RESPONSE
TO THE AMENDED REASONED REQUEST SUBMITTED BY THE ENERGY COMMUNITY SECRETARIAT AGAINST THE REPUBLIC OF SERBIA, CASE ECS-3/08

Introduction

The Republic of Serbia, as a signatory to the Treaty Establishing the Energy Community (hereafter: Treaty), through the Government of The Republic of Serbia, as the bearer of executive government in The Republic of Serbia, has been made familiar with the contents of the Reasoned Request of July 20 2016 which the Secretariat of Energy Community (hereinafter referred to as: Secretariat) submitted against The Republic of Serbia, in the case ECS-3/08, in which the Secretariat stated that:

> "by not using the revenues resulting from the allocation of interconnection capacity on the interconnectors with Albania, the former Yugoslav Republic of Macedonia and Montenegro for one or more of the purposes specified in Article 6 (6) of Regulation 1228/2003, the Republic of Serbia, to which actions and non-actions of its state-owned transmission system operator are imputable, fails to comply with Article 6 of Regulation 1228/2003."

The Republic of Serbia denies all allegations of the Secretariat from the amended Reasoned Request as factually incorrect and legally unfounded, for the following reasons:

1. the absolute lack of jurisdiction of the Energy Community in regards to this issue, since it is already being resolved within the process of the Republic of Serbia's European Union accession, which was elaborated in the section of this reply where views regarding points (4) and (5) of that request were provided.

2. The amended Reasoned Request is incorrect because it's based on the wrongful assumption that the territory of Kosovo*[1] represents an independent control area, which was elaborated in detail in this reply in the section of this reply where the views on points (11) – (21) of that request were provided.

3. The amended Reasoned Request is unfounded because it comes from the wrongful and arbitrary interpretation of the relevant Energy Community rules by the Secretariat, which was elaborated in the section of this reply where the views on points (76) – (97) of that request were provided.

4. The Secretariat has, contrary to Article 94 of the Treaty and Article 28 paragraph 3 of the Procedural Act 2008/01MC-EnC from June 27 2008, delved into drawing conclusions in the amended Reasoned Request, which was elaborated in the view on point (69) of that request.

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[1]This designation is made without prejudice regarding the status and in accordance with United Nation Security Council Resolution 1244 and the opinion of the International Court of Justice on Kosovo's declaration of independence.

From the aforementioned, it follows that the Republic of Serbia opposes the suggestion of the Secretariat submitted to the Ministerial Council to have the Ministerial Council, within its competencies based on Article 90 paragraph 1 point a) of the Treaty, make a decision which would proclaim that the Republic of Serbia failed to comply with Article 6 (6) of the Regulation of the European Parliament and Council 1228/2003 from June 26 2003, and [the Republic of Serbia] suggests to the Ministerial Council to dismiss, as unauthorized, the amended Reasoned Request in the case ECS-3/08 for reasons of the absolute lack of jurisdiction of the Energy Community regarding this issue, as it is already being resolved in the process of the Republic of Serbia's accession to the European Union, and if the amended Reasoned Request is not dismissed, it is suggested that the procedure in the case ECS-3/08 be stopped until a solution in the political dialogue in Brussels with European Union's mediation is found based on point 13 of the First Agreement of Principles Governing the Normalization of Relations of Belgrade and Priština (The Brussels Agreement) and the Agreement on Energy.

Further in the text of this reply there are detailed remarks about the Secretariat's assessment regarding the disputed issues on the relation between Public Enterprise "Elektromreža Srbije," Belgrade (hereinafter referred to as: PE EMS) and the Kosovo transmission system operator (hereinafter referred to as: KOSTT), as well as individual remarks regarding allegations from the amended Reasoned Request about all its parts and points.

I. Relevant facts

1. Introduction

Points (1) – (2)

The factual basis of the amended Reasoned Request of the Secretariat from July 20 2016 in the case ECS-3/08 is related to certain disputed issues which exist on the PE EMS-KOSTT relation, and pertain to, importantly, the functioning of the electricity transmission system in the territory of Kosovo, specifically the part related to allocation of cross-border capacity. Key remarks necessary to understand these issues in a wider context will be carried out below.

The Republic of Serbia is an internationally recognized state *de jure* and *de facto*, in the sense of the physical attributes of statehood of the state territory, population and stable government guaranteed by the Constitution of the Republic of Serbia. According to the Constitution of the Republic of Serbia, the territory of the Republic of Serbia is wholesome and indivisible, and the border of the Republic of Serbia is inviolable, and is to be changed by procedures prescribed for Constitutional changes.

The province of Kosovo and Metohija is an integral part of the territory of the Republic of Serbia and has essential autonomy within the sovereign Republic of Serbia, and from that position of Kosovo and Metohija, follows a constitutional obligation for all state institutions to represent and protect the state interests of Serbia in Kosovo and Metohija in all internal and external political relations.

By signing the Treaty, the Republic of Serbia took upon itself an obligation to implement the acquis communautaire on energy.

Acquis communautaire on energy, for the purposes of the Treaty, encompasses three legislative packages. The first legislative package included Directive 96/92, the second Directive 2003/54/EC, and the third includes amendments to existing Directive 2009/72/EC, Regulation 714/2009/EC as well as Regulation 838/2010/EU and the Directive establishing the Agency for the Cooperation of Energy Regulators in Europe.

The application of aforementioned EU acquis includes aligning with technical generally applicable standards of the European Community, necessary for secure and efficient operation of grid systems, published by the European Committee for Standardization - CEN, European Committee for Electro-technical Standardization – CENELEC or sometimes the Union for the Co-ordination of Transmission of Electricity - UCTE), now known as the European Network of Transmission System Operators for electricity - ENTSO -E, or the European Association for the Streamlining of Energy Exchange - Easeegas, as it was prescribed by a provision of Article 23 of the Treaty.

All legal and technical obligations related to operation in the synchronous interconnection Continental Europe are defined by the legally binding UCTE (now ENTSO-E) Multilateral Agreement, which was signed by all transmission system operators within the synchronous interconnection, including PE EMS. The previously mentioned competency of PE EMS, as the transmission system operator in the Republic of Serbia also relates to the area of implementation of the multilateral Inter TSO Compensation Agreement, (hereinafter referred

to as: ITC Agreement) in the territory of the Republic of Serbia where PE EMS was recognized as the only party to the agreement for the transmission system on the territory in question, which includes the territory of Kosovo*. KOSTT was not a member of the ITC mechanism or a party to the agreement until the signing in December 2015.

Fulfilling its obligations from the Second Energy Package, the Republic of Serbia, with the purpose of fulfilling the obligations from Section II of the Energy Acquis, founded PE EMS on July 1 2005 – an energy subject responsible for transmission of electricity, managing the transmission system and organizing the electricity market.

In accordance with the Law on Energy ("Official Gazette of the Republic of Serbia," number 84/04) the electricity system of the Republic of Serbia is wholesome in the whole territory of the Republic of Serbia, and in accordance with Article 91 of the aforementioned law, the activity of operating the transmission system in the territory of the Republic of Serbia is carried out by the transmission system operator PE EMS based on a licence granted by the Agency for Energy of the Republic of Serbia, as the regulatory body that's competent for issuing licences for provision of energy operations in accordance with the Law on Energy, as well as the obligations established in Article 23 of Directive 2003/54/EC.

Further on, with the adoption of the new Law on Energy („Official Gazette of the Republic of Serbia", number 57/11, 80/11, 93/12, 124/12 and 145/14), Article 2, an electricity transmission system operator was defined as an energy subject which carries out transmission and operation of the electricity transmission system and is responsible for the operation, maintenance and development of the transmission system in the territory of the Republic of Serbia, its interconnection with other systems and for securing long-term ability of the system to meet the demands for electricity transmission in an economically justified way.

In accordance with the contents and the scope of the Regulation 1228/2003/EC the Republic of Serbia, and therefore the transmission system operator PE EMS as well, have undertaken all measures, actions and activities to enable the implementation of it into domestic legal acts and bylaws, and later also the application of adequate rules for cross-border exchange of electricity in order to improve competition in the internal electricity market, based on the cost compensation mechanism for cross-border electricity flows, as well as for establishing compliant principles of payment collection for cross-border electricity transmission and available capacity allocation on interconnecting transmission lines between national transmission systems.

The Agency for Energy of the Republic of Serbia (hereinafter referred to as: AERS) had, in June 2006, issued the first licence for electricity trading, only to have PE EMS open access to the capacity market in November 2006 already. The right to participate in capacity allocation was possessed only by participants who received a licence for electricity trading from AERS. Since then, the operator had continuously, at all borders and in all directions, carried out the allocation of cross-border capacities, based on Rules made by transmission system operators in accordance with the Treaty and other international agreements ratified by the Republic of Serbia.

The Rules in question (as for auctions held only by PE EMS for 50% of capacities, so for joint auctions which PE EMS holds in cooperation with other transmission system operators) are created for each calendar year, approved by the Agency for Energy, and published on the internet page of PE EMS, additionally, the rules for joint auctions need to also be approved by the regulatory bodies of countries with whose TSOs the joint auctions are held.

PE EMS had only held auctions (for 50% of capacities) on all borders, and starting from 2009, on the borders with Hungary, Romania, Bulgaria, Croatia and Bosnia and Herzegovina, PE EMS has been organizing joint auctions (auctions for 100%), while on the border with Montenegro, Albania and Macedonia it still holds only auctions for 50% of capacities even today.

The fact that PE EMS possesses signed agreements on allocation of cross-border transmission capacity with all eight transmission system operators in the neighbouring countries, including transmission system operators of the three countries which KOSTT listed in its complaint, confirms that PE EMS is recognized as the only transmission system operator on the regional and pan-European level, responsible for the complete procedure of congestion management on the borders of the regulatory area of the Republic of Serbia, including cross-border transmission capacity allocation itself.

On the other hand, the transmission system in Kosovo* is connected, by internal transmission lines, to the rest of the transmission system of the Republic of Serbia, and represents a part of the single control area of the Republic of Serbia, within which there are no borders or congestion, so that energy for the purposes of suppliers of users in Kosovo* can be acquired at any border of the Republic of Serbia with no extra costs, and is treated as a transaction on the internal market of the Republic of Serbia.

Until the moment when dialogue was established between EMS and KOSTT on a bilateral level under the Brussels Agreement, KOSTT had not fulfilled legal or technical conditions to represent an entirely functionally independent transmission system operator, and PE EMS had, on the regional and pan-European level, been recognized as the only transmission system operator, responsible for the complete procedure of congestion management on the borders of the regulatory area of the Republic of Serbia, including the allocation of cross-border transmission capacities itself.

Based on the above, the Republic of Serbia considers Secretariat postulate on this point incorrect, because KOSTT is presenting itself as an "equal" entity whose cross-border capacities are being allocated by another entity (in this case PE EMS). If it's "equal" (independent or recognized), the question as to why would someone else allocate its cross-border capacities arises.

KOSTT is still not declared and recognized as a Control Area in the ENTSO-E hierarchy and for that reason it has no cross-border capacities which it could allocate.

Point (3)

In point (3) of this section the Secretariat described the position of KOSTT based on regulation adopted under the patronage of UNMIK and stated that KOSTT was designated as the only transmission system operator (hereinafter referred to as: TSO) based on a licence issued by the Energy Regulatory Office, or that KOSTT manages the transmission system in Kosovo* as the territory encompassed by UNMIK.

This assessment of the Secretariat about the status of KOSTT is unfounded and incorrect for multiple reasons:

- First of all, the licensing itself, by the Energy Regulatory Office, does not mean that KOSTT was established as recognized as a transmission system operator in Kosovo*, seeing that acquiring such a status depends on fulfilling the criteria synchronized with technical and generally applicable standards of the European Community, which are established by the relevant international institutions. Therefore the internal recognition of KOSTT's operator status does not make KOSTT a transmission system operator in a sense which has relevance to the Reasoned Request of the Secretariat;
- According to the Constitution of the Republic of Serbia, the Autonomous Province of Kosovo and Metohija is an integral part of the Republic of Serbia and has a position of essential autonomy within the sovereign state of Serbia, and from such a position of the Autonomous Province of Kosovo and Metohija, follow the obligations of all state institutions to represent and protect the state interests of the Republic of Serbia in Kosovo* in all internal and external political relations;

- In accordance with UN Security Council Resolution 1244, which remains in force, the AP Kosovo and Metohija is an integral part of the Republic of Serbia (as the successor of SR Yugoslavia) under the authority of the UN Interim Administration Mission in Kosovo (UNMIK).

- Based on the Law on Energy („Official Gazette of the Republic of Serbia", number 84/04) the electricity system of the Republic of Serbia is wholesome in the whole territory of the Republic of Serbia, and in accordance with Article 91 of the aforementioned law, the activity of transmission system operation in the territory of Serbia is performed by the transmission system operator PE EMS based on a licence issued by the Agency for Energy of the Republic of Serbia, as the regulatory body;

- Energy Agreement from 2013 foresees that KOSTT will be recognized as the TSO for the territory of Kosovo*. From this, it follows that KOSTT, at the moment of signing the Brussels Agreement, was not recognized as a TSO and that its recognition by PE EMS has yet to follow. This circumstance is irrefutable and it has been recognized by the institutions of Kosovo* as such by signing the aforementioned agreement. The purpose of recognizing KOSTT as a TSO was also defined, by stating that it would be recognized for the purpose of participation in all relevant mechanisms (ITC, congestion management etc). The Brussels Agreement also establishes the framework for resolving mutual claims from the past period, whether with prescribed agreements, or through international arbitration.

In accordance with that, the transmission system in the territory of Kosovo can be observed only within the transmission system of the Republic of Serbia, as its integral part, so in the view of that, the role of KOSTT should be observed too, and it cannot be a transmission system operator on Kosovo*.

We note that Secretariat's referencing (in footnote 6) to the document submitted by KOSTT as a source of information about the history of the dispute between PE EMS and KOSTT brings into question the impartiality of the Secretariat, seeing that, with it, the Secretariat indirectly accepted, as the objective view of the factual situation, the view given from the perspective of just one of the stakeholders.

Points (4) – (5)

Secretariat's allegations, from which it follows that the negotiations held in Brussels, whose result was the Brussels Agreement, were carried out in an amicable manner to resolve the dispute between PE EMS and KOSTT regarding the Treaty, are incorrect, because there was no dispute. The Brussels negotiations can be observed only within the wider context of the process of European Integration of Serbia.

Based on the Stabilization and Association Agreement between European communities and their member states, on one side, and the Republic of Serbia, on the other side, which was signed on April 29 2008 ("Official Gazette of the Republic of Serbia" – International agreements, number 83/08) and which entered into force on September 1 2013 ("Official Gazette of the Republic of Serbia" – International agreements, number 11/13) (Chapter 35. Other issues: Relations with Kosovo*) and the EU Negotiation Framework for the Republic of Serbia (adopted on January 9 2014), the full normalization of the relations of the Republic of Serbia with Kosovo* is the conditio sine qua non of the entire process of Serbia's EU accession.

From the aforementioned it follows that political dialogue on the Republic of Serbia-Kosovo* line is an inseparable part of the EU accession. The political negotiations of Belgrade and Priština resulted in the Brussels Agreement which was signed on April 19 2013. Point 13 of the Brussels Agreement (out of 15 total points) stipulates that the signatories take upon themselves the obligation to reach agreements on telecommunications and energy.

In accordance with the above, the regulation of mutual relations in the area of energy is a part of the wider process of the EU accessions of the Republic of Serbia and Kosovo*, within which the mutually binding obligations of the two sides in this area are defined.

On the other hand, the legal effects of the decision whose making the Secretariat proposes to the Ministerial Council of the Energy Community with its amended Reasoned Request would have direct implications precisely on the aforementioned group of issues – the relations between PE EMS and KOSTT, and with that, the relations between Belgrade and Priština.

Considering that Article 103 of the Treaty explicitly prescribes that "This Treaty will not influence any obligation undertaken in the context of European Union accession negotiations," and that the factual basis of the amended Reasoned Request of the Secretariat is related to issues according to which obligations are imposed upon the Republic of Serbia, and by proxy upon PE EMS, in the context of Republic of Serbia's accession to the EU, we find that the subject matter is outside of the frames of the Energy Community's mechanism, as, according to the quoted article of the Treaty, the process of accession has priority in that case, because of which, ultimately, the amended Reasoned Request is invalid to be even considered by the Ministerial Council.

The submitted reasons point to the absolute lack of jurisdiction of the Energy Community for the issue which was presented in the amended Reasoned Request, because of which the procedure ECS-3/08 should be dismissed, without any further consideration of factual allegations and the legal basis of the Reasoned Request.

Point (7)

Under point (7), the Secretariat stated that with KOSTT's entry into the ITC mechanism (on January 1 2016), the alleged failure to comply with Article 3 of Regulation 1228/2003 by the Republic of Serbia has been removed, which is why it abandoned a part of its Reasoned Request from 05/13/2016 (and the procedure in this case had been continued only in relation to the allegations of failure to comply with Article 6 paragraph 6 of Regulation 1228/2003).

However, the Secretariat neglects the circumstance that the issue of capacity allocation is regulated the same way that the issue of compensation for hosting cross-border electricity flows (as it was mentioned in the previous paragraph) was resolved. Namely, KOSTT had on December 10 2015 signed ENTSO-E Connection Agreements with all TSOs from the Regional Group Continental Europe (hereinafter referred to as: Connection Agreement), which regulates the subject matter in question.

The application of the aforementioned agreement has been delayed until the temporary institutions of self-government in Priština have fulfilled the conditions they had accepted in Brussels negotiations and with the Agreement on Energy, but that, seeing that it's about conditions whose implementation is entirely in the hands of the temporary institutions of Kosovo*, cannot be attributed to the responsibilities of the Republic of Serbia or PE EMS.

In other words, PE EMS and the Republic of Serbia fulfilled all provisions of the Agreement on Energy which (through the signing of the Connection Agreement, which represents the result of the implementation of that agreement) had legally regulated the issue which is at the core of the amended Reasoned Request of the Secretariat from July 20 2016 (whereas such a situation appeared a long time before the submission of the Reasoned Request in question) so all further action based on that request became pointless.

2. Capacity allocation on the interconnections with Albania, the Former Yugoslavian Republic of Macedonia and Montenegro

Points (8) – (10)

The Secretariat further states that the system which KOSTT controls is connected with the transmission systems of Albania, Former Yugoslavian Republic of Macedonia and Montenegro and that the allocation of transmission capacities on these interconnections in the territory of Kosovo* should be performed by KOSTT, and not PE EMS, which is the transmission system operator in the Republic of Serbia. At the same time, Secretariat sees KOSTT as some sort of an "open area," where its northern border with PE EMS doesn't exist, since the transmission system in Kosovo* is connected with internal transmission lines to the rest of the transmission system of the Republic of Serbia. Until the establishment of the separate KOSTT Control Area, the flows of power between PE EMS and KOSTT cannot be considered as cross-border flows, but internal flows of power within one Control Area.

The current situation is such that there are no borders or congestion within the Control Area of EMS, therefore the energy for the needs of consumers in Kosovo* can be acquired at any border of the Republic of Serbia with no additional costs, and is treated as a transaction on the internal market of the Republic of Serbia.

