses in the system by CGES and CEDIS.*

*The largest amount of electricity entered the Montenegrin power system from Bosnia and Herzegovina, which is a net exporter, and then from Albania and Kosovo, while the largest amount of energy was delivered to the Italian power system. By connecting the transmission systems of Italy and Montenegro, the Montenegrin system became an energy hub, which resulted in doubled transit compared to the period before the submarine interconnection was put into operation.*

*During 2022, participants in the Montenegrin wholesale electricity market sold 883.767 MWh to market participants based in other countries, namely: Albania, Bosnia and Herzegovina, Denmark, Check Republic, Hungary, Slovenia, Serbia, and Switzerland. During 2022, participants in the wholesale electricity market of Montenegro purchased 700.261 MWh from the participants in the market that are based in other countries, namely: Albania, Bosnia and Herzegovina, Denmark, Check Republic, Hungary, Slovenia, Serbia, and Switzerland.*

*The weighted average price of electricity to cover losses in the transmission system, formed in 2022 on the long-term organized market in Montenegro, was twice as high as the price in 2021, and two and a half times higher compared to the price in 2020. In 2022, energy to cover losses in the transmission system was completely purchased by EPCG, while in 2020 and 2021, it was predominately purchased by from participants in Montenegro based in other countries. The weighted average electricity prices to cover losses in the distribution system, formed in 2022, on the long-term organized market in Montenegro, was 45% higher compared to the price in 2021, and twice as high compared to the price in 2020. During 2020, 2021, and 2022, energy to cover losses in the distribution system was completely purchased by EPCG. In 2022, the burden of the aforementioned increase was borne by CGES and CEDIS, as the transmission and distribution system operators, and this increase in the price of electricity in the wholesale market was not transferred to the retail market. Due to the increase in price in the Montenegrin wholesale electricity market, no special measures were introduced during 2022.*

*The Montenegrin power system still faces with certain challenges that were recognized in the European Commission's Report on Competition in the Energy Market from 2007 as obstacles to achieving benefits for end customers through liberalization and market development. The Montenegrin market is still characterized by the dominant position of EPCG in all market activities – generation, trade, and supply of electricity.*

*The key challenges that REGAGEN faced in the first year of REMIT implementation refer to:*

- The opinion of the High Court for Misdemeanour that REGAGEN is not authorized to submit a request for initiation of misdemeanor proceedings before the Court for Misdemeanour, regarding the surveillance it carries out in accordance with the Energy Law, but that the competent Ministry and inspectors are authorized to do so, which violates the independence of REGAGEN, and thereby regulation in the field of energy is jeopardized, as well as fulfillment of obligations undertaken by Montenegro through the ratification of the Agreement between the European Community and the Republic of Montenegro on the establishment of the Energy Community and the European integration process (Chapter 15).;*
- Derogation from the norms of the Law on Market Surveillance by the adoption of the Law on Amendments to the Energy Law („Official Gazette of Montenegro, No. 152/22) at the end of 2022, and its implementation at the beginning of 2023, thereby endangering transparency in the wholesale market of Montenegro and provide misleading signals about the price of wholesale energy products.*

- *Concern related to the possibility of enforcing the decisions of REGAGEN in the proceedings in which the participants are companies that do not have their headquarters in Montenegro (it is questionable whether the decisions of Montenegrin courts can be enforced in other countries where these market participants are established);*
- *Lack of human and technical capacities required for REMIT implementation.*

*In order to ensure that the Law on Market Surveillance achieves its purpose, which is strengthening confidence in the market and its development, it is necessary to ensure legal certainty and continuity. Namely, the process of harmonization of the Montenegrin legal framework with the EU acquis requires that the entire legal system is consistent and harmonized with the EU legal framework. In other words, it is important that the harmonization achieved through a certain law is not violated by other laws. By definition, the legal system represents a set of mutually harmonized rules valid in one country. In order to avoid inconsistencies in the law and to bring into place optimal normative solutions in the field of energy, it is advisable to consult the professional public when creating or changing the legal framework.*

*In the surveillance of the wholesale electricity market, it is very important to strengthen cooperation with the authority responsible for the protection of competition, the authority responsible for the capital market, the competent bodies of the Energy Community, and ACER. As far as inter-institutional cooperation in the country is concerned, since 2022, REGAGEN has concluded a Cooperation Agreement with the Authority for Protection of Competition (now the Competition Protection Agency).*

*When it comes to international cooperation in the implementation of REMIT, REGAGEN cooperates with the competent bodies of the Energy Community and participates in the work of the ECRB working group dealing with the implementation of REMIT. During 2022, there was continuous communication and data exchange with competent bodies at the international level on the implementation of REMIT in Montenegro.*

*According to Article 17 paragraph 3 of the Law on Market Surveillance, in 2022, data from the register of participants in the wholesale electricity market of Montenegro were submitted to the competent body of the Energy Community. In addition to the above, in 2022, REGAGEN participated in the activities of the ECRB working group dealing with the implementation of REMIT, and the result of the work of this group in 2022 was, among other things, the adoption of the Guidelines on REMIT, published on the REGAGEN website.*

*When it comes to the implementation of REMIT, in 2022, there was no cooperation with ACER because this institution did not have competence in this field in the Contracting Parties of the Energy Community. Cooperation with ACER was exclusively related to the participation in seminars and workshops, aimed to transfer the knowledge and experience of this institution in the implementation of REMIT.*

No: 23/3093-3

Podgorica, 26. July 2023

**The Board President**

**Branislav Prelević**

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