Point (9) lists elements of the congestion management process which is entirely performed by PE EMS for the whole territory of its Control Area, and KOSTT will be able to

take over the responsibility for congestion management only when ENTSO-E Connection Agreement, signed by PE EMS as well, comes into force, and when KOSTT fulfils all requirements contained in this agreement.

Additionally, the fact that PE EMS possesses signed agreements on cross-border transmission capacity allocation with all eight transmission system operators of neighbouring countries, including transmission system operators of the three countries specified by the Secretariat in the amended Reasoned Request. That is a confirmation that PE EMS is recognized, on the regional and pan-European level, as the only transmission system operator, responsible for the complete procedure of congestion management on the borders of the regulatory area of the Republic of Serbia, including the allocation of cross-border transmission capacity itself.

In point (10) there is a wrong allegation that joint auctions for 100% of capacity are held on some of the listed borders, because on all the borders, split-auctions for 50% of cross-border capacities are performed.

Additionally, the claim at the end of point (10) that cross-border capacity on these borders are not being allocated through the South East European Coordinated Auction Office ("CAO") is absolutely irrelevant, since the membership in that body does not, by itself, give the right to allocation of cross-border capacities – KOSTT has been a member of CAO since its founding, but it cannot allocate cross-border capacities, since it has none, because it is not recognized as an independent subject in the ENTSO-E hierarchy of Control Areas (which is something the Secretariat itself admits in footnote number 13).

3. Relations of KOSTT with ENTSO-E

Points (11) – (15)

The Secretariat admits that KOSTT is not recognized as a Control Area i.e. an operator of a particular segment of the interconnected network, and that it would gain that status only when the ENTSO-E Connection Agreement is activated and when it fulfils all standards and requirements of the ENTSO-E association.

The claim in this point, that KOSTT was prevented from allocating cross-border capacities, is not true. The truth is that KOSTT did not meet the legal or technical conditions to perform cross-border capacity allocation, and that it will, only after the Connection Agreement coming into force and after it fulfils the conditions of that agreement, qualify as a Control Area in the ENTSO-E hierarchy, and based on that it will be able to perform congestion management operations which include cross-border capacity allocation.

The elaboration of the Secretariat related to EIC codes is irrelevant for this case because it is an entirely technical-administrative issue regarding ENTSO-E procedures and rules. The essential issue of KOSTT's authority to perform cross-border capacity allocation boils down to fulfilling conditions imposed by the Connection Agreement, which recognizes a number of nonconformities of KOSTT with established rules and demands of ENTSO-E, and which prescribes obligations and deadlines for remedying listed nonconformities (for example, at the Plenary meeting of ENTSO-E held on May 28 2015, a nonconformity rate of 55% with the standards of the Operation Handbook was established regarding KOSTT).

Points (16 -17)

The claim that the negotiations between ENTSO-E and KOSTT led to the finalization of the ENTSO-E Connection Agreement-a is not true, instead, just a draft Connection Agreement with KOSTT had been prepared, after which it entered regular adoption procedure in accordance with internal regulation of ENTSO-E.

The claim that the revision request, which PE EMS submitted, was submitted after the adoption of the ENTSO-E Connection Agreement by the relevant body of ENTSO-E is untrue. In accordance with the decision-making procedure in ENTSO-E, the submission of a revision request is a part of standard procedure of adopting certain documents, which precedes the adoption of the final document (established through the ENTSO-E Regional Group Continental Europe – Terms of Reference 07/09/2015 – Article 5). PE EMS used the right to submit, in a regular manner, a revision request for the document draft in accordance with ENTSO-E procedure.

The competent ENTSO-E body (RG CE Plenary), after the submission of the revision request had, in accordance with internal procedure, unanimously adopted a final decision which synchronized the text of the Connection Agreement. All member TSOs of ENTSO-ERG CE and ENTSO-E as an association agreed with this text, after which the Connection Agreement was sent to KOSTT, which KOSTT consented with.

The Connection Agreement was signed by KOSTT, all member TSOs of ENTSO-E RG CE and ENTSO-E in the capacity of a witness (guarantor) of the agreement. No TSO, nor KOSTT nor ENTSO-E had opposed the provision of Article 16 of the Connection Agreement, which was added based on the revision request of PE EMS, nor did they request the removal of the condition for the Connection Agreement coming into force which relates to the issuance of a licence for supplying to the company Elektrosever.

Because of this, the claim that this condition is not related to transmission system operation is untrue. If such a claim were true, this condition would've been opposed by some TSO or KOSTT itself precisely from that perspective. We repeat, PE EMS could not have imposed this condition, instead, it was agreed upon (accepted) by KOSTT and all TSO members of RG CE (including PE EMS).

Points (19) – (20)

The Secretariat fails to list that the requirement for the Connection Agreement to come into force had not been fulfilled because of the failure of the temporary institutions of Kosovo* to act, and ad the same time it wrongfully claims that KOSTT fulfils all requirements in terms of operational security in accordance with the standards of the ENTSO-E Operational Handbook.

A significant number of nonconformities were recognized in the Connection Agreement, which KOSTT has to fulfil within two (2) years, with intense monitoring and inspections by the competent ENTSO-E bodies. At the moment of signing of the Connection Agreement, the number of nonconformities of KOSTT with the provisions of the ENTSO-E Operational Handbook was 150. (Or 55 %).

Only after removing all nonconformities and undertaking all measures prescribed in the Connection Agreement, ENTSO-E will be able to confirm that KOSTT meets all requirements related to operational security, and conditions, in terms of fulfilling operational-technical requirements, will be met for KOSTT to apply for membership in ENTSO-E.

In addition to operational-technical requirements, KOSTT must also fulfil all requirements related to the liberalization of the market prescribed by the Third package of EU legislation in the energy sector, in a manner used in the Energy Community, which was concluded in the annual report of the Energy Community for year 2015, from October 8 2015.[2]

Secretariat's allegations in point (20) have a political character. The Secretariat is leaving the boundaries of its jurisdiction by making one-sided and biased, politically-coloured conclusions.

The Agreement on Energy is all-encompassing and it provides the obligations of both sides (both Belgrade and Priština) which both sides will have to fulfil in due time with the goal of securing stability of supply, which could be endangered by partial, non-integral implementation of the Agreement. The opinion of the Secretariat, which is based on singling out of one e-mail message of the EU facilitator while at the same time ignoring the entire correspondence and the wider context regarding the implementation of the Brussels agreement, is not correct. The EU facilitator is actually the one who formulated the basis of the compromise based on the Agreement on energy, based on which the formulation for the conditional clause in Article 16 of the Connection Agreement was created. PE EMS's proposal for a revision of the Connection Agreement proposal was made because of the negligence of the contractual obligations by the temporary institutions of Kosovo* which had not fulfilled its obligations from the Agreement on Energy, which, by ignoring an integral part of the nature of the agreement, endangered its implementation. The reason to amend Article 16 of the Connection Agreement is preserving security and continuity of supplying the users in the north of Kosovo*, and preventing a humanitarian catastrophe caused by one-sided actions of the temporary institutions of Kosovo* (which had been attempted earlier, with the order to permanently disconnect all users in the north of Kosovo*). [3]

That the argument of PE EMS was valid is also confirmed by the correspondence of the EU facilitator[4] and the adoption of PE EMS's proposal by all members of ENTSO-E Regional Group Continental Europe.

Secretariat's claim that the formulation mentioned in the Connection Agreement is crucial from the aspect of obligations regarding unbundling is incorrect. PE EMS is entirely unbundled in accordance with the laws of the Republic of Serbia, and it is envisaged that the company Elektrosever will be an entirely independent supplier, in regards to the legal framework of the temporary institutions of Kosovo*. We note that, on the other hand, the temporary institutions of self-government in Priština have still not enabled the estabilishing of

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[2]Supplement 1: Annual Report of the Energy Community, dated October 8 2015.

[3]Supplement 2: ENTSO-E preparation materials for the Plenary

[4]Supplement 3: Facilitator notice from September 7 2015

the supply company Elektrosever in the north of Kosovo*, nor have they fulfilled the obligations they adopted regarding the implementation of the Third package of EU legislation and the opening of the electricity market in prescribed deadlines. Temporary instituiions of self-government in Priština have undertaken these obligations both by the Treaty and the Agreement on Energy.

Point (21)

Secretariat's statement that establishing the Control Area is a prerequisite to perform congestion management is true, but the statement that there was no progress at all in the process between EMS and KOSTT is not true.

Namely, the entire process regarding PE EMS and the TSOs was concluded with the signing of the Connection Agreement with KOSTT. Presently, it's up to the temporary institutions of Kosovo* to fulfil their obligations in order to have the Connection Agreement come into force.

In regards to that, the implicit view of the Secretariat that the Republic of Serbia, or PE EMS, is responsible for the delay, which, in the bottom line, relates to the existence of an alleged breach of Article 6 paragraph 6 of the Regulation 1228/2003 which is referenced by the amended Reasoned Request, is entirely arbitrary. The Secretariat did not offer any evidence for such a view, nor pointed in front of which body, and in which process, had such responsibility of the Republic of Serbia or PE EMS been established.

4. Bilateral agreements between EMS and KOSTT

Points (22) – (26)

Secretariat's claim that none of the Temporary Agreements signed in 2001 do not authorize PE EMS to perform capacity allocation is wrong. At the time of signing these agreements, the second or the third package of EU legislation did not exist, and the electricity market from that period did not know capacity allocation and congestion management the way that's the case today. That is the reason why the Temporary Agreements between MEM and PUD UNMIK contained no contractual obligations related to this topic. Upon the establishment of market methods for congestion management and capacity allocation, those methods started being implemented between Control Areas, which is the case today as well.

The Temporary Agreements between MEM and PUD UNMIK prescribe that the agent for performing all duties on the MEM side is EPS (at the time a vertical enterprise in Serbia), whose successor for transmission system operation affairs became PE EMS as of July 1 2005. As the Control Area of EMS spans the entire territory of the Republic of Serbia, cross-border capacity allocation is performed on the borders of the Control Area, which had been confirmed by the neighbouring TSOs, with which PE EMS has bilateral agreements regarding capacity allocation (with the Macedonian, Montenegrin and Albanian TSOs too).

With the Temporary Agreements, PUD UNMIK authorized MEM to perform all duties related to the Control Area under the UCTE hierarchy at that time, which represents recognition

of authority, at that time, of the Control Area of EPS in the European UCTE hierarchy of Control Areas.

In point (24) it is implicitly attempted to draw a wrongful conclusion (through footnote 32) from the circumstance that PE EMS does issue invoices to KOSTT for services related to system regulation. In the earlier period, PUD UNMIK paid its liabilities on that basis in accordance with the Temporary Agreements, and since May 2007 it one-sidedly stopped paying its liabilities. The Agreement on Energy recognizes the possible claims of the Serbian side on this basis.

Point (33)

Immediately after signing the Framework Agreement between PE EMS and KOSTT, PE EMS proposed a simple, fair and cost-reflective methodology for distribution of income regarding congestion management and ITC mechanism. KOSTT refused this methodology after consideration which lasted around a year. After that, both PE EMS and KOSTT gave new proposals for the distribution of income and losses related to capacity allocation and cross-border energy transit, and currently there is an ongoing coordination of a mutually acceptable solution.

Considering the sides had prescribed with the agreement that they will mutually agree about the method of calculation of income and costs, since an agreement on the distribution of income from interconnection allocation had not been signed, there is no legal basis for KOSTT's claims in regards to this issue, because, in the Article 6 of the Agreement on Energy from 2013, both sides had agreed to find a joint solution for mutual claims.

Points (35) – (36)

We highlight that the Inter-TSO Agreement on Network and System Operation Management, which was signed between PE EMS and KOSTT, prescribed periods of bilateral cooperation even before KOSTT becomes a Control Area, and after KOSTT becomes a Control Area. This agreement also covers cooperation regarding certain congestion management processes (model creation, capacity calculations etc.) and has been modelled after other bilateral agreements which PE EMS has with all other neighbouring TSOs, and in that way places KOSTT in an equal position so that it can, after fulfilling the requirements for the Connection Agreement to come into force, start its operation as a separate Control Area.

Point (37)

The Secretariat ignores the fact that the conclusions of the EU facilitator about the implementation of the Agreement on Energy from 2013 (Supplement 4)[5] prescribe not only the obligations of PE EMS and the Serbian side, but mutual obligations, i.e. also the obligations of the temporary institutions of Kosovo* regarding the establishing of a Serbian supplier in the north of Kosovo*.

II. Relevant Energy Community laws

[5]Supplement 4: Conclusions of the EU facilitator about the implementation of the Energy Agreement from 2013

Points (38) – (45)

The amended Reasoned Request references the existence of a failure to comply by the Republic of Serbia with specific EU regulations which are no longer in force, or rather which no longer represent EU acquis communautaire on energy.

Namely, the Regulation 1228/03 ceased being in force because of the Regulation 714/09 of the European Parliament and Council from July 13 2009, which was confirmed by the a Decision of the Ministerial Council of the Energy Community 2011/02/MC-EnC from October 7 2011.

For the aforementioned reasons, the proposal of the Secretariat, to have the Ministerial Council of the Energy Community establish the existence of noncompliance with regulation which is no longer in force, is pointless and unfit for consideration.

Additionally, footnote 42 negates the importance, or the applicability, of the third package (Regulation 714/2009) to this case, but despite that, in Chapter 2, the Secretariat uses definitions from ENTSO-E documents and grid codes which were created under the provisions of the Third package of EU energy legislation.

III. Preliminary procedure

Points (46)-(56)

Regarding the listed points, and the argumentation that the Secretariat provided throughout the amended Reasoned Request, underscoring that the Republic of Serbia was not fulfilling its obligations, we point out that the Secretariat neglects the importance of political dialogue which was held between Priština and Belgrade under the patronage of the High EU Representative for Foreign Affairs and Security Policy, in which the resolving of the case in the Reasoned Request was also included, which on September 8 2013 resulted in the signing of an Agreement on Energy under the patronage of the High EU Representative for Foreign Affairs and Security policy and the European Commission, in which it was stated that KOSTT would be recognized as a TSO for the territory of Kosovo* for the purpose of participating in all relevant mechanisms (ITC, Congestion management...) and that PE EMS will provide support to KOSTT in becoming a member of ENTSO-E, as well as that they would regulate all their mutual claims through operational agreements.

The following operational agreements were concluded in the following order:

1. Framework Agreement concluded on February 11 2014,
2. Inter-TSO Agreement on network and system operation management, concluded in September 15 2014,
3. Connection Agreement concluded on December 10 2015.

Additionally, before addressing the Secretariat, the sides attempted to resolve the dispute bilaterally, as well as with the support of ETSO and the European Commission,

where there was a proposal by the Republic of Serbia for concluding a bilateral agreement with UNMIK (supplement 5: The letter of State Secretary Dušan Mrakić)[6], which was not acceptable for UNMIK.

Regarding allegations from point (48) of the amended Reasoned Request, we note that the Republic of Serbia attempted to find a mutually acceptable solution, and that it had, in the letter from November 7 2012 (supplement 6: Letter by the Ministry for Energy, Development and Environmental Protection from November 7 2012)[7] written that the Government of Serbia was actively preparing for the opening of a concrete and constructive dialogue between Belgrade and Priština, in which the issues regarding the energy sector would also be discussed, as well as that it would place the unresolved cases on the energy sector agenda in the dialogue of Belgrade and Priština, which showed that resolving mutual relations in the field of energy is a part of a wider process of the EU accessions of the Republic of Serbia and Kosovo*, in which mutually required obligations of the two sides in this area were defined.

We also point towards the letter of the Energy Community Secretariat from October 3 2012[8] in which it was announced that the case would be resolved by negotiations, and that such an approach was entirely acceptable to the Secretariat and that it was in accordance with its clear preference for a bilateral agreement between the both involved sides.

Additional arguments in favour of the above are the statements from Point (113) of the Reasoned Opinion from October 7 2012[9] where the Secretariat supports all initiatives of the Republic of Serbia's Ministry of Energy, Development and Environmental Protection of the Republic of Serbia aimed at resolving disputes in accordance with the laws of the Economic Community, including further negotiations.

IV. Legal assessment

General overview of the process faults of the amended Reasoned Request related to the jurisdiction of the Secretariat

The amended Reasoned Request of the Secretariat from July 20 2016 is essentially based on an interpretation from the aspect of the acquis communautaire legal meaning of certain institutions (terms (most notably the definition of a transmission system operator) and the legal relationships (including scope and contents of the obligation to use income acquired from cross-border capacity allocation)) relevant for the assessment of the existing breach of the Treaty, whose interpretation was given by the Secretariat itself.

This behaviour of the Secretariat is against Article 94 of the Treaty which prescribes that the institutions of the Energy Community will interpret all expressions or other terms derived from the acquis communautaire, in accordance with the case law of the Court of Justice or the European Court of First Instance, and when the interpretations of the aforementioned courts are not available, the Ministerial Council of the Energy Community will offer guidelines for interpretation, and it can delegate this task to the Permanent High Level Group.

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[6]Supplement 5: Letter of State Secretary Dušan Mrakić from December 7 2011

[7]Supplement 6: Letter of the Ministry for Energy, development and environmental protection from November 7 2012

[8]Supplement 7: Letter of the Energy Community Secretariat from October 3 2012

[9]Supplement 8: Reasoned Opinion of the Secretariat from October 7 2011

From the previous course of the case procedure it is evident that, in terms of the legal assessment of certain circumstances from the aspect of the acquis communautaire between the Republic of Serbia and the Secretariat, there are opposing views, i.e. the important disputed issues for determining the existence of an alleged breach of the Treaty mentioned in the Reasoned Request are primarily of legal character.

However, the legal views of the Secretariat expressed in the amended Reasoned Request are not backed by the case law of the Court of Justice or the European Court of First Instance, nor did the Secretariat obtain guidelines from the Ministerial Council, or the Permanent High Level Group, for the expression of those views, which it was, according to the quoted Article 94 of the Treaty, in the possible lack of corresponding case law of the aforementioned court, obligated to do.

Therefore, the amended Reasoned Request is based on an arbitrary legal qualification of certain circumstances which the Secretariat, as a body of the Energy Community, is not authorized to give, which, in the bottom line, makes the amended Reasoned Request unfit for consideration by the Ministerial Council of the Energy Community, or rather, makes it prima facie unfounded, as it's legal basis is constituted outside the rules of the Treaty.

1. Applicable laws

Points (63) – (74)

As it was stated in the above text, in the opinion regarding part II of the amended Reasoned Request, we consider the opinion of the Secretariat about which material regulation is authoritative for this case is wrong.

With the amended Reasoned Request from July 20 of 2016 the Secretariat proposes that the Ministerial Council confirms that, at the moment of making the decision based on the amended Reasoned Request (or rather, according to the factual situation at the time of making that decision), there was an alleged breach of regulation (precisely, of Article 6, paragraph 6 of the Regulation 1223/2003) which was evidently not in effect, i.e. it does not represent a part of the Energy Community Law since the adoption of the Decision 2011/02/MC-EnC.

Such a request of the Secretariat is pointless and therefore unfit for consideration.

Point (69)

The Secretariat is leaving the bounds of its jurisdiction established by the Energy Community Treaty by suggesting to the Ministerial Council which law is authoritative for the decision on the amended Reasoned Request concerned. The assessment of authoritative law is in the exclusive jurisdiction of the Ministerial Council.

Point (71) – (72)

The allegations of the Secretariat that ENTSO-E rules are not of importance for this case, we deny entirely, because the Secretariat itself states that KOSTT must fulfil requirements related to operational security in accordance with the standards of ENTSO-E Operational Handbook for the interconnected synchronous area Continental Europe in order to get to into a position to perform cross-border capacity allocation.

In Article 23 of the Treaty it is explicitly prescribed that the standards of UCTE (ENTSO-A), are to be applied directly.

Namely, Article 23 of the Treaty stipulates that the Generally Applicable Standards of the Energy Community relate to any technical system standard applied in the European Community that is necessary for secure and efficient operation of network systems, including the aspects of transmission, cross-border connections, modulation and general technical-safety standards, issued, where applicable, by the European Committee for Standardization (CEN), European Committee for Electro-technical Standardization (CENELEC) or a similar normative body, or issued by Union for the Coordination of Transfer of Electricity and the European Association for the Streamlining of Energy Exchange - gas (EASEEGAS) in terms of determining common rules and business practices.

The implementation of EU acquis communautaire includes harmonization with the technical generally applicable standards of the European Community, necessary for secure and efficient operation of network systems, issued by the European Committee for Standardization (CEN), European Committee for Electro-technical Standardization (CENELEC), or sometimes by the Union for the Co-ordination of Transmission of Electricity (UCTE), now the European Network of Transmission System Operators for electricity (ENTSO -E), or the European Association for the Streamlining of Energy Exchange –(Easeegas)

The statements of the Secretariat, in points (72) and (73), that the rules of the ENTSO-E association are not a part of Energy Community law are not correct in an essential sense. The ENTSO-E association has been created according to the provisions of the Third Package of EU acquis communautaire on energy and is tasked, among other things, with adopting and maintaining the technical/market rules and standards, as well as Grid Codes. Additionally, Article 6 of the transposed Regulation 714/2009 stipulates that all Grid Codes which are in the competence of the ENTSO-E association need to be transposed in the Energy Community and applied by all TSOs of the Energy Community.

Therefore, the allegations in points (71) and (72) are not acceptable because it's impossible to isolate the rules and practice of the ENTSO-E association from the regulations of the Energy Community.

Point (73)

Secretariat's assessment that the Energy Community law is neutral in principle in regards to the issue of ownership over a transmission system is untrue. Article 9 of the Directive 2009/72 in force prescribes that a TSO needs to be an owner of its assets, or appointed by the owner as the TSO. KOSTT does not fulfil either of the two listed criteria.

Since the issue of KOSTT's status is of importance for the assessment of the adequacy of the amended Reasoned Request of the Secretariat, and since that issue is, according to the listed provision of the Directive 2009/72, related to the issue of ownership over a transmission network, there is no basis for the issue of ownership over the transmission network and the assets on the territory of Kosovo*, having in mind UN Resolution 1244, which guarantees the sovereignty of the Republic of Serbia in Kosovo*, to be left out of the legal assessment in this case.

Additionally, the fact that PE EMS, as the legal successor of the enterprise PO "Elektroistok" – SOUR "Elektroprivreda Kosova" – PE "Elektroprivreda Srbije," had taken on itself all rights and obligations in terms of mains assets as well as the liabilities of its legal predecessors, cannot be ignored. We note that the Republic of Serbia, through PE EMS, still services all debts of the legal predecessors of PE EMS in the segment related to transmission of electricity in the territory of the Republic of Serbia, including Kosovo*. Based on the above it can be concluded that KOSTT is not the owner of the transmission system in Kosovo*, and that all listed facts are definitely relevant for this case.

Point (74)

Bilateral agreements between KOSTT and PE EMS cannot be taken into consideration only for determining the factual situation. These agreements represent a direct source of law which regulates the relations of parties to the agreement (and which, among other things, also relate to the issue which is the subject matter of the amended Reasoned Request), and which, according to the Energy Community Treaty itself, have priority. An additional argument for that is also Article 103 of the Energy Community Treaty which states that:

"Any obligations under an agreement between the European Community and its Member States on the one hand, and a Contracting Party on the other hand shall not be affected by this Treaty. Any commitment taken in the context of negotiations for accession to the European Union shall not be affected by this Treaty."

2. Status of KOSTT as a transmission system operator

Point (75)

The Agreement on Energy prescribes in point 2 that KOSTT will be recognized as a transmission system operator (TSO) for the purpose of participating in all relevant commercial-technical mechanisms, and it follows from this that this agreement confirmed (by the signatories and the EU as a facilitator) that KSOTT was not a TSO at the time of signing. Through the bilateral agreements which the Secretariat ignores, PE EMS established a relationship with KOSTT as an equal partner and enabled it to enter the process of taking on certain TSO functions in order to be internationally recognized by all other TSOs in Europe. Within that process, on January 1 2016, KOSTT joined the pan-European ITC mechanism. Also, KOSTT signed the Connection Agreement which listed various non-compliances which KOSTT had to remove in order to be able to fully perform those TSO functions, which it cannot currently perform because it does not meet the required technical standards. In other words, from the aforementioned it's noticeable that it is a process which is still ongoing and in which the entire TSO community of Europe participates in, which means that the circumstance that PE EMS agreed to treat KOSTT as a TSO is irrelevant by itself, as that status, in the bottom line, depends on meeting the conditions set by the European TSO community.

3. Subject matter

General overview of points (76)-(97)

In this part of the amended Reasoned Request the Secretariat expresses its view about the essence of the case, which comes down to an opinion that PE EMS is not using its cross-

border capacity allocation revenue in accordance with Article 6 paragraph 6 of the Regulation of the European Parliament and Council number 1228/2003 from June 26 2003. Such an opinion of the Secretariat is wrong because it comes from an arbitrary interpretation of the matter of the obligation prescribed by the listed article of the Regulation.

Namely, since it cannot deny that the territory of Kosovo* is a part of the wholesome Control Area of EMS, the Secretariat brings up the argument that the use of revenue made from the allocation of cross-border capacities needs to be tied to the part of the system where the individual revenue was created.

Such a formulation of the Secretariat is not in accordance with Article 6 Paragraph 6 of the Regulation, according to which a transmission system within one control area is evidently being observed as an integrated whole, which is the only logical and technically justified solution, so the revenue from all interconnections are observed as a whole. That means that the adequacy of the use of such revenue (regarding the purposes prescribed by Article 6 Paragraph 6 of the Regulation) can only be checked compared to the whole, and not compared to some (artificially separated) parts of the system. When the facts are observed in that context, it is clear that there is no breach of European Community law which the Republic of Serbia is charged with in the amended Reasoned Request from July 20 2016.

Point (77)

In regards to the allegations of the Secretariat in this point, we again note the objection, which in the bottom line relates to the orderliness of the amended Reasoned Request, since Directive 2003/54/EC and Regulation 1228/2003 have been made no longer in force by the decision of the Ministerial Council from October 7 2011 number 2011/02/MC-EnC).

Point (78)

The statement that KOSTT, as a transmission system operator, was obligated to implement Regulation 1228/2003 is incorrect, as KOSTT did not fulfil the legal or factual conditions to perform the duty of transmission system operator. Until the Connection Agreement comes into force, KOSTT will not be in charge of energy transfer with other interconnected systems, and instead it will be in the jurisdiction of PE EMS as the Control Area of ENTSO-E in accordance with the applicable international rules and standards.

Point (79)

The statement of the Secretariat that PE EMS, and not KOSTT, performs congestion management in the sense of European regulation and the operational technical regulation of ENTSO-E is correct. Congestion management includes a list of activities, measures and processes on which the security of the system operation and supply depend on, not just for the electricity system of EMS but also for the entire interconnection in Continental Europe: Capacity allocation represents just one of the activities in the process of congestion management, for which the revenue is published publically. The costs related to other activities and measures are recognized by the competent national regulatory agency.

Point (80)

Secretariat's statement that the Republic of Serbia (or PE EMS) manages congestion through capacity allocation on the three listed interconnectors in accordance with the acquis communautaire on energy of the Energy Community is correct, because PE EMS does manage congestions on all borders of the EMS Control Area, which includes the three listed southern borders (BYROM, Albania and Montenegro). Secretariat's ascertainment that PE EMS cannot collect revenue from allocation on these borders, including the three listed southern borders, in accordance with the law of the Energy Community, is untrue.

Point (81)

The Republic of Serbia had entirely transposed the principles and rules from the Regulation 714/2009, or the Regulation 1228/2003 which was formerly in effect, and which pertain to the distribution of revenue from cross-border capacity allocation, to its Law on Energy from 2014, which, in Article 165 Paragraph 7 prescribes that "all revenue acquired from the allocation of cross-border capacities can be used for the following purposes:

1) guaranteeing the availability of allocated capacity;
2) maintaining or increasing the cross-border capacities through network investments, particularly with investments into new interconnection transmission lines",

and in paragraph 8, as an exception to the aforementioned purposes, it is prescribed that the revenue:

"can be used, with approval of the Agency for Energy, as revenue which the Agency takes into consideration when creating the methodology for determining the price of access to the electricity transmission system up to a maximum amount determined by the Agency. The remainder of the revenue is placed into a separate internal account of the transmission system operator, until conditions are created for its uses as listed in paragraph 7 points 1 and 2 of this article."

PE EMS performs the distribution of allocation revenue in accordance with the abovementioned Law on Energy.

Point (82)

It is indisputable that PE EMS performs the capacity allocation not only on the three southern borders of the EMS Control Area, but also on all eight borders of the EMS Control Area. All eight borders of the EMS Control Area are internationally recognized as borders of the EMS Control Area, so the three southern borders cannot be observed separately from the others, on any basis. Another argument for this is that PE EMS has contracts for capacity allocation with the TSOs from Albania, Macedonia and Montenegro.

Point (85)

The statement that PE EMS and KOSTT are negotiating about the compensation allegedly owed by PE EMS is incorrect. The aforementioned framework agreement stipulates that specific agreements are to be signed, which would regulate the distribution of revenue from

capacity allocation. In relation to that, there is an on-going harmonization of the methodologies of distribution, which also needs to consider all costs that have occurred in the process of management of congestion on the side of PE EMS and KOSTT.

Point (88)

The Republic of Serbia denies Secretariat's position that the use of cross-border capacity allocation revenue on the three southern borders is not in accordance with Article 6 Paragraph 6 of the Regulation 1228/2003.

As it was stated, PE EMS uses the capacity allocation revenue at all eight EMS Control Area borders (whose integral part is the territory of Kosovo*) for guaranteeing the availability of allocated capacity (which impacts the entire EMS Control Area, with Kosovo*) and for investments into the grid which impact the maintenance, or the increase of cross-border capacities in relation to the entire EMS Control Area, and therefore the territory of Kosovo* too.

Point (89)

As it was stated, PE EMS uses revenue from capacity allocation in accordance with the Law on Energy, which transposes the previsions of the relevant Acquis communautaire into domestic legislation. Therefore, Secretariat's ascertainment that that approach does not ensure the use of revenue in accordance with the relevant provisions of the Regulation 1228/2003 is not true.

Points (90) – (93)

Again we note that the Secretariat's claim that capacity allocation revenue is not used in accordance with the provisions of the Regulation 1228/2003 is not true.

PE EMS guarantees allocated capacity to all market participants by using secured resources of system services for the entire EMS Control Area, while on the other hand KOSTT offered no support whatsoever to this process, and instead used all the benefits of the secure system without paying any compensation to PE EMS. All costs of system services which were used for guaranteeing the capacities were covered by revenue from capacity allocation and by other PE EMS revenue, so the claim of the Secretariat the secured system services are not used for guaranteeing cross-border capacities does not hold up. Since 2005, since the capacities started being allocated, PE EMS never performed capacity curtailment because of endanger security or limitations in the grid of the whole EMS Control Area, and instead it used the necessary congestion management measures (on the basis of acquired system services) in order to have the guaranteed capacity utilized in its entirety.

The ascertainment of the Secretariat that PE EMS had not invested and maintained the transmission system on the territory of Kosovo* is not true. PE EMS maintained and invested into parts of the systems that were available to it (northern Kosovo*). The remaining parts of the system were not available to PE EMS because of the one-sided secession and the political dispute. In other words, PE EMS was prevented by the temporary institutions on Kosovo* from fulfilling its duty on its own assets (to invest, maintain, operate and develop the transmission system in Kosovo*).

The claim of the Secretariat that the construction of the interconnection transmission line by PE EMS on some of the borders of the EMS Control Area outside the territory of Kosovo* did not increase the transmission capacities on the southern borders of the EMS Control Area (Albania, BYROM, and Montenegro) is not true. Each new element of the transmission network has an impact on the increase of total capacity of the regional transmission network, and that is also supported by the fact that TSOs, during calculations of cross-border capacities for allocation, use synchronized regional models of the transmission network with which they perform the calculations of available capacities. Particularly from the aspect of the southern borders of the EMS Control Area (Albania, BYROM, Montenegro), the construction of a new 400 kV transmission line between BYROM and Serbia increased the total cross-border capacity on all three mentioned borders.

Point (94)

With its interpretation of the assumption for the application of Article 6 Paragraph 6 of the Regulation 1223/2003, the Secretariat implicitly expresses the view that PE EMS took control over an area of another transmission system operator. That view is wrong, for reasons which were explained in detail in this reply, and whose essence is that KOSTT does not represent a transmission system operator in a sense that would be relevant for this case and that it also is not the owner of the transmission network in the territory of Kosovo*, which is owned by the Republic of Serbia.

Point (95)

It is wrong that KOSTT is obligated to allocate cross-border capacities according to Energy Community law. Only after fulfilling the requirements from the Connection Agreement, KOSTT will gain the right to become a Control Area, which will give it the right to perform cross-border capacity allocation on the borders of the newly-established Control Area.

Having in mind all allegations of the Secretariat itself related to the relationship EMS-KOSTT-ENTSO-E, it is evident that the Secretariat is aware of that fact.

Further on, the statement of the Secretariat that PE EMS will transfer revenue from allocations to KOSTT is untrue, as the Framework Agreement between EMS and KOSTT prescribes that the sides will establish a methodology for covering the costs of congestion management and perform the eventual distribution of revenue from allocation as agreed upon by PE EMS and KOSTT.

Point (97)

The claim of the Secretariat that system users within the EMS Control Area in the territory of Kosovo* do not benefit from the activities and measures of congestion management carried out by PE EMS for the entire EMS Control Area (including the territory of Kosovo*) is not correct. The situation is actually the opposite.

Namely, in addition to general benefits which are derived from the guaranteeing of the availability of allocated capacity and maintenance, or increase of cross-border capacities which affect the whole EMS Control Area, users in Kosovo* also enjoy special benefits.

The benefit for consumers/users of the system in the territory of Kosovo and Metohija is evident in the lack of the northern border of Kosovo* with the rest of Serbia, which means that eventual congestions in that direction and their costs are not taken into account, which makes the energy used in Kosovo* cheaper by the amount of those costs. Also, the energy which is exported from Kosovo* is cheaper by the amount of these costs, which makes it more competitive on the regional market.

Another great benefit for the system users in Kosovo* are reduced costs of system services paid through the local KOSTT tariff, because those costs are shouldered by PE EMS without any participation by KOSTT.

The third great benefit for system users in Kosovo* is the accomplished security of supply in the whole territory of Kosovo*, which had been secured by PE EMS with its operational work and by securing system services for the entire EMS Control Area, whereas KOSTT did not participate in the covering of costs or the operational measures.

4. Conclusion

Point (98)

In accordance with everything brought up in this Response, the Republic of Serbia contests the conclusion of the Secretariat made by the Secretariat in this point, and questions the jurisdiction of the Secretariat to give its assessments in such a form, since, according to the rules about the contents of the Reasoned Request prescribed by the Procedural Act 2008/01MC-EnC from July 27 2008, specifically the provision of Article 28 paragraph 3, the Secretariat can, in the Reasoned Request, only make arguments and make proposals to the Ministerial Council, but not make conclusions, as was done in this specific case.

* * *

The Republic of Serbia contests all allegations by the Secretariat from the amended Reasoned Request as factually incorrect and legally unfounded.

The claim of the Secretariat that the Republic of Serbia, or PE EMS, does not use revenue from cross-border capacity allocation for purposes intended by Article 6 Paragraph 6 of the Regulation of the European Parliament and Council number 1228/2003 from June 26 2003 is incorrect. The methods of using the revenue made from cross-border capacity allocation by PE EMS is regulated by Article 165 of the Law on Energy ("Official gazette of the Republic of Serbia," number 145/14), which. in accordance with Article 6 Paragraph 6 of the Regulation of the European Parliament and Council number 1228/2003 from June 26 2003 prescribes, as a basic rule, that all revenue acquired from allocation of cross-border capacities can be used for guaranteeing the availability of allocated capacity and maintenance or improvement of the cross-border capacities through investments into the network, particularly into the construction of new interconnection transmission lines.

From the aforementioned, it follows that the Republic of Serbia will oppose Secretariat's proposal sent to the Ministerial Council to have the Ministerial Council, within its competencies founded on Article 90 Paragraph 1 point 1 of the Treaty, make a decision which would proclaim that the Republic of Serbia is failing to comply with Article 6(6) of the Regulation of the European Parliament and Council number 1228/2003 from June 26 2003 and it suggests to the Ministerial Council to dismiss as unfounded the Reasoned Request in the case ECS-3/08 for reasons of the absolute lack of jurisdiction of the Energy Community in this matter, since it is already being resolved within the process of the accession of the Republic of Serbia to the European Union, and if the amended Reasoned Request is not dismissed, it is suggested that the procedure in the case ECS-3/08 is suspended until a solution, based on the point 13 of the First Agreement of Principles Governing the Normalization of Relations between Belgrade and Priština and the Agreement on Energy, is reached in the political dialogue in Brussels mediated by the European Union,

SUPPLEMENTS

Supplement 1: Annual report from October 8 2015
Supplement 2: ENTSO-E preparatory materials for the Plenary
Supplement 3: Letter of correspondence of the EU facilitator from September 7 2015
Supplement 4: Conclusions of the EU facilitator about the implementation of the Energy Agreement from 2013
Supplement 5: Letter of State Secretary Dušan Mrakić from December 7 2011
Supplement 6: Letter from November 7 2012 by the Ministry of Energy, Development and Environmental Protection of the Republic of Serbia
Supplement 7: Letter of the Energy Community Secretariat from October 3 2012
Supplement 8: Reasoned Opinion from October 7 2011

for the Republic of Serbia
MINISTER

ALEKSANDAR ANTIĆ

EC Annual Report 2015 page 88:

As the highest priority, the process of amending the primary legislation must be finalized in order to ensure an effective transposition and implementation of the Third Package provisions in the electricity sector, since Kosovo* has already missed the deadline of 1 January 2015.
Without any delay, ERO must impose measures aimed at de-regulation of prices in the wholesale and retail electricity markets and limit public service obligation to what is necessary to address market failure. Kosovo* is lagging behind other Contracting Parties in that respect. The current cross-subsidization between different categories of customers must be phased out.
The necessary preconditions for retail market opening need to be put in place, including development of switching rules, appointing a supplier of last resort and defining load profiles for customers without interval meters. Distribution tariffs must be publicly available in order to allow for non-discriminatory third party access.
KOSTT must also start to procure balancing services and network losses in transparent and market-based procedures. The process of KEDS unbundling needs to be finalized and a compliance programme adopted and applied.

Note to the Regional Group Continental Europe

For DECISION and INFORMATION: referring to Agenda item 7.1
RG CE Plenary meeting
Brussels, 10 June 2015

From: Darko Kramar, Project Manager of PG KOSTT
Date: 29 May 2015
Subject: PG TSO KOSTT Status report

Background

At the last RG CE Plenary meeting on 14 April 2015 the status of KOSTT's capability to perform scheduling, accounting and grid model was presented. Scheduling and accounting are considered to be OK, while the grid model is not. Taking into account the political situation, PG TSO KOSTT was asked to extend by about 2 months the timeline for the Interim Connection Agreement to be signed. At the same time PG TSO KOSTT was asked to continue their work on helping KOSTT to remove their non-compliances and insufficient compliances.

Outcome of PG TSO KOSTT Meeting on 28 May 2015

The meeting discussed:

1. How to solve the situation with the grid model. KOSTT is now able to create DACF on a daily basis, but without cooperation of EMS testing cannot be done.
2. The concern raised by Swissgrid due to the future uncertainty with regard to the management of unintentional deviations. Plenary has already been informed that, currently, neither EMS nor KOSTT is balancing Kosovo area. Although KOSTT is not compliant with 55 % of the OH standards this is the main motivation of ENTSO-E to sign the Connection Agreement ASAP in order to establish control over KOSTT.

Some PG members are concerned that that not all RG CE Plenary members are aware of the fact that KOSTT does not have LFC; consequently, the PG wishes to bring this to the attention of the RG CE Plenary once again. Swissgrid as a coordination centre is concerned because, under the current arrangement, EMS are ultimately responsible for managing the consequences of these deviations. However after the Connection Agreement is signed the responsibility will rest solely with KOSTT and, given the limitations on LFC currently available to them, there may be occasions when KOSTT are unable to manage the deviations and other TSOs will take on the burden (again: this is the situation we are facing TODAY already).

It is accepted that the scale of these deviations is small relative to the size of the synchronous area and KOSTT is bringing into play a number of measures which will mitigate the risk e.g. switching generators on load frequency control and procuring load frequency response from Albania. Nevertheless, PG TSO KOSTT believes it would be prudent to ensure that this risk is brought to the attention of the affected TSOs through RG CE Plenary. Moreover, RG CE Plenary should be asked to decide on behalf of TSOs that this risk (given the size and the mitigating measures being put in place) should not prevent the Connection Agreement being signed as previously agreed.

Under the Connection Agreement KOSTT may operate as control block or as a part of control area. At the time the Agreement is signed and for some time afterward it will not be possible for KOSTT to become part of a control area. Therefore, PG TSO KOST is developing the plan for implementing remedial measures to achieve compliance with the OH on the assumption that KOSTT system will operate as Control Block.

It was agreed at the PG TSO KOSTT that given the complexity of achieving full compliance with the OH, the need to engage with several TSOs and previous experiences e.g. Albania, the current target of 2 years is unachievable. Therefore, the project will be planned for KOSTT to achieve full compliance within 2 years for obligations deemed to be high priority, essentially those dealing with secure real time operation. Compliance with the lower priority obligations will be fulfilled over a period of 4 years. This will be proposed to the RG CE Plenary in its meeting on 10 June 2015. The Project Plan will be presented to RG CE Plenary on 16 September 2015.

RG CE Plenary is asked to:

- Endorse the assumption that the KOSTT system will be operated as a Control Block for the purposes of achieving compliance with the Operational Handbook
- Agree that it will take 4 years for KOSTT to achieve full compliance with the Operational Handbook, whereas the compliance with the high priority obligations should be achieved within 2 years

Note to the Regional Group Continental Europe

For DECISION: referring to Agenda item 5
RG CE Plenary meeting
Budva, 16 September 2015

From: The Secretariat
Date: 6 September 2015
Subject: Revision request of EMS against the approval of the Connection Agreement for KOSTT

Following the approval of the Connection Agreement for KOSTT, a decision which RG CE Plenary took by electronic voting finished on 9 July 2015, EMS submitted a revision request on 22 July 2015, because EMS considers "that this decision is seriously prejudicial to its interest".

According to Article 6.1 of RG CE ToRs "a decision subject to a revision request shall be suspended until a final decision has been taken by the Plenary".

Upon this, on 24 July 2015, the convenor of RG CE Plenary, Rudolf Baumann, invited EMS to formulate their revision request by 14 August 2015 and to provide:

- The elements of the background presenting the topic;
- An explanation of the reasons why the decision subject to a revision request is prejudicial to EMS' interests; and
- A counter proposal, aimed at replacing the decision subject to revision request.

On 30 July 2015, EMS asked Rudolf Baumann to prolong the deadline till 1 September 2015. Rudolf Baumann approved this.

On 1 September 2015, EMS sent a mail with the full formulation of their revision request, which is given in the following without changes and language check. The two documents attached to this mail are in the Session File:

- *150916_RG_CE_TOP_05.1_D.2_2015 08 31 APP 2 EMS and KOSTT Control Areas*, and
- *150916_RG_CE_TOP_05.1_D.3_APP1 Conclusions of the EU facilitator on the implementation of the 2013 Energy Agreement*).

Revision request of EMS

Dear Rudolf,

On behalf of JP Elektromreža Srbije – EMS following the RG CE Terms of Reference, Article 6.1 letter c) I am writing to you in your capacity as Convenor of Regional Group "Continental Europe" in order to submit a Revision request against a decision of the Plenary from July 9, 2015 regarding the RGCE approval of the Connection Agreement for KOSTT.

Background

During the ENTSO-E RGCE Plenary meeting on the 10th of June in Brussels no unanimity has been reached at the voting on approving the Connection Agreement for KOSTT, since JP EMS has voted against the proposal.

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According to Article 6.1b of RG CE Plenary ToR, a second voting by secret ballot has been organized by mail. The results were again in favor of signing the Connection Agreement for KOSTT:

- 18 Members of RG CE, representing 88.57% of the First Part of the Voting Power and 79.61% of the Second Part of the Voting Power, voted in favor of the adoption of the proposed decision
- 2 Members of RG CE voted against the adoption of the proposed decision.
- 2 Members of RG CE abstained.

In the e-mail from 22nd of July 2015, Mr. Dusko Tubic, JP EMS representative in the RGCE Plenary has informed Mr. Rudolf Baumann, convener of RGCE Plenary, about JP EMS intention to enter a revision request against a decision of the Plenary from July 9, 2015 regarding the RGCE approval of the Connection Agreement for KOSTT.

Main reasons

The reason to enter the revision request is that the security of supply in the north of Kosovo*, predominantly inhabited by Serbs, would be endangered without fulfillment of conditions defined in Brussels Energy Agreement from September 2013 as well as in document: „Conclusions of the EU facilitator on the implementation of the 2013 Energy Agreement" from August 25, 2015 (please see the attachment).

Counter proposal

According to the Brussels Energy Agreement from September 2013:

- JP EMS will help KOSTT to become an ENTSO-E TSO;
- In the north of Kosovo*, predominantly inhabited by Serbs, local authorities will found and operate a supply and distribution companies. The task of the companies will be to supply and deliver the electricity to the areas predominantly inhabited by Serbs.

In document: „Conclusions of the EU facilitator on the implementation of the 2013 Energy Agreement" from August 25, 2015 are listed next steps which have to be done by both sides for implementation of the 2013 Energy Agreement. Having in mind provisions of this document, facilitated and guaranteed by European Commission, it will be necessary to introduce transitional period before full implementation of CA in order to ensure proper implementation of agreement and security of supply for customers on the north of Kosovo*.

Until recently, JP EMS has actively participated in the process of preparation of KOSTT to become an ENTSO-E TSO. However we have faced the situation that we are now close to fulfillment of our part of the 2013 Energy Agreement, and the other side have not even started to work on their part.

That is why JP EMS proposes to gradually implement CA:

1. JP EMS will immediately sign, together with other RG CE TSOs, ENTSO-E and KOSTT the Connection agreement with KOSTT including the disclaimer related to the implementation during the transitional period;
2. The CA implementation will start not before than 45 days after the signing. This period is necessary for preparation of necessary changes in scheduling and accounting systems, preparation of DACF models, organization of capacity allocation process, informing of market participants and especially constraints related to the introduction of changes in the ITC mechanism.
3. In the transitional period of CA implementation mentioned above, the accounting point between JP EMS and KOSTT control areas will be temporarily established in SS Valac (please see the attachment) in order to allow the current supplier EPS to continue with the supply of the customers on the north of Kosovo* until the full implementation of the document „Conclusions of the EU facilitator on the implementation of the 2013 Energy Agreement" from August 25, 2015;

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4. After the full implementation of the above mentioned document, and EPS supply company for north of Kosovo* becomes fully operational, the accounting point between JP EMS and KOSTT control areas will be set on the OH line 110 kV Novi Pazar 2 - Valac, as it is defined in the EMS - KOSTT operational agreement.

This introduction of transitional period of CA implementation will ensure both reliable operation of RG CE interconnection (EMS will continue to balance this part of future KOSTT area in the transitional period) and security of supply in the north of Kosovo* (until the EPS supply company becomes fully operational).

Please find in the attachment the geographical and graphical presentation of EMS proposal.

Best regards

Duško Tubić

Kosovo* - 'This designation is without prejudice to positions on status, and is in line with UNSC 1244 and the ICJ Opinion on the Kosovo Declaration of Independence.'

Reaction of Energy Community and European Commission

This full formulation of the revision request was only sent to all RG CE Plenary members with voting rights. It seems that the mail was, however, forwarded to the Energy Community and European Commission. As a matter of fact, these two institutions reacted by mails sent to the attention of Mr. Peder Andreasen, President of ENTSO-E, on 3 September 2015.

Deputy Director of Energy Community, Mr. Dirk Buschle, stressed that "the request for re-defining the respective areas of KOSTT and EMS for a (non-specified) transitional period contravenes the bilateral agreements signed by the two system operators and thus the two documents agreed on at the highest level during last week". Six documents were attached to this mail, two of them being the same which EMS sent with their revision request, and one containing the text of the revision request. The other three are in the Session File:

- *150916_RG_CE_TOP_05.1_D.4_ENTSOE_O_dbu_01_03-09-2015*
- *150916_RG_CE_TOP_05.1_D.5_Chairman_s_Conclusions_Western_Balkans_Summit*
- *150916_RG_CE_TOP_05.1_D.6_Addendum_Western_Balkans_Summit*

Mr. Nicholas Cendrowicz from EC Directorate-General for Neighbourhood and Enlargement Negotiations wrote that he hopes that "you will disregard the request", because it "would not be in line with any of the agreements on energy reached so far". This mail is also in the Session File:

- *150916_RG_CE_TOP_05.1_D.6_RE Letter to the attention of President Mr Peder Andreasen*

Reaction of EMS and final formulation of the revision request

Following all this, on 4 September, EMS sent a mail with the following content which can be understood as the final full formulation of the revision request (it is given here below without changes and language check).

Dear Colleagues,

On behalf of EMS I would expressed our astonishment of Mr. Cendrowicz's letter sent to EC, ENTSO-E and EnCS high officials (which was forwarded to you by ENTSO-E Secretariat) and especially with conclusion at the end of this letter with instruction not to support of EMS technical Revision Request (RR).

I would like to point out that this technical EMS RR is fully in line with the spirit of document "Conclusions of the EU facilitator on the implementation of the 2013 Energy Agreement", approved by the two Prime Ministers 10 days ago. RR proposes proper and smooth implementation of the mentioned document. Unfortunately it is obvious that in document is made a terminological mistake in the topic 10, linking the moment when the "ElektroSever" supply license becomes operational with the KOSTT membership status in ENTSO-E, instead to link moment of the "ElektroSever" operational readiness with

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the approval of the KOSTT Control area status within ENTSO-E interconnection. It is well known that the ENTSO-E membership process is very long lasting procedure (sometimes, it can last for the next 1 or 2 years, or even more like in the case of Albania and Turkey) which is not linked with the Control Area status and recognition of some TSO (in our case KOSTT) as a separate Control Area, with all rights and obligations attached to this status. This understanding was confirmed by both EMS and KOSTT (and ENTSO-E Secretariat, of course) on the last KOSTT Project group meeting held on September 2, 2015 in Switzerland.

So, in order to ensure full implementation of the Agreement and unblock the approval process of the KOSTT Interconnection agreement with ENTSO-E, Serbian side has proposed to reformulate topic 10 in the following way:

"10. The supply license will be operational in the moment when KOSTT is officially recognized by ENTSO-E as a separate Control Area, and vice versa."

As it is written in EMS RR, according to above mentioned and having in mind provisions of document "Conclusions of the EU facilitator on the implementation of the 2013 Energy Agreement", facilitated and guaranteed by European Commission, it will be necessary to introduce transitional period before full implementation of CA in order to ensure proper implementation of Agreement and ensuring of security of supply for customers on the north of Kosovo*.

That is why JP EMS proposes to gradually implement CA:

1. JP EMS will immediately sign, together with other RG CE TSOs, ENTSO-E and KOSTT the Connection agreement with KOSTT including the disclaimer related to the implementation during the transitional period;
2. The CA implementation will start not before than 45 days after the signing. This period is necessary for preparation of necessary changes in scheduling and accounting systems, preparation of DACF models, organization of capacity allocation process, informing of market participants and especially constraints related to the introduction of changes in the ITC mechanism.
3. In the transitional period of CA implementation mentioned above, the accounting point between JP EMS and KOSTT control areas will be temporarily established in SS Valac in order to allow the current supplier EPS to continue with the supply of the customers on the north of Kosovo* until the full implementation of the document „Conclusions of the EU facilitator on the implementation of the 2013 Energy Agreement" from August 25, 2015;
4. After the full implementation of the above mentioned document, and "ElektroSever" supply company for north of Kosovo* becomes fully operational, the accounting point between JP EMS and KOSTT control areas will be set on the OH line 110 kV Novi Pazar 2 - Valac, as it is defined in the EMS - KOSTT operational agreement.

This introduction of transitional period of CA implementation will ensure both reliable operation of RG CE interconnection (EMS will continue to balance this part of future KOSTT area in the transitional period) and security of supply in the north of Kosovo* (until the "ElektroSever" supply company becomes fully operational).

Best regards

Duško Tubić

Therefore, it can be concluded that EMS proposes to RG CE Plenary to take the following decisions:

RG CE Plenary is asked to:

– Ask EMS to immediately sign, together with other RG CE TSOs, ENTSO-E, and KOSTT, the Connection Agreement for KOSTT including a disclaimer related to the implementation during the transitional period

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- Decide that the implementation of the Connection Agreement for KOSTT shall not start before than 45 days after its signing. This period is necessary for the preparation of the necessary changes in scheduling and accounting systems, the preparation of DACF models, the organization of the capacity allocation process, the informing of market participants, and especially because of the constraints related to the introduction of changes in the ITC mechanism
- Decide that in the transitional period mentioned above of the implementation of the Connection Agreement for KOSTT the accounting point between the control areas of EMS and KOSTT shall be temporarily established in the substation Valac in order to allow the current supplier EPS to continue with the supply of the customers on the north of Kosovo* until the full implementation of the document „Conclusions of the EU facilitator on the implementation of the 2013 Energy Agreement" from 25 August 2015 (*this designation is without prejudice to positions on status, and is in line with UNSC 1244 and the ICJ Opinion on the Kosovo Declaration of Independence)
- Decide that (i) after the full implementation of the document „Conclusions of the EU facilitator on the implementation of the 2013 Energy Agreement" from 25 August 2015, and (ii) as soon "ElektroSever", the supply company for north of Kosovo*, becomes fully operational the accounting point between the control areas of EMS and KOSTT shall be set on the 110 kV overhead line Novi Pazar 2 - Valac, as it is defined in the operational agreement between EMS and KOSTT (*this designation is without prejudice to positions on status, and is in line with UNSC 1244 and the ICJ Opinion on the Kosovo Declaration of Independence)

Remark of the Secretariat:

In accordance with Article 6.1 d) of the RG CE Terms of Reference, the RG CE will be asked to vote on the counter proposal (or any other solution as could be discussed during the meeting). If there is a quorum and a majority in favour of the counter proposal (or the other solution discussed during the meeting), the latter will be adopted and will replace the decision subject to a revision request.

On the contrary, if there is no quorum or no majority in favour of the counter proposal (or the other solution discussed during the meeting), the decision subject to a revision request (i.e. the decision taken on 9 July 2015) will be considered as validly adopted. This will mean that the Connection Agreement for KOSTT is finally approved without changes.

For the avoidance of doubt, the vote will require a special majority and a secret ballot.

Clarification of European Commission

On 7 September 2015, Mr. Nicholas Cendrowicz from EC Directorate-General for Neighbourhood and Enlargement Negotiations sent a mail to the attention of Mr. Peder Andreasen and Konstantin Staschus, President and Secretary General of ENTSO-E. Among others, Marko Đurić, Director of the Office for Kosovo and Metohija of the government of Serbia and the CEO of KOSTT were in the copy of this mail the content of which is given in the following:

Dear ENTSO-E colleagues,

I have been in contact with some of you about the agreement reached between the Prime Ministers of Kosovo and Serbia on August 25th, in particular the point marked as follows:

10. The supply license will be operational when KOSTT becomes a member of the ENTSO-E.

This has been worded in a rather unfortunate way, since we all know that membership of ENTSO-E is a long technical process that could take a number of years. We sincerely hope that the supply company that these arrangements foresee will be operational long beforehand.

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In discussions with you, and with the Energy Community Secretariat, we wanted to clarify what this linkage should mean. Instead of 'membership of ENTSO-E', the supply license should become operational **when KOSTT signs the Connection Agreement with ENTSO-E.**

I hope that everyone can agree with this interpretation.

In parallel to the Prime Ministers' agreement of 25/8, there was also an agreement at the end of the 27/8 Vienna summit, in which parties committed (inter alia) to

- EMS (Serbia) and KOSTT (Kosovo*) to implement the Framework and Inter-TSO Agreement (September 2015)

With this in mind, I trust that both EMS and KOSTT will be co-operating constructively in the ENTSO-E framework, and that the two TSOs will be signing an interconnection agreement that designates KOSTT as the TSO for the entire electrical territory of Kosovo.

Thank you very much for your understanding,

Yours sincerely,

Nicholas CENDROWICZ

Reaction of the Serbian government

On 7 September 2015, Marko Đurić, Director of the Office for Kosovo and Metohija of the government of Serbia, replied to the aforementioned mail of Mr. Nicholas Cendrowicz. In the following, the full content of his mail is given:

Dear Mr. Cendrowicz,

first of all, let me thank you on your understanding and clear commitment to solve and close this suddenly open question caused by inappropriate formulation/wording of topic 10. I am very glad to confirm high-level of understanding and flexible approach shown by all involved parties (especially by the involved TSOs and ENTSO-E), so from our point of view there is no any obstacle on the political level also to overcome this (blocking) situation on the most elegant and efficient way and to continue with the implementation of the Prime Ministers' agreement of August 25th, without any additional delay nor misunderstanding.

In order to continue with the implementation of the Agreement with the security of supply fully ensured in the initial/transitional period (as our common goal), besides the already recognized necessity to reformulate topic 10 on the proper way it is also necessary to approve this amendment (or interpretation) on the highest possible level, i.e. by the European Commission (as a facilitator and guarantor of the Agreement) and two Prime Ministers. From our point of view, there are two easily applicable possibilities:

1. To introduce "Annex to the Conclusions of the EU facilitator on the implementation of the 2013 Energy Agreement" and approve it by two Prime Ministers' (preferred option for our side), with the following proposed wording:

Topic 10 is reformulated/clarified in the following manner: The supply license will become operational in the moment when KOSTT is officially recognized by ENTSO-E as a separate Control Area, i.e. when the KOSTT Connection agreement with the ENTSO-E is signed by all involved parties.

2. European Commission to propose following additional interpretation, which should be officially approved by both sides on the Prime Ministers' level:

Topic 10 is interpreted in the following manner: The supply license will become operational in the moment when KOSTT is officially recognized by ENTSO-E as a separate Control Area, i.e. when the KOSTT Connection agreement with the ENTSO-E is signed by all involved parties.

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Of course, we are ready to guarantee that, immediately after this reformulation/interpretation are introduced and approved by both sides, EMS will withdraw all requests for the revision of the "KOSTT Connection Agreement with ENTSO-E" and continue to contribute to the process with the same leadership role and full commitment, as it was the case before the recent obstruction made by Pristina side.

We are looking forward to your reply,

Best regards,

Marko Djuric

Reaction of Rudolf Baumann

Rudolf Bauman, the convenor of RG CE Plenary, would like to stress that after the mails received from Energy Community and European Commission, ENTSO-E bodies are not in a position to approve setting the demarcation point between the areas of EMS and KOSTT in a different way than as already specified in the high level documents the signing of which has been moderated by these institutions.

The only realistic option RG CE Plenary has is to put the approval of the Connection Agreement for KOSTT in the political context from which it resulted. Therefore, in its decisions, RG CE Plenary should clearly indicate that the implementation of the Connection Agreement for KOSTT will fail or succeed with the success of the political process itself, whereas maintaining the security and continuity of supply on the whole territory of the future control block of KOSTT must be of utmost importance.

Rudolf Baumann proposes to RG CE Plenary to take the decisions here below (which are not given in a decision box in order not to highlight them against the revision request of EMS) instead of the decisions proposed by EMS. This will open a room for RG CE Plenary to intervene and steer the implementation of the Connection Agreement for KOSTT depending on the further developments within the scope of the political process.

RG CE Plenary is asked to:

- Approve the Connection Agreement for KOSTT, confirm that it will come into force on 30 November 2015, and that all the technical preparations necessary for its implementation shall be accomplished ahead of this entry into force date
- Ask ENTSO-E Secretariat to, without any delay, first invite the CEOs of KOSTT to sign the Connection Agreement for KOSTT
- Invite all TSOs of CE to sign the Connection Agreement for KOSTT without any delay
- Ask ENTSO-E Secretariat to publish the 10Y EIC Market Code for KOSTT as soon as the CEO of KOSTT has signed it
- Emphasize that the Connection Agreement for KOSTT is an inseparable part of the political process in which, based on mutual trust, KOSTT, EMS and all involved political structures/institutions shall fulfil all their respective obligations resulting from different agreements signed under the moderation of the European Commission and Energy Community in good faith and with high level of diligence
- Emphasize that the security and continuity of supply for all customers on the whole territory of the future control block of KOSTT is of utmost importance, being another inseparable part of the above mentioned political process, and shall be by no means endangered

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AGREEMENT ON THE CONNECTION OF THE KOSOVO*[1] POWER SYSTEM TO THE CONTINENTAL EUROPE SYNCHRONOUS AREA

* This designation is without prejudice to positions on status, and is in line with UNSCR 1244 and the ICJ Opinion on the Kosovo Declaration of Independence.

AGREEMENT ON THE CONNECTION OF THE KOSOVO*[2] POWER SYSTEM TO THE CONTINENTAL EUROPE SYNCHRONOUS AREA

BETWEEN:

ON THE ONE HAND:

50Hertz Transmission GmbH, a company incorporated under the laws of Germany in the form of a GmbH, with registered office at Eichenstrasse 3A, 12435, Berlin, Germany;
Amprion GmbH, a company incorporated under the laws of Germany in the form of a GmbH, with registered office at Rheinlanddamm 24, 44139, Dortmund, Germany;
Austrian Power Grid AG, a company incorporated under the laws of Austria in the form of an AG, with registered office at IZD Tower, Wagramer Str.19, A-1220 Wien, Austria;
ČEPS, a.s., a company incorporated under the laws of the Czech Republic, registered in the Commercial Register kept by the Municipal Court in Prague, Section B, Entry 5597; Company Registration Number (IC): 257.02.556, with registered office at Elektrárenská 774/2, 101 52 Praha 10, Czech Republic;
CGES AD, a company incorporated under the laws of Montenegro, in the form of a 'akcionarsko drustvo' (joint stock company), registered with registered office at Bulevar Sv. Petra Cetinjskog br.18, 20000 Podgorica, Montenegro;
Compania Națională de Transport al Energiei Electrice Transelectrica S.A., a company incorporated under the laws of Romania in the form of a "societate pe acțiuni" (joint stock company), registered with registration number J40/8060/2000 at Trade Register of Bucharest, having the Unique Registration Code (Fiscal Code) R13328043, with registered office at 33, General Gheorghe Magheru Blvd., Bucharest – 1, 010325, Romania;
CREOS Luxembourg S.A., a company incorporated under the laws of Luxembourg in the form of a limited company, with registered office at 59-61, rue de Bouillon, L-1248, Luxembourg, Grand-Duchy of Luxembourg;
Croatian Transmission System Operator Ltd., a company incorporated under the Croatian Companies' Law, with registered office at Kupska 4, HR-10000 Zagreb, Croatia;
ELEKTROENERGIEN SISTEMEN OPERATOR, a company incorporated under the laws of Bulgaria, in the form of an EAD, i.e. a sole-owner joint stock company, having the Unique Registration Code (Fiscal Code) 175201304, with registered office at 105 Gotse Delchev Blvd., Sofia 1404, Bulgaria;
ELES, d.o.o., sistemski operater prenosnega elektroenergetskega omrežja, a company incorporated under the laws of Slovenia in the form of a d.o.o. (company with limited liablility), with registered office at Hajdrihova 2, 1000 Ljubljana, Slovenia;
ELIA System Operator NV/SA, a company incorporated under the laws of Belgium in the form of a naamloze vennootschap/société anonyme, with registered office at 20, Boulevard de l'Empereur B-1000 Brussels, Belgium;
EMS - Javno Preduzeće Elektromreža Srbije, a company incorporated under the laws of Serbia, in the form of a javno preduzeće (public enterprise) registered in Register of the Agency for commercial registers of the Republic of Serbia No. 80469/2005 dated 01/07/2005, with

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* This designation is without prejudice to positions on status, and is in line with UNSCR 1244 and the ICJ Opinion on the Kosovo Declaration of Independence.

registered office at 11, Kneza Miloša Str., Beograd 11000, Serbia;
Energinet.dk, a company incorporated under the laws of Denmark in the form of an independent public corporation, with registered office at Tonne Kjaersvej 65, 7000 Fredericia, Denmark;
Independent Power Transmission Operator S.A, a company incorporated under Greek law, having its registered office at 89 Dyrrachiou Str., Athens, 10443, Greece (IPTO);
MAVIR Hungarian Independent Transmission Operator Company Ltd., a company incorporated under the laws of Hungary with its registered office at Anikó u. 4., H-1031 Budapest, Hungary, registered with a registration number 01-10-044470 at Company Registry Court of Budapest-Capital Regional Court;
MEPSO - Operator na elektroprenosniot sistem na Makedonija, AD, vo drzavna sopstvenost (Macedonian Transmission System Operator, joint stock, state owned company) a company incorporated under the laws of FYR of Macedonija, registered at Trade Register of Skopje, having the Unique Registration Code (Fiscal Code) 4030004529600, with registered office at 4, Maksim Gorki Str., Skopje, 1000, former Yugoslav Republic of Macedonia;
Nezavisni Operator Sistema u Bosni i Hercegovini, a company incorporated under the laws of Bosnia and Herzegovina, registered with registration number 03 at Ministry of Justice of Bosnia and Herzegovina, having the Unique Registration Code (Fiscal Code) 4200777780003, with registered office at Ul. Hamdije Ćemerlića 2/V., Sarajevo, Zip Code71000, Bosnia and Herzegovina;
Operatori i Sistemit te Transmetimit – OST sh.a, a state-owned company incorporated under the laws of Albania, registered under the number K42101801N, having its registered office at Bulevardi. "Bajram Curri", Rruga "Viktor Eftemiu", ish godina e KESH sh.a., Tirana, Shqiperi (Albania);
PSE S.A., a company incorporated under the laws of Poland in the form of a S.A., with registered office at Warszawska 165 St, 05-520 Konstancin Jeziorna, Poland;
REE - Red Eléctrica de España, S.A.U, a company incorporated under the laws of Spain in the form of an S.A., with registered office at Paseo del Conde de los Gaitanes, 177, 28109 Madrid, Spain;
REN - Rede Eléctrica Nacional, S.A., a company incorporated under the laws of Portugal in the form of an S.A., with registered office at Av. Dos Estados Unidos da América 55-12°, 1700, Lisbon, Portugal;
RTE - Réseau de transport d'électricité, a limited company incorporated under the laws of France, with registered office located tour initiale, 1, terrasse Bellini, TSA 41 000, 92919 La Défense Cedex, France;
Slovenská elektrizačná prenosová sústava, a.s ., a company incorporated under the laws of Slovakia in the form of an a.s., Trade register Sa 2906B, with registered office at Mlynské Nivy 59/A, 824 84 Bratislava 26, Slovakia;
Swissgrid AG, a company incorporated under the laws of Switzerland in the form of an AG, with registered office at Werkstrasse 12, 5080, Laufenburg, Switzerland;
TenneT TSO B.V., a company incorporated under the laws of The Netherlands in the form of a BV, with registered office at Utrechtseweg 310, P.O. Box 718, 6800 AS, Arnhem, the Netherlands;
TenneT TSO GmbH, a company incorporated under the laws of Germany in the form of a GmbH, with registered office at Bernecker Straße 70, 95448 Bayreuth, Germany;
Terna - Rete Elettrica Nazionale SpA, a liability company incorporated under the laws of Italy, with registered office at Via Egidio Galbani, 70, 00156, Roma, Italy;
TransnetBW GmbH, a company incorporated under the laws of Germany in the form of a GmbH, with registered office at Kriegsbergstraße 32, 70174, Stuttgart, Germany;
Türkiye Elektrik İletim A.Ş. (TEIAS), a company incorporated under the laws of Turkey,

with registered office at Nasuh Akar Mah. Türkocağı Cad. No: 12 06520 Çankaya, Ankara, registered under number 165458;
Vorarlberger Übertragungsnetz GmbH, a company incorporated under the laws of Austria in the form of a GmbH, with registered office at Gallusstrasse 48, 6900 Bregenz, Austria;

AND, ON THE OTHER HAND:

The Kosovo Electricity Transmission, System and Market Operator (*Operator Sistemi Transmisioni Dhe Tregu sh.a — "**KOSTT**")*, a Joint Stock Company incorporated under the laws of Kosovo*, having its registered office at St.Iljaz Kodra p.n, 10000 Pristina, Kosovo;

Each of the above 30 companies and KOSTT shall be referred to as the **"Parties"** collectively and individually as **"Party"**;

The present agreement being referred to as the **"Agreement"**;

WHEREAS

A. The European Network of Transmission System Operators for Electricity **("ENTSO-E")** is an association of 41 European Transmission System Operators **("TSO")** from 34 countries, including the synchronously interconnected TSOs in Continental Europe, TSOs of Nordic countries, TSOs operating systems in Great Britain and in the Republic of Ireland and Baltic TSOs;
B. The electrical transmission systems of Continental Europe are synchronously interconnected and comprise the so-called Continental Europe Synchronous Area (hereinafter referred to as **"CESA");**
C. Within ENTSO-E, the Plenary of the Regional Group Continental Europe (**"RGCE"**) coordinates the operation and maintenance amongst the TSOs of Continental Europe, decides on the extension of CESA by setting the technical prerequisites and by monitoring the compliance and performance of the candidate system before connection;
D. Security within the CESA is, among other things, ensured by the observance, by the TSOs of CESA, of a set of technical and operational rules and principles gathered in one document, the "Operation Handbook" (the **"Operation Handbook").** The observance of the Operation Handbook is rendered obligatory upon TSOs of CESA; by the signature of a multilateral agreement (to which all TSO of CESA are parties), the "Multilateral Agreement" (the **"MLA");**
E. The power systems of the CESA TSOs are subject to the provisions of the MLA.
F. KOSTT is authorised by Kosovar law to perform the respective TSO functions for the Kosovar Power System (the **"Kosovar Power System"),** including system operation, maintenance and development;
G. Kosovar Power System is defined as all the transmission facilities extended to Kosovo* territory and operated by KOSTT under the transmission System operation and Market Operation licenses obtained from Energy Regulatory Office (ERO).
H. KOSTT's system is currently synchronously interconnected to the CESA and, as result of this, it is part of the CESA system. Therefore, due to this connection, operational relations and risks arise with TSOs of CESA. It is, therefore, legally necessary to ensure KOSTT's compliance with and observance of the Operation Handbook vis-a-vis the TSOs of CESA;
I. The Parties acknowledge that both bilateral and multilateral actions carried out by a single TSO or between TSOs with respect to their respective transmission systems can materially

affect the security, reliability, and efficiency of the transmission systems of TSOs not directly involved in such actions;

J. KOSTT acknowledges that currently the Kosovar Power System does not fully comply with the Operation Handbook; KOSTT recognises and adopts the Operation Handbook and operational principles and their future updates and undertakes the responsibility to progressively apply these to the operation of the Kosovar Power System;

K. The Parties are willing to protect the interests of the TSOs of CESA and ensure its security by applying the same rules and principles as defined in the Operation Handbook.

L. In this context, the purpose of this connection agreement is to list the technical measures which KOSTT needs to implement in order to become compliant with the technical standards of the Operation Handbook. These technical measures that KOSTT needs to implement to reach compliance with the Operation Handbook are listed in the "Catalogue of Measures" (Annex I) on KOSTT;

M. KOSTT recognises that it has all the financial means to meet the obligations under the present Agreement;

N. The Treaty establishing Energy Community of South East Europe (**"Energy Community Treaty" - "ECT"**) is an international Treaty between the European Union (**"EU"**) on the one side and eight jurisdictions from East and South East Europe (**"SEE"**), including Kosovo*. The ECT, which sets up a European Energy Community, aims at establishing a single regulatory framework for trading energy (including electricity) across SEE and the EU under the same conditions. It ensures that ECT Parties, thus also Kosovo*, have to adopt the EU single market regulations regarding energy, that is the *acquis communautaire* in the relevant fields of energy (including electricity), environment and competition law;

O. The TSOs of Regional Group Continental Europe (**"RGCE TSOs"**) have been appointed by public authorities in their respective countries as operators of the electricity transmission network. As a result, they have obtained exclusive rights or other special rights and must therefore act in an objective, transparent and non-discriminatory fashion to guarantee all actors in the market access to the electricity networks. In this context, they must abide by rules on confidentiality and professional secrecy, generally or wholly or in part laid down in the applicable legal and/or regulatory provisions, in particular in the national provisions implementing Article 16 of Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC, according to which: *"without prejudice to Article 30 or any other legal duty to disclose information, each transmission system operator and each transmission system owner shall preserve the confidentiality of commercially sensitive information obtained in the course of carrying out its activities which may be commercially advantageous from being disclosed in a discriminatory manner [.. .]"*. Protection of confidentiality in information/data exchanges between RGCE TSOs and/or other TSOs, companies, authorities or bodies is thus of utmost importance;

P. The present Agreement is considered as a temporary solution, while final status of KOSTT will be considered by ENTSO-E after KOSTT fully meets the obligations arising from the present Agreement. It is interpreted as an agreement that covers KOSTT's non-compliance to the Operation Handbook;

Q. The special Project Group TSO KOSTT (**"PG TSO KOSTT"**) was established for the implementation of the present Agreement, its performance and compliance;

R. KOSTT recognises that, as for its relations with ENTSO-E, and more particularly, the TSOs that are members of the Regional Group Continental Europe, it fully respects the relevant ENTSO-E and Regional Group Continental Europe decisions;

S. KOSTT nominates a contact person for PG TSO KOSTT and undertakes the responsibility to provide all information and assistance needed for the implementation of the present Agreement;

T. KOSTT recognises that its compliance with the obligations of the present Agreement is a prerequisite for the continuation of the synchronous operation of the Kosovar Power System with CESA.

THEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS:

1. DEFINITIONS

/

The definitions set forth below shall apply for the purposes of the present Agreement:

a) Agreement:	The present agreement.
b) Addendum:	Means the declaration provided by a MLA party, or a party to a similar long-term agreement on permanent synchronous operations, constituting part of the MLA or as the case may be, of the similar long-term agreement on permanent synchronous operations, referring to one specific standard (requirement) of a Policy of the Operation Handbook that cannot be temporarily complied with by the MLA party itself.
c) Agreement Period:	The agreement period as defined in article 2 of the present Agreement.
d) Kosovar Power System:	The Kosovar power system as defined in recitals F and G of the preamble of the present Agreement.
e) Catalogue of Measures:	The non-exhaustive list of measures that are referred to in Annex I of the present Agreement.
f) Confidential Information:	The information as defined under article 12 (2) of the present Agreement that must be treated as confidential under the terms and conditions of article 12 of the present Agreement.
g) Energy Community Treaty:	The treaty as defined in recital N of the preamble of the present Agreement.
h) ENTSO-E:	The "European Network of Transmission System Operators for Electricity" as defined in recital A of the present Agreement.
i) ENTSO-E Articles of Associations	The Articles of Associations of ENTSO-E.
j) ENTSO-E Internal Regulations	The Internal Regulations of ENTSO-E.
k) Force Majeure:	The event as defined in article 15 of the present Agreement
l) ICC Rules of Arbitration:	The rules of arbitration of the International Chamber of Commerce

m) Member:	A member of ENTSO-E as defined in the Articles of Association/Internal Regulations of ENTSO-E.
n) Measures:	The measures as defined in article 8(1) of the present Agreement.
o) National Dispatching Centre or NDC:	The Kosovar National dispatching centre.
p) Operation Handbook:	The comprehensive collection of technical rules and principles for the operation of the interconnected grids issued by ENTSO-E, divided in various policies, which each enter into force at their respective effective dates and are subject to amendment in accordance with the relevant ENTSO-E procedures.
q) Project Group or PG TSO KOSTT	The project group as defined in recital Q of the preamble of the present Agreement.
r) Plenary:	The body of the Regional Group Continental Europe which, in accordance with the Articles of Association/Internal Regulations of ENTSO-E and with the terms of reference of the RGCE, is competent for among other tasks, of tasks related to the Operation Handbook and to the MLA and other similar long-term agreements on permanent synchronous operations.
s) Synchronous Area:	The area covered by Transmission System Operators that are operating maintaining and developing transmission infrastructure at a voltage level higher than 200 kV, whose control areas are synchronously interconnected.
t) Interconnection	The synchronous interconnection between the systems of the Parties.
u) Technical Requirements	The technical requirements set by the Operation Handbook.
v) Termination of the Agreement	The termination of the present agreement as defined in article 16 of the present Agreement.
w) Transmission System Operator (TSO):	A natural or legal person responsible for operating, ensuring the maintenance of and, if necessary, developing the transmission system in a given area and, where applicable, its interconnections with other systems, and for ensuring the long term ability of the system to meet reasonable demands for the transmission of electricity.
x) CESA:	The system comprising the synchronously interconnected systems of Continental Europe.

2. OBJECT OF THE AGREEMENT

(1) The present Agreement defines the rights and obligations of the Parties, as well as rules, conditions and prerequisites they shall fulfil in order to accomplish that KOSTT:

a) becomes compliant with the Operation Handbook within a two (2) year period (the **"Agreement Period"**);
b) ensures safe operation of the Kosovar Power System and preserve security in the neighbouring CESA; and
c) regulates its mutual relationship with the TSOs of the CESA throughout the Agreement Period.

3. CONTRACTUAL DOCUMENTS

(1) The constituent elements of the present Agreement are:
a) the present Agreement; and
b) the Annexes to the present Agreement:

- **Annex I** "Catalogue of Measures for KOSTT"
- **Annex II** "Contact details"

4. COMPLIANCE WITH OPERATION HANDBOOK

(1) KOSTT will take all necessary steps during the Agreement Period to fully comply with the Operation Handbook.

(2) PG TSO KOSTT acts as the interlocutor and the communication channel to RGCE.

5. KOSTT SYSTEM REFERENCE STATUS

(1) As basis for the present Agreement are considered:

a) the "Catalogue of Measures for KOSTT" prepared by PG TSO KOSTT, that resulted from the application of the so-called RGCE "Compliance & Monitoring Process" ("CMP") Process and consists of the main actions that KOSTT has to undertake by a certain deadline within the Agreement Period. The "Catalogue of Measures for KOSTT" is attached to the present Agreement as **Annex I**.

6. KOSTT SYSTEM OPERATION

(1) Kosovar power system is synchronously operated with CESA.

(2) Kosovar Power System is operated by the NDC responsible for all operations and system control.

7. MARKET OPERATION

(1) KOSTT has the obligation to comply with the rules implementing the Directive 2009/72/EC, Directive 2005/89/EC as well as the Regulation (EC) No 714/2009 and with all new relevant amendments, as they have been incorporated into the Kosovar law in accordance with the Energy Community Treaty.

(2) The Energy Community Treaty of South East Europe is in force in Kosovo*, thus applicable to KOSTT, so that congestion management is done in accordance with applicable EU law including but not limited to Regulation 714/2009 and any subsequent

legislation such as e.g. the EU Regulation on Capacity Allocation and Congestion Management.

8. CATALOGUE OF MEASURES

(1) KOSTT recognises the non-compliance with the Operation Handbook, and accepts to implement within specific deadlines during the Agreement Period all activities, procedures and projects, referred to as measures, **("Measures"),** needed to reach compliance with the Operation Handbook.

(2) The non-exhaustive list of Measures (the **"Catalogue of Measures" [CoM])** comprises the main measures and requirements that are referred to in **Annex I** with the respective deadlines for implementation within the Agreement Period.

(3) KOSTT recognises that all compliance points in Operation Handbook are of equal importance and agrees to take appropriate additional measures that are not listed in **Annex I** but are needed for full compliance to Operation Handbook. KOSTT informs PG TSO KOSTT when taking such additional measures.

(4) KOSTT is the sole responsible for the implementation and testing of the measures specified in the CoM, and for any consequence that may arise from that.

(5) KOSTT agrees to decide, after proper consultation with PG TSO KOSTT, the way of implementation of the measures as well as the testing procedures where and when needed.

(6) RGCE through PG TSO KOSTT reserves the right to enhance the Catalogue of Measures at any time, without the prior consent of KOSTT in order to cover the evolution of the Operation Handbook and to adopt/add measures for facing the changing conditions of the Kosovar Power System. Changes to the Catalogue of Measures are subject to the decision of the Plenary, upon proposal of PG TSO KOSTT. Upon approval of changes by the Plenary, Annex I is updated accordingly.

(7) KOSTT should fully comply with the Operation Handbook before the end of the Agreement Period and this will be exhibited by the appropriate submission to PG TSO KOSTT of the respective compliance tables demonstrating full compliance, according to the RGCE Compliance Monitoring Program (CMP) in place. PG TSO KOSTT will evaluate the compliance tables, according RGCE CMP, and confirm full compliance.

9. MONITORING AND REPORTING OF COMPLIANCE PROCEESS

(1) The compliance with the present Agreement, including compliance with the above-mentioned projects, is monitored by PG TSO KOSTT. PG TSO KOSTT provides technical expertise and recommendation to KOSTT in order that KOSTT reaches compliance. PG TSO KOSTT is supported by KOSTT experts nominated by KOSTT management. KOSTT shall collaborate in good faith with PG TSO KOSTT. PG TSO KOSTT meets at least twice a year in order to support and monitor the compliance process. At least every six (6) months, periodic progress reports (including status of KOSTT Compliance), are prepared, discussed and approved by PG TSO KOSTT and submitted to the Plenary. All activities of PG TSO KOSTT are subject to the Plenary approval.

10. PARTICIPATION OF KOSTT'S EXPERTS TO RGCE ACTIVITIES

(1) The Parties shall ensure during the Agreement Period the participation of KOSTT's nominated member(s) to specific RGCE activities for issues related to the present Agreement after proper approval of the competent RGCE bodies..

11. LEGISLATIVE FRAMEWORK

(1) When necessary to comply with the Operation Handbook, KOSTT undertakes every reasonable effort to adapt relevant Kosovar laws and/or regulations. When necessary to comply with the EU legislation on the liberalisation of the EU energy market, KOSTT undertakes every effort to promote adaptation of relevant Kosovar legislations and/or regulations in accordance with the Energy Community Treaty and the relevant acquis. In the case of an amendment of Kosovar national legislation that has an impact on the cooperation based on the present Agreement, in particular regarding KOSTT´s compliance with the Operation Handbook, KOSTT undertakes to inform and update ENTSO-E about all developments within a reasonable period of time.

12. CONFIDENTIALITY

(1) In view of the strict regulatory duties of confidentiality of the Parties, each Party undertakes to maintain confidentiality of the confidential information, as defined hereafter, of which the Party and/or the members of its personnel, representatives, consultants and/or its bodies have knowledge or to which they have access in connection with the performance of the Agreement.

(2) Any information communicated by one Party to another Party is considered as being confidential information (hereinafter "Confidential Information"), except for information which is: (i) already in the public domain at the time it is communicated; (ii) was not obtained previously, directly or indirectly, from another Party; after its disclosure, was made available to the Party by a third party which had no confidentiality obligation towards any other Party, (iii) disclosed to a court or a state institution upon its order.

(3) This definition includes all commercially sensitive information as referred to in EU Directive 2009/72/EC.

(4) The Parties, except legally compulsory, accept that they will not disclose this information to third parties or any enterprise or public or will not use this information for other purposes excluding the cooperation for the present Agreement without the prior written consent of the other Party. Each of the Parties can disclose the Confidential Information to their staff, representatives and consultants who have been made aware of and agreed to be bound by the confidentiality obligations under this article or in any event subject to at least equal confidentiality obligations. The disclosing party is liable of informing its staff, representatives and consultants that such information are technical and commercial Confidential Information of the other Party and their confidentiality is protected by the present Agreement, and liable of compliance of its staff, representatives and consultants with these provisions herein. Confidential Information will not be used for any other purpose than the performance of the present Agreement.

(5) At each Party's request or at the latest within fifteen (15) days after the end of the present Agreement, for whatever reason, the other Party will deliver to the Party or will destroy all documents, copies or other media containing all or part of the Confidential Information, and will confirm in writing to the Party that all such documents, copies or media containing Confidential Information have been either returned to the Party or destroyed. The Parties may agree on information which shall be kept by each Party after the end of this agreement.

(6) Each Party shall take the necessary measures to ensure that this confidentiality obligation is imposed upon and is observed by each of its employees and by any person who, without being employed by the Party, is under its responsibility and might legally receive such Confidential Information.

(7) Any violation of the confidentiality obligations provided hereinabove by one Party shall be considered as a serious fault and will give any other Party the right to terminate without advance notice or indemnification the present Agreement without prejudice to the right of any other Party to obtain a complete indemnification for all damage resulting from such fault.

(8) Each Party undertakes to abide by this commitment throughout the entire duration of the Agreement and for five (5) years after the end of the Agreement, for whatever reason, without prejudice to other obligations of confidentiality which may then apply.

13. LIABILITY

(1) In case of a breach by any Party of its obligations under the present Agreement, the other Party shall indemnify the damages arising from such fault. No Party shall be liable for indirect damages of any kind whether due to loss of profits and/or interruption of business or indirect, incidental, special or consequential damages.

(2) In any case a Party to this agreement shall only be liable for its wilful misconduct or its gross negligence and only for resulting damages typical and foreseeable in the context of the present Agreement and up to a maximum amount of five million (5.000.000,00) Euros for any single incident.

(3) The abovementioned limitations of liability shall apply for the purposes of the present Agreement and that any additional sums that may fall due are to be waived and are not recoverable. Recovery of damages does not release the defaulting Party from its obligations under the present Agreement.

(4) Each Party agrees to indemnify, hold harmless and defend the other Party, its shareholders, directors, officers, employees, agents, successors and assigns from and against any and all claims for loss, damage or injury (including suits, actions or administrative or legal proceedings of any kind) brought against the other Party by any third party, which claims or actions arise from or in connection with any act or omission on the part of the Party in connection with the implementation of the present Agreement.

14. DISPUTE SETTLEMENT

(1) In case of any dispute, mutual negotiations and good faith will be essential. Any dispute disagreement or controversy between the Parties and any claim arising under or in

connection with the present Agreement, including validity, invalidity, breach or termination of it shall firstly be settled amicably. In case the Parties cannot reach an amicable solution in the framework of this amicable settlement within a reasonable period of time, any of the involved Parties may raise the issue to mediation as set forth below.

(2) The following conditions should occur so that a Party is considered to be breaching a term of the present Agreement:

(3) The demanding party should notify in writing the defaulting party about the infringement, the time period of its occurrence (which cannot be longer than fourteen (14) days from such a notification) and should set a time period for remedy. Such a remedy period for the infringement should not be either less than thirty (30) days or more than fifty (50) days from the date of the relevant notification receipt.

(4) The party which receives the notification should, within the time limit set, either remedy the breach or allege that no infringement has been committed and to notify the other party about this within twenty (20) days, explaining the reasons why it considers that it has not committed any breach. If the explanations provided as mentioned above are not considered adequate by the demanding party, then the demanding party should address the issue to mediation according to paragraph 14 (5) below.

(5) Any dispute or difference between the Parties arising out of the present Agreement including any question regarding its existence, validity, breach of the Agreement, its termination or the payment of damages which cannot be resolved by the Parties according to Clause 14(1) above, shall be referred to mediation to be carried out by highly estimated professionals designated by the parties involved. Each involved Party to the dispute shall appoint one professional. If the parties are unable to resolve the dispute within sixty (60) days of the date when the matter was first referred to mediation, the parties shall refer the matter to the arbitration as provided in Clause 14 (6) below.

(6) All disputes arising out of or in connection with the present Agreement between the Parties, which cannot be resolved pursuant to the above paragraph, shall finally be settled by way of arbitration under the ICC (International Chamber of Commerce) Rules of Arbitration. The number of arbitrators shall be three and shall be appointed in accordance with articles 8 and 9 of the ICC Rules of Arbitration. In such a case the arbitration place shall be in Brussels in Belgium. The arbitral proceedings shall be conducted in English.

(7) The decision of the arbitrators is final for the parties and no further recourse is permitted.

15. FORCE MAJEURE

(1) No Party shall be liable to the other for failure or delay in the performance of any of its obligations under the present Agreement for the time and to the extent such failure or delay is caused restrictively, by riots, civil commotions, wars, insurrections, hostilities between nations, embargoes, acts of God, storms, fires, accident, strikes, lockouts, breakdown of plant, sabotage, explosions or other similar contingencies beyond the reasonable control of

the respective Parties. Force majeure may be a reason only for delay of performing. Every necessary effort should be made after the lapse of the force majeure incident for the fulfilment of the obligations of the Party, which suffered the force majeure incident.

16. DURATION

(1) The Agreement Period starts at the date when the following two conditions are met:

a) All the Parties have signed the present Agreement; and
b) The supply license of the Serbian supplier in Kosovo* ("ElektroSever") has been issued and become operational.

The present Agreement shall terminate at the end of the Agreement Period. However, in case KOSTT fulfils all obligations arising from the present Agreement before the end of the Agreement Period, the present Agreement shall terminate as soon as KOSTT enters into a new Agreement to assure maintaining KOSTT's compliance with the Operation Handbook.

(2) Each Party may terminate the present Agreement at any time, without the intervention of a court and with immediate effect, for cause of persistent breach of any of the Parties.

(3) The Agreement period may be extended upon the agreement of all Parties.

17. NOTICES

(1) Any notice given pursuant of the present Agreement shall be in writing and be given by sending the same by registered post or facsimile, if addressed to the Party concerned at its address as defined in Annex II

18. ENTIRE AGREEMENT

(1) The present Agreement embodies all the terms and conditions agreed upon among the Parties hereto as to the subject-matter of the present Agreement and supersedes or cancels in all respects all previous agreements and undertakings, if any, between the Parties hereto with respect to all issues provided for hereby whether such be written or oral.

19. NON-WAIVER

(1) No failure or delay on the part of any Party in exercising any power or right hereunder shall operate as a waiver thereof nor shall any single or partial exercise of such right or power preclude any other or further exercise of any other right or power hereunder.

20. SEVERABILITY

(1) If any of the provisions of the present Agreement becomes invalid, illegal or unenforceable in any respect under any law, the validity, legality or enforceability of the remaining provisions shall not be in any way affected or impaired.

21. TITLES

(1) The titles of the articles of the present Agreement are written only for working purposes and they cannot be used for the interpretation of the present Agreement.

22. LANGUAGE

(1) All communications, documents and notices shall be in the English language.

23. REQUIREMENT FOR WRITING FORM

(1) Without prejudice to article 8 (3) of the present Agreement, any new annex to the present Agreement or any amendment to the body of the present Agreement requires the explicit written consent of all Parties. Modifications of the Annexes to the present Agreement can be done by mere decision of PG TSO KOSTT, ratified by decision of the Steering Committee.

24. GOVERNING LAW

(1) The present Agreement shall be construed in accordance with and governed by the laws of Belgium.

IN WITNESS WHEREOF, the parties hereto have duly executed tills Agreement as of the day and year first
above written in thirty one (31) originals, one for each Party;

Agreement on the Connection of the Kosovo*Power System to the Continental Europe Synchronous Area

SIGNATORY PAGE

1. Austrian Power Grid AG:

Signature: .....

Name: Thomas KARALL (in the name and on behalf of Ulrike BAUMGARTNER-GABITZER, CEO and Gerhard CHRISTINER, Member of the Board)

Title: Member of the Board

Date and place: 01.10.2015

Agreement on the Connection of the Kosovo* Power System to the Continental Europe Synchronous Area

SIGNATORY PAGE

2. Vorarlberger Übertragungsnetz GmbH

Signature: .....

Name: Hubert PETER

Title: Managing Director

Date and place: 01.10.2015

Agreement on the Connection of the Kosovo*Power System to the Continental Europe Synchronous Area

SIGNATORY PAGE

3. Nezavisni Operator Sistema u Bosni i Hercegovini:

Signature: .....

Name: Miroslav MESIĆ (in the name and on behalf of Josip DOLIĆ, General Manager)

Title: President of the Management Board

Date and place: 01.10.15

Agreement on the Connection of the Kosovo* Power System to the Continental Europe Synchronous Area

SIGNATORY PAGE

4. ELIA System Operator NV/SA:

Signature: .....
Name: Pascale FONCK (in the name and on behalf of Frank VANDENBERGHE, Chief Officer Customers, Market & System)
Title: Manager Public & Regulatory Affairs and European Activities
Date and place: 01.10.2015

Signature: .....
Name: Chris PEETERS
Title: CEO
Date and place: 01.10.2015

Agreement on the Connection of the Kosovo* Power System to the Continental Europe Synchronous Area

SIGNATORY PAGE

5. ELEKTROENERGIEN SISTEMEN OPERATOR (ESO) EAD:

Signature: .....

Name: Mitiu CHRISTOZOV (in the name and on behalf of Mr. Ivan YOTOV, Executive Director)

Date and place: 01.10.2015

Agreement on the Connection of the Kosovo*Power System to the Continental Europe Synchronous Area

SIGNATORY PAGE

6. Swissgrid AG:

Signature: .....

Name: Yves ZUMWALD

Title: CEO ad interim

Date and place: 01.10.2015

Agreement on the Connection of the Kosovo* Power System to the Continental Europe Synchronous Area

SIGNATORY PAGE

7. ČEPS, a.s.:

Signature: .....

Name: Zbyněk BOLDIŠ (in the name and on behalf of VladimírTOŠOVSKÝ, Chairman of the Board and Miroslav VRBA, Vice-Chairman of the Board)

Title: Member of the Board

Date and place: 01 . 10 . 2015

Agreement on the Connection of the Kosovo*Power System to the Continental Europe Synchronous Area

SIGNATORY PAGE

8. TransnetBW GmbH:

Signature: i.V. .....

Name: Jens LANGBECKER (in the name and on behalf of Werner GÖTZ, Managing Director and Dr. Rainer PFLAUM, Managing Director)

Title: Director of System Management

Date and place: 01.10.2015

SIGNATORY PAGE

9. TenneT TSO GmbH:

Signature: .....
Name: Dr. Urban KEUSSEN
Title: CEO
Date and place: 01.10.2015

Signature: .....
Name: Dr. Urban KEUSSEN (in the name and on behalf of Dr. Peter HOFFMANN)
Title: CEO
Date and place: 01.10.2015

Agreement on the Connection of the Kosovo*Power System to the Continental Europe Synchronous Area

SIGNATORY PAGE

10. Amprion GmbH:

Signature: ppa. J. Vanzetta
Name: Joachim VANZETTA
Title: Director System Operation
Date and place: 01.10.2015

Signature: ppa. Kaendler
Name: Gerald KAENDLER
Title: Director Asset Management
Date and place: 01.10.2015

Agreement on the Connection of the Kosovo* Power System to the Continental Europe Synchronous Area

SIGNATORY PAGE

11. 50Hertz Transmission GmbH:

Signature: .....
Name: Boris SCHUCHT
Title: CEO
Date and place: Berlin, 24th September 2015

Signature: .....
Name: Frank GOLLETZ
Title: CTO Chief Technical Officer
Date and place: Berlin, 24th September 2015

Agreement on the Connection of the Kosovo* Power System to the Continental Europe Synchronous Area

SIGNATORY PAGE

12. Energinet.dk:

Signature: .....

Name: Peder ANDREASEN

Title: CEO and President

Date and place: 01.10.2015

Agreement on the Connection of the Kosovo* Power System to the Continental Europe Synchronous Area

SIGNATORY PAGE

13. REE - Red Eléctrica de España, S.A.U.:

NAME:	**SANTIAGO MARÍN**
TITLE:	MANAGER OF SERVICES FOR THE SYSTEM
DATE AND PLACE:	10.12.15

Name: Santiago MARIN (in the name and on behalf of José FOLGADO, Chairman of the Board of Directors)
Title: manager of System Operation Services
Date and place: 10 December 2015, Brussels

** This designation is without prejudice to positions on status, and is in line with UNSCR 1244 and the ICJ Opinion on the Kosovo Declaration of Independence.*

Taking into account that this agreement does not imply the recognition of Kosovo by the Spanish authorities, REE signs this agreement in the understanding that it is a private agreement between companies and will not imply at any time the establishment of a relationship with Kosovar public authorities

Agreement on the Connection of the Kosovo* Power System to the Continental Europe Synchronous Area

SIGNATORY PAGE

14. RTE – Réseau de transport d'électricité:

Signature: .....
Name: François BROTTES
Title: President
Date and place: 01.10.2015

Agreement on the Connection of the Kosovo* Power System to the Continental Europe Synchronous Area

SIGNATORY PAGE

15. Independent Power Transmission Operator S.A.:

Signature: .....
Name: Ioannis BLANAS
Title: CEO
Date and place: 01.10.2015

Agreement on the Connection of the Kosovo* Power System to the Continental Europe Synchronous Area

SIGNATORY PAGE

16. Croatian Transmission System Operator Ltd.:

Signature: .....

Name: Miroslav MESIĆ

Title: President of the Management Board

Date and place: 01.10.2015

Agreement on the Connection of the Kosovo* Power System to the Continental Europe Synchronous Area

SIGNATORY PAGE

17. MAVIR Hungarian Transmission Operator Company Ltd.:

Signature: .....

Name: Kamilla CSOMAI

Title: CEO, authorized representative

Date and place: 01.10.2015

Agreement on the Connection of the Kosovo* Power System to the Continental Europe Synchronous Area

SIGNATORY PAGE

18. Terna – Rete Elettrica Nazionale SpA (Terna):

Signature: .....

Name: Matteo DEL FANTE

Title: CEO

Date and place: 04.10.2015

Agreement on the Connection of the Kosovo*Power System to the Continental Europe Synchronous Area

SIGNATORY PAGE

19. CREOS Luxembourg S.A:

Signature: .....
Name: Claude SEYWERT
Title: CEO
Date and place: 01.10.2015

Agreement on the Connection of the Kosovo*Power System to the Continental Europe Synchronous Area

SIGNATORY PAGE

20. CGES AD:

Signature: .....

Name: Siniša SPASOV (in the name and on behalf of Ivan BULATOVIĆ, Executive Director)

Title: General Director

Date and place: 01.10.2015

Agreement on the Connection of the Kosovo* Power System to the Continental Europe Synchronous Area

SIGNATORY PAGE

21. MEPSO - Operator na elektroprenosniot sistem na Makedonija, AD:

Signature: .....

Name: Siniša SPASOV

Title: General Director

Date and place: 21.10.2015

Agreement on the Connection of the Kosovo* Power System to the Continental Europe Synchronous Area

SIGNATORY PAGE

22. Operatori i Sistemit te Transmetimit – OST sh.a

Signature: .....

Name: Luan ARANITASI (in the name and on behalf of Dr.Eng.Engjëll ZEQO, Administrator)

Title: Director of System Operation

Date and place: 1.10.2015
Brussels

Agreement on the Connection of the Kosovo* Power System to the Continental Europe Synchronous Area

SIGNATORY PAGE

23. TenneT TSO B.V.:

Signature: .....
Name: Ben VOORHORST
Title: Managing Director
Date and place: 24-10-15

Agreement on the Connection of the Kosovo* Power System to the Continental Europe Synchronous Area

SIGNATORY PAGE

24. PSE S.A.:

Signature: .....
Name: Henryk MAJCHRZAK
Title: President of the Management Board
Date and place: 01.10.2015

Signature: .....
Name: Piotr RAK
Title: Member of the Management Board
Date and place: 01.10.2015

Agreement on the Connection of the Kosovo* Power System to the Continental Europe Synchronous Area

SIGNATORY PAGE

25. REN - Rede Eléctrica Nacional, S.A.:

Signature: .....

Name: Maria José CLARA

Title: General Manager

Date and place: 01.10.2015

Agreement on the Connection of the Kosovo* Power System to the Continental Europe Synchronous Area

SIGNATORY PAGE

26. Compania Națională de Transport al Energiei Electrice "Transelectrica" S.A.:

Signature: .....

Name: Adriana-Marcela CERNAT (in the name and on behalf of Mr. Ion-Toni TEAU, Directorate President)

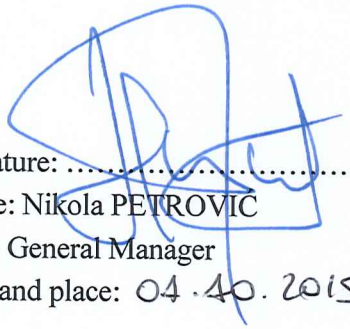
Title: Manager International Cooperation and ENTSO-E relation

Date and place: 01.10.2015

Agreement on the Connection of the Kosovo* Power System to the Continental Europe Synchronous Area

SIGNATORY PAGE

27. EMS - Javno Preduzeće Elektromreža Srbije:



Signature: .....
Name: Nikola PETROVIC
Title: General Manager
Date and place: 04.10.2015

Agreement on the Connection of the Kosovo*Power System to the Continental Europe Synchronous Area

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28. ELES, d.o.o

Signature: .....

Name: Vitoslav TÜRK (in the name and on behalf of Aleksander MERVAR, M. Sc., CEO)

Title: General Coordinator for International Affairs

Date and place: 01. 10. 2015

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29. Slovenská elektrizačná prenosová sústava, a.s

Signature: .....

Name: Jozef DOVALA

Title: Executive Director for Strategy and International Cooperation

Date and place: 01. 10. 2015

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30. Türkiye Elektrik İletim A.Ş. (TEIAS)

Signature: .....

Name: Serhat METIN (in the name and on behalf of M.Sinan YILDIRIM, Chairman of the Board and General Manager)

Title: Senior Expert

Date and place: 01.10.2015

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31. Operator Sistemi. i Transmisionit dhe Trcgu sh.a -"KOSTT"

Signature: .....
Name: Naim BEJTULLAHU
Title: Chief Executive Officer
Date and place: 01.10.2015

ANNEX I

CATALOGUE OF MEASURES FOR KOSTT

POLICY 1)

1. KOSTT shall communicate to the "TSO-Forum" (RGCE SG System Frequency) in order to be included in:
   a) overall distribution of reserves and control actions, as determined and decided by the RGCE SG System Frequency on an annual basis for the next calendar year i.e. to get respective contribution coefficient ci for PRIMARY CONTROL; (P1-A-S1, P1-A-S3, P1-A-S3.1, P1-A-S3.2)
   b) share of information about location, time, size and type and TSOs primary contribution of the recorded incidents; (P1-A-S5.1)
   c) setting of the frequency gain that is applied during normal operation. (P1-B-S3.4)
2. KOSTT shall declare to the "TSO-Forum" (RGCE SG System Frequency) (P1-A-S4):
   a) the individual minimum amount of the PRIMARY CONTROL RESERVES that needs to be kept within the CONTROL AREA / BLOCK due to security needs (as a share of the mandatory amount) on annual basis; (P1-A-S4.5)
   b) the individual maximum amount of the PRIMARY CONTROL RESERVES that can be transferred safely to other CONTROL AREAS out of the own CONTROL AREA on annual basis; (P1-A-S4.6)
   c) the individual expected maximum size for instantaneous loss of generation or power infeed that is used for sizing of SECONDARY CONTROL RESERVE including directly activated TERTIARY RESERVE; (P1-B-S4.3)
   d) the sizing of the SECONDARY CONTROL RESERVE; (P1-B-S4.6)
   e) the list of TIE-LINES of the CONTROL AREA in operation (including transmission lines and transformers of the different voltage levels and VIRTUAL TIE-LINES e.g. for cross-border exchanges of SECONDARY CONTROL) and update the list on a regular basis. (P1-B-S5.1)
3. KOSTT shall ensure (availability, operation and provision) required amount of secondary and tertiary reserves on a contractual, market or regulatory base to maintain the POWER INTERCHANGE of its CONTROL AREA/BLOCK at the scheduled value and, consequently, to support the restoration of FREQUENCY DEVIATIONS in the interconnected network. (P1-B-S1.1, P1-B-S2, P1-B-S3.7)
   a) An adequate SECONDARY CONTROL RESERVE and TERTIARY CONTROL RESERVE must be available to cover the loss of the largest generating unit of the KOSTT CONTROL AREA within the required time. (P1-B-S4., P1-B-S4.2) KOSTT has to have access to sufficient TERTIARY CONTROL RESERVE to follow up SECONDARY CONTROL after an incident. A total TERTIARY CONTROL RESERVE (sum of directly activated and schedule activated) must be

available to cover the largest expected loss of power (generation unit, power infeed or load) in the CONTROL AREA.

b) Reserve contracts between TSOs can be a component of the required amount of TERTIARY CONTROL RESERVE. (P1-C-S1). A fixed share of 50% of the total needed SECONDARY CONTROL RESERVE plus TERTIARY CONTROL RESERVE must be kept inside the CONTROL AREA. (P1-C-S3.1). KOSTT has to be able to immediately activate TERTIARY RESERVE in case insufficient free SECONDARY CONTROL RESERVE is available or expected to be available. (P1-C-S2)

4. KOSTT shall establish control hierarchy and organisation not influencing the behaviour or quality of SECONDARY CONTROL in a negative way or introducing control instability. (P1-B-S1.2)
5. KOSTT shall perform secondary control by a single automatic controller (LFC) which operates in on-line closed loop regime in accordance with following characteristics:
   a) the AREA CONTROL ERROR (ACE) has to be set as a linear combination of FREQUENCY DEVIATION ($K*\Delta f$) and POWER DEVIATION (ΔP); (P1-B-S2.1, P1-B-S3.3, P1-B-S3.4)
   b) ACE must be controlled to return the SYSTEM FREQUENCY and the POWER EXCHANGES to their set point values after any deviation and at any time; (P1-B-S2.1)
   c) after 30 seconds at the latest, the SECONDARY CONTROLLER must start the control action by change in the set-point values for SECONDARY CONTROL to initiate corrective control actions; (P1-B-S2.1)
   d) as a result of SECONDARY CONTROL, the return of the ACE must continue with a steady process of correction of the initial ACE as quickly as possible, without overshoot, being completed within 15 minutes at the latest; (P1-B-S2.1)
   e) to follow the control program towards all other CONTROL AREAS / BLOCKS of the SYNCHRONOUS AREA at the committed scheduled value at any time, taking into consideration the expected capabilities of the total generation and load in the CONTROL AREA/BLOCK or generation reserves contracted cross-border to follow changes in the exchange programs; (P1-B-S2.3)
   f) to maintain careful compliance with large exchange program changes; (P1-B-S2.4)
   g) for FREQUENCY DEVIATIONS smaller than 200 mHz, SECONDARY and PRIMARY CONTROL RESERVES must be available for activation independently. (P1-B-S4.1)
6. Programmed values for SECONDARY CONTROL (e.g. for power exchanges and frequency set-points) shall be entered into the controller as time-dependant set-point values based on schedules (P1-B-S3.3)
7. KOSTT shall implement:
   a) time setting of SECONDARY CONTROLLER synchronized to a reference time; (P1-B-S3.6)
   b) actual frequency set-point value for TIME CONTROL to be used within the SECONDARY CONTROLLER for calculation of the FREQUENCY DEVIATION, aiming to limit the deviation between SYNCHRONOUS TIME and UTC. (P1-B-S3.9)

8. KOSTT shall be physically demarcated by the position of the points for measurement of the interchanged power to the adjacent interconnected network. This demarcation must consider all TIE-LINES that are operated together with neighbouring CONTROL AREAS. (P1-B-S5)

9. KOSTT shall provide usage and provision of alternative measurement from neighbouring CONTROL AREAS for comparison or eventual backup. Substitute measurements and reserve equipment for all TIE-LINES with significant impact to SECONDARY CONTROL should be available in parallel to the primary measurement. Accuracy and cycle times for the substitute TIE-LINE measurements must fulfil the same characteristics. (P1-B-S6.3)

POLICY 2)

10. KOSTT needs to be able to individually perform scheduling at any time (P2-A-S12), including:

    a) the exchange programs must match before the gate closure time; (P2-A-S1)

    b) document common agreed rules with system operators affected by cross border scheduling. For example agreements on the MTFS and number of digits, solution for mismatches and measures to be taken in case of problems with data exchange and matching process; (P2-A-S4, P2-A-S4.1, P2-A-S4.2, P2-A-S4.3)

    c) KOSTT and the neighbouring control areas have to document their agreement for common rules for their border. The document has to contain the identification code to be used (either EIC or GS1), agreements on the contents and granularity of the exchanged CAS, agreed timing for processes, rules to solve mismatches at Cut-Off Time and responsibilities according to the implementation guide for the ESS. (P2-A-S5, P2-A-S5.1, P2-A-S5.2, P2-A-S5.3, P2-A-S5.4, P2-A-S5.5)

11. In relation to data exchange and recognition of Market Parties, KOSTT shall:

    a) be identified with EI- C-X-code, with adequate area code and role codes. The registration for this code should be coordinated together with the responsible ENTSO-E body; (P2-A-S6)

    b) be connected and be able to exchange data via Electronic Highways. If the Electronic Highway is disturbed, an electronic back-up must be available such as: ftp-dial in via ISDN-line or e-mail via internet. If electronic communication is generally disturbed, fax or phone can be used as last back-up; (P2-A-S7, P2-C-S2.4)

    c) agree on the electronic data exchange format with the neighbouring TSOs; (P2-A-S8)

    d) agree with neighbouring TSOs on identification of Market Party Schedules (MPS). Either EIC or GS1 (former EAN) must be applied. Cross border nominations of MPS must be based on an "Out Area" / "In Area" and "Out Party / "In Party" sense and identical on both sides of the border. (P2-A-S9)

12. KOSTT shall agree with neighbouring CA/CBs on the time intervals for exchange programs and value resolution. (P2-A-S10, P2-A-S11)

13. In relation with data exchange and matching of EXCHANGE PROGRAMS between CONTROL AREAS, CONTROL BLOCKS and CO-ORDINATION CENTRE in all time frames, KOSTT shall follow valid scheduling timetable in RG CE, being able to exchange relevant data in agreed formats. (P2-A-S13, P2-A-S13.1, P2-A-S13.2, P2-A-S14, P2-A-

S14.2, P2-A-S14.3, P2-A-S15.1, P2-A-S17, P2-A-S17.1, P2-A-S17.2, P2-A-S18, P2-A-S18.2, P2-A-S18.3, P2-A-S19.1)

All available back-up solutions and pre-agreed rules should be applied in case of problem with the transmission of exchange data. Pre-agreed rules should be applied in case of mismatches in the day ahead and intraday matching processes. (P2-A-S26.1, P2-A-S26.2)

14. KOSTT shall facilitate intraday trading by executing relevant ID scheduling processes. Due to different local market rules the Intra Day process for cross border scheduling must follow a set of rules which must be bilaterally agreed between the neighbouring Control Areas. These rules must be published or communicated towards the market parties in question. Beside this the affected CONTROL AREAS have to agree on a common Intra Day process being able to run a successful matching and data transmission in time towards other ENTSO-E bodies. The timing of the Intra Day process must allow the responsible ENTSO-E bodies on a higher level to perform a successful matching. (P2-A-S20, P2-A-S21.1, P2-A-S21.2, P2-A-S22.2, P2-A-S22.3, P2-A-S23.1)

Only outside normal market process modifications in the scheduling process might be applied. In this case valid timetable is not applied. (P2-A-S24)

15. At any time KOSTT needs to make sure that the nominated schedule of a market party does not exceed the corresponding allocated CAPACITY limits. The responsibility of KOSTT is also to check at any time if the totally market-nominated values of the EXCHANGE PROGRAMS do not exceed bilaterally agreed NTC limits. (P2-A-S28.1, P2-A-S28.2)

16. KOSTT has to inform the neighbouring CONTROL AREA OPERATOR and the CO-ORDINATION CENTRE on any perturbation in the measurement equipment with regard to the physical exchange crossing the border with neighbouring CONTROL AREA. (P2-B-S5.1, P2-B-S5.2)

Abnormal operating and accounting situations KOSTT has to detected and correct as soon as possible and responsible ENTSO-E body has to be contacted in order to make corrective measures and to step back to normal operation. (P2-B-S6.1)

17. For the purpose of the accounting of UNINTENTIONAL DEVIATION, KOSTT needs to deliver final schedules to the CO-ORDINATION CENTRE (P2-A-S25) and establish proper workflow for carrying out the accounting and settlement process. (P2-C-S1.1, P2-C-S1.2, P2-C-S2.1, P2-C-S2.2, P2-C-S2.3, P2-C-S2.6)

18. In case of unavailability of an accounting office, e.g. national bank holidays or system maintenance, the office in question must inform the upper ENTSO-E level at least 4 weeks before. (P2-C-S1.6)

19. In order to perform the accounting and settlement process in a correct manner (P2-C-S3) KOSTT and its neighbouring TSOs have to fix a bilateral accounting agreement including the following items:

a) to agree upon the list of TIE-LINEs to be included in the accounting process; (P2-C-S3.1)

b) to agree on the exchange format for metering, accounting and settlement and corresponding resolution; (P2-C-S3.2, P2-C-S3.4, P2-C-S4.1)

c) to agree on trouble shooting; (P2-C-S3.3)

d) to agree on the way to consider line losses; (P2-C-S3.5)

e) follow the workflow and timing of the daily and weekly accounting process defined with neighbouring CB based on standards. (P2-C-S4.2, P2-C-S4.2.1, P2-C-S4.2.2)

20. KOSTT should assemble and send its meter measurement data (SOMA) to the adjacent CA and CB. The results are validated by both parties and then a SOVM file should be assembled by one of the parties and sent to the other party for acknowledgement. (P2-C-S4.3.1)

a) The calculated accounting data is assembled into a document (SOAM) to be exchanged by both parties in the adjacent CA and CB. If accounting data is based on substitute meter measurement data the two involved TSOs have time to adjust the data during the final weekly accounting process. If data is not adjusted by the TSO and they match, this data is considered as final on the dedicated ENTSO-E pyramid level. If data do not match, the accounting mismatch rules will be applied by the dedicated ENTSO-E pyramid level. (P2-C-S4.3.2)

b) Counters and backup counters should be installed in the metering points. The metered data should be tele-transmitted to the neighbouring TSOs. (P2-C-S4.4.5)

c) The availability and Timing for Meter Measurement and accounting data Exchange Process must follow the deadlines outlined in timetable 1a and 2a in chapter C in the Appendix of Policy 2. (P2-C-S4.5, P2-C-S4.6, P2-C-S4.7.1, P2-C-S4.7.2)

21. KOSTT has to establish all relevant procedures to carry out daily and weekly settlement process that lead to the program for compensation of the UNINTENTIONAL DEVIATION for its CONTROL BLOCK. (P2-C-S5, P2-C-S5.1.2, P2-C-S5.2.1)

Policy 3)

22. KOSTT shall establish tools and procedures to comply with N-1 principle for internal network and tie-lines. In particular KOSTT shall form the contingency list and perform N-1 security calculations based on which security of the interconnected operation is monitored and all the current measurements of the single network elements of the responsibility area are kept under control. Furthermore, established procedures shall insure voltage deviations within the KOSTT responsibility area which are inside acceptable operating limits. (P3-A1-S1, P3-A1-S1.1, P3-A1-S1.2, P3-A1-S1.3, P3-A1-S3)

23. KOSTT shall establish ways of communication to inform its neighbouring TSOs in case of any event that can have an important impact outside or can even trigger an uncontrollable cascading outage propagating across the borders till the boundary of its responsibility area. (P3-A1-S1.4, P3-A1-S4, P3-A1-S4.1, P3-A1-S4.2)

24. KOSTT shall set up a list of exceptional type of contingency for security calculation based on the likelihood of occurrence of the event and communicate this list to the neighbouring TSOs. (P3-A1-S2)

25. KOSTT shall proceed with all the necessary steps to assess N and N-1 situations in planning phase and in real time operation as well. This process shall include creation of the DACF models for KOSTT area and exchange of this data with other TSOs. In addition, KOSTT shall be able to determine N situation in real time operation by the state estimation on the basis of measurements and topology. KOSTT shall perform an automatic (at least every 15 minutes) N-1 simulation for all the contingencies of the contingency list in real time. (P3-A1-S3, P3-A1-S3.1, P3-A1-S3.2, P3-A1-S3.3, P3-A1-S3.3.1)

26. KOSTT shall perform additional N-1 simulations prior to the application of important topology changes and other important activity in the power system. All topology changes of relevant elements shall be communicated to the neighbouring TSOs. (P3-A1-S3.3.2)

27. KOSTT shall extend the observability area to the neighbouring TSOs and inform them about the content of its external observability list, especially in case of changing the network configuration for network lines included in the external observability list of neighbouring TSOs or major changes of generation patter. The external network model corresponding to the observability area shall be implemented in the SCADA/EMS system and its real-time observability by state estimator shall be ensured by a proper amount of exchanged online data. (P3-A2-S1, P3-A2-S2, P3-A2-S5, P3-A2-S5.1, P3-A2-S5.2, P3-A4-S3)

28. KOSTT shall perform the determination of the external contingency list and the observability list at least once a year, and additionally at any time when there is a major change in the network (e.g. a new line is added). ENTSO-E reference case as a basis for the determination of the external contingency list and the observability area shall be used. (P3-A2-S4, P3-A2-S4.1)

29. KOSTT shall provide its neighbouring TSOs in due time with all needed information for adequate simulations. Details shall be agreed within Operational agreements with neighbouring TSOs that implies among others all data related to switching status, active and reactive power flows, voltage, injections and loads, tap changer position of transformers. (P3-A2-S6)

30. Considering the loss of a network element (N-1 situation) overloads on impacted network elements are admitted only if remedial actions are available to KOSTT. All elements exceeding pre-defined limits must be listed after automatic N-1 security calculation and measures available. If remedial actions are not available KOSTT has to inform its neighbouring TSOs as soon as the violation is detected. (P3-A3-S2, P3-A3-S2.2, P3-A3-S6)

31. KOSTT shall prepare in advance remedial actions by its own as well as in a coordinated manned with affected neighbouring TSO(s) to be implemented in due time to cope with any contingency of the contingency list. When curative actions are not sufficiently rapid, preventive remedial actions are due to be implemented before the occurrence of the related contingency. These remedial actions shall be previously assessed by numerical simulations in order to evaluate the efficiency of those measures on the constraints. (P3-A4-S1, P3-A4-S1.1, P3-A4-S2)

32. Regional agreement defining constraints and a set of remedial actions shall be established among KOSTT and TSOs in the region. (P3-A4-S4, P3-A4-S4.1, P3-A4-S5.4)

33. Preventive and curative remedial actions are due to be prepared by KOSTT in the operational planning phase as well as for the real time operation or a few hours ahead. (P3-A4-S5) These measures include:

a) year ahead, week ahead and day ahead horizon; (P3-A4-S5.1)

b) numerical assessment of the measures efficiency; (P3-A4-S5.2)

c) cross-check with affected TSO's in order to prevent counter-effects on neighbouring networks; (P3-A4-S5.3)

d) update of the situation and re-evaluation of the measures in real time operation. (P3-A4-S6)

34. After first contingency KOSTT shall apply the already studied and prepared curative remedial actions. In case a new constraint occurs, KOSTT must define a new set of available remedial actions to cope at best with the security violation with immediate effect. Special attention must be paid to the highlighted risks that might lead to a cascading effect. In this case KOSTT is obliged to inform neighbouring TSOs and initiate the preparation of common remedial actions in a coordinated way. (P3-A4-S7.1, P3-A4-S7.2, P3-A4-S7.3, P3-A4-S7.4)

35. A continuous voltage control needs to be carried out by KOSTT in order to maintain voltage variations within pre-determined limits. The responsibility of KOSTT is to develop policies and procedures for voltage control for its responsibility area as well as to coordinate all needed operational actions for managing voltage control and reactive power resources with their adjacent TSOs and other stakeholders owing installations connected to the transmission network. (P3-B-S1.1, P3-B-S1.2, P3-B-S2.1.2)

36. KOSTT has to possess and exchange information of the main reactive power resources available in the transmission network of its own responsibility area with neighbouring TSOs. (P3-B-S1.2.3 P3-B-S2.2)

37. KOSTT has to provide data for the ENTSO-E reference data set used for short circuit calculations. (P3-C-S3.2)

38. KOSTT shall be responsible for maintaining synchronous operation with other TSOs and operate its network in such a way that a loss of transient STABILITY does not extend to other generating units or lead to cascading effects to adjacent TSOs after the loss of a system element. The loss of any element must not lead to a loss of transient STABILITY of the connected generators and induce unacceptable consequences for the whole system with regard to the N-1 principle. Therefore any generator shall have a critical clearing time higher than the fault clearing time of the protection devices installed in the transmission system (Cf. grid codes with the requirements for generators). (P3-D-S1)

Policy 4)

39. In normal operation, taking also into account planned outages, and during the capacity assessment process KOSTT has to jointly ensure with adjacent TSOs that the interconnected network always meets the N-1 SECURITY PRINCIPLE (P4-A-S1, P4-B-S1). As a prerequisite, KOSTT has to set up with adjacent/regional TSOs:

a) procedure for calculation and harmonization of capacity assessment procedure;

b) DACF quality checking and improvement procedure (recommended cooperation with RSCI).

40. KOSTT has to perform capacity assessments for different time frames and in advance of corresponding capacity allocation procedures. Those binding values are assessed on the basis of the KOSTT best forecast. (P4-B-S2)

41. KOSTT has to harmonize with neighbouring TSOs the calculated capacity values on their common borders and region. In case there is no agreement on a common value, the lower value has to be used, as this ensures secure operation in both systems. In case there is a joint capacity allocation procedure, KOSTT has to calculate and harmonize the ATC values. (P4-B-S3)

42. KOSTT has to use a coordinated and harmonized capacity assessment methodology with the neighbouring TSOs or in the region. The methodology must guarantee system security in the part of the affected transmission grid. It has to deliver available capacities

satisfactory and reliable for the market. KOSTT has to use the procedure for the calculation of NTC values which is described in RGCE Operation Handbook appendix 4 section B or flow-based capacity assessment is described in appendix 4 section C. (P4-B-S4, P4-B-S4.1)

43. KOSTT has to follow the time schedule and the data of the base cases needed for the NTC calculation as determined and controlled by appropriate ENTSO-E relevant body (SG CMMI). (P4-B-S5)

44. KOSTT has to:

a) participate in the DACF method coordinated by relevant ENTSO-E RG CE body; (P4-C-S2.5, P4-C-S6)

b) provide relevant DACF data sets; (P4-C-S7)

c) use the current ENTSO-E format for the exchange of the DACF load flow sets; (P4-C-S2.2)

d) provide the Vulcanus system with the Day Ahead exchange programs; (P4-C-S8)

e) provide on request of other TSOs snapshots (SN) of the real-time operation. (P4-C-S11)

45. KOSTT has an obligation to provide to the EH-ftp server a forecasted load flow data set of its grid, with the whole, detailed network model related to the transmission grid (P4-C-S2, P4-C-S2.3). It also needs to collect DACF files from the EH-ftp server and to construct a network model that represents the most probable state of the forecast time. That model can include all ENTSO-E networks, but KOSTT can also disregard the data sets of TSOs whose influence on its network is deemed negligible (P4-C-S3). In case of EH-ftp server malfunction KOSTT has to exchange the data sets by sending an e-mail to an agreed list of addressees. (P4-C-S2.4)

Until KOSTT is given the access to the EH ftp-server and Vulcanus all obligations that refer to EH ftp-server and Vulcanus can be realized in a coordination with one of TSOs acting on behalf of KOSTT.

46. KOSTT has to regularly communicate the relevant ENTSO-E co-ordination centre in order to make accessible control block programs. (P4-C-S2.6)

47. KOSTT has to provide quality datasets and calculations that are monitored by relevant ENTSO-E RG CE body. (P4-C-S4.1, P4-C-S4.2)

48. KOSTT has to carry out DACF N-1 security calculations according to Policy 3 A1-S3. (P4-C-S9)

49. In case of a detected congestion the DACF security analysis, KOSTT results should be sent in a prescribed format to the EH-ftp server or to any other appropriate media for access to every TSO. KOSTT should then decide with involved TSOs whether and what kind of countermeasures should be taken to solve the detected congestion. (P4-C-S10)

Policy 5)

50. KOSTT shall establish tools/procedures to assess system states according to its N-1 security assessment of its own system in real time, taking into account observability area and contingency list. (P5-A-S1)

51. KOSTT shall agree procedures with direct neighbouring TSOs for information on system states including remedial actions and means of communication, and introduce them in the

control centre. The system states have to be identified and defined in the agreed procedures with direct neighbouring TSOs. (P5-A-S2, P5-A-S2.1, P5-A-S2.1.1, P5-A-S2.2)

52. KOSTT shall establish secured telephone lines with all neighbouring TSOs to guarantee a high level of availability in all system states. (P5-A-S4)

53. KOSTT shall conclude signed procedures to define system states (Alert, Emergency and Blackout), that means list of events in a TSO grid and implement Emergency Awareness System. The procedures and defined system states shall be introduced in the control centre. (P5-A-S5.1, P5-A-S5.2, P5-A-S5.3).

54. KOSTT shall agree in writing on bilateral / multilateral procedures with all their neighbouring TSOs for emergency issues, update and implement preventive and curative measures in accordance to Policy 3 to cope with the most serious phenomena. (P5-B-S1, P5-B-S2). KOSTT shall also agree coordinated measures with neighbouring TSOs to relieve the constraint, limit the propagation of disturbance and to prevent spreading of collapse. (P5-B-S4, P5-B-S5, P5-B-S5.1, P5-B-S5.2).

55. To ensure proper management of ENTSO-E RG CE system frequency KOSTT shall establish procedures with power plants to carry out LFC in order to cope with frequency deviation, prevent further deterioration and contribute to quicker restoration to normal operation. In addition to ΔP the K*dF factor has to be integrated into the LFC. (P5-B-S6, P5-B-S6.1.1, P5-B-S6.1, P5-B-S6.2, P5-B-S6.3, P5-B-S6.4, P5-C-S3.5)

56. KOSTT has to prepare in advance and update regularly a restoration plan. As a starting point the development/update of the requirements for generation units with a request that new generation units should be capable of black start is expected (P5-C-S1.2). As a second step the update of the reenergizing procedure, including also a bottom up approach as soon as one unit in its system will be capable to perform black start, is foreseen (P5-C-S1.2.1, C-S2.2, P5-C-S2.2.2). At the end of this process KOSTT shall develop tests for black start capabilities of units and perform these tests of units regularly on-site at least once per three year. (P5-C-S1.2.1.2, P5-C-S1.2.1.3)

57. KOSTT shall detail in its procedures the different load frequency secondary control modes/states for the bottom-up and for the top-down strategy. (P5-C-S2.3)

KOSTT shall update/conclude Operational Agreements (and related Annexes) with neighbouring TSOs (EMS, MEPSO, OST and CGES) including real time data exchange to be able to extend and border of its synchronous area including neighbouring TSOs. (P5-C-S3.1)

58. KOSTT shall agree with Distribution System Operator the procedure for reconnection of shed loads, and introduce this procedure in the implementation. (P5-C-S3.6)

Policy 8

59. KOSTT has to extend the existing training program with the most essential elements of new operational agreements with neighbouring TSOs. (P8-A-R1, P8-A-R3, P8-A-S1, P8-A-S1.2).

60. When preparing training scenarios KOSTT shall exchange the operational experience with neighbouring TSOs in order to cope with normal and abnormal situations in a coordinated way (P8-B-R1). Common trainings with all neighbouring TSOs (EMS, MEPSO, OST and CGES), according to the guidelines P8-B-G1, P8-B-G2, P8-B-G3 shall take place. (P8-B-S1)

Measures no. 8, 10, 11a, 11c, 11d, 12, 13, 15, 17, 19, 20, 21, 39, 40, 41, 42, 43, 44, 45, 46 and 47 shall be fulfilled before KOSTT starts to operate as a Control Block.

In case of any amendments of the Operation Handbook this Catalogue of Measures has to be adopted within 3 months.

ANNEX II

CONTACT DETAILS

Company	Control Area Manager
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From: Nicholas.Cendrowicz@ec.europa.eu [mailto:Nicholas.Cendrowicz@ec.europa.eu]
Sent: Monday, September 07, 2015 10:14 AM
To: Konstantin.staschus@entsoe.eu; peder.andreasen@entsoe.eu
Cc: Dirk.Buschle@energy-community.org; Andreas.Pointvogl@energy-community.org; marko.djuric@kim.gov.rs; dragan.vladisavljevic@kord-kim.gov.rs; Edita.Tahiri@rks-gov.net; naim.bejtullahu@kostt.com; gazmir.raci@rks-gov.net; Anzej.FRANGES@eeas.europa.eu; Boyd.MCKECHNIE@ext.eeas.europa.eu; Anna-Maria-Eleni.BOURA@eeas.europa.eu
Subject: EMS-KOSTT interconnection agreement

Dear ENTSO-E colleagues,

I have been in contact with some of you about the agreement reached between the Prime Ministers of Kosovo and Serbia on August 25th, in particular the point marked as follows:

10. The supply license will be operational when KOSTT becomes a member of the ENTSO-E.

This has been worded in a rather unfortunate way, since we all know that membership of ENTSO-E is a long technical process that could take a number of years. We sincerely hope that the supply company that these arrangements foresee will be operational long beforehand.

In discussions with you, and with the Energy Community Secretariat, we wanted to clarify what this linkage should mean. Instead of 'membership of ENTSO-E', the supply license should become operational **when KOSTT signs the Connection Agreement with ENTSO-E.**

I hope that everyone can agree with this interpretation.

In parallel to the Prime Ministers' agreement of 25/8, there was also an agreement at the end of the 27/8 Vienna summit, in which parties committed (inter alia) to

- EMS (Serbia) and KOSTT (Kosovo*) to implement the Framework and Inter-TSO Agreement (September 2015)

With this in mind, I trust that both EMS and KOSTT will be co-operating constructively in the ENTSO-E framework, and that the two TSOs will be signing an interconnection agreement that designates KOSTT as the TSO for the entire electrical territory of Kosovo.

Thank you very much for your understanding,

Yours sincerely,

Nicholas CENDROWICZ

European Commission
Co-ordinator of the Centre for Thematic Expertise
Connectivity / Networks and Agriculture, Environment, Regional Development

Directorate-General for Neighbourhood and Enlargement Negotiations
Western Balkans Regional Cooperation and Programmes Unit

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ΦΕΚ 117/Α

Conclusions of the EU facilitator on the implementation of the 2013 Energy Agreement

In order to implement obligations under the 'Arrangements regarding energy', signed by the two Prime Ministers in September 2013, both parties agree to the following:

Establishment of new trade company

1. Kosovo will allow EPS to establish a power trade company in Kosovo, in line with its non-discriminatory obligations under the Energy Community and in accordance with the Kosovo legal and regulatory framework.
2. EPS will deposit documents to the Kosovan Business Registration Office to apply for a business registration certificate before the end of **August 2015**.
3. In line with Kosovo's own rules and deadlines, this business registration certificate will be granted within 7 days.
4. This company will apply for, and be granted a license that covers import, export and transit.

Establishment of new supply and distribution services company

5. Kosovo will allow EPS to establish a supply company in Kosovo, in line with its non-discriminatory obligations under the Energy Community and in accordance with the Kosovo legal and regulatory framework.
6. EPS will deposit documents to the Kosovan Business Registration Office to apply for a business registration certificate before the end of **August 2015**.
7. In line with Kosovo's own rules and deadlines, this business registration certificate will be granted within 7 days.
8. The name of this company will be 'ElektroSever'.

Supply license

9. This company will apply to the Energy Regulatory Office (ERO) for the necessary license to supply customers, to buy and sell power in the open market and to import and export electricity. This license will be delivered in accordance with Kosovo's own legal and regulatory framework.
10. The supply license will be operational when KOSTT becomes a member of the ENTSO-E.
11. ElektroSever will sign agreements with KOSTT in order to participate in the Kosovo power market and to become balance responsible party.
12. ElektroSever will be entitled to carry out billing and collection, since these are the normal activities of a supply company.
13. Access to KOSTT, KEDS and ERO to the transmission and distribution infrastructure as well as customer data will be provided. This data will be provided via the EU.
14. ElektroSever will enter into discussions with KEDS and KOSTT, to ensure third party access.

Distribution services

15. Both parties will continue to work, with EU facilitation, with a view to allowing ElektroSever to provide distribution services based on the principles of 'Arrangements regarding Energy'.

Other issues

16. Serbia, and EMS, will support KOSTT's application to sign an interconnection agreement with ENTSO-E, including in the appeal process.
17. Both parties agree that all points of these Conclusions will be implemented independently of progress on point 15.

Disclaimer

Kosovo considers that, in accordance with Kosovo Constitution and Laws, and international law, namely UNSCR 1244 and respective UNMIK Regulations, the property within the territory of Kosovo is ownership of Kosovo.

Serbia considers that, that in accordance with domestic and international law, namely UNSCR 1244, property within the territory of Kosovo is ownership of Serbia, under specific provincial regulation and in full accordance with the Constitution of Serbia.

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Министарство за
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No: 312-01-760/2010-02
Date: 7th December 2011

ENERGY COMMUNITY SECRETARIAT
Mr. Slavtcho NEYKOV, Director
Am Hof 4, Level 5
1010 Vienna, Austria

REF Serbia-Reasoned opinion in relation to Case ECS 03-08

Dear Mr. Neykov,

I hereby inform you that in line with point 113. of Reasoned opinion in Case ECS 03-08, the Republic of Serbia is fully devoted to finding a swift and practicable solution aimed at settling the present dispute.

In this sense, we are ready to engage in the innovation of the Technical Agreements between the Republic of Serbia and UNMIK, in which the issue of compensation of costs incurred as a result of hosting electricity flows would be adequately regulated.

Kind regards,

STATE SECRETARY

Dušan Mrakić

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Nº: 312-01-760/2010-02
Date: 7th November 2012

Dear Mr. Neykov,

I would like to thank you for the last letter of October 3, 2012. Even though I have discharged the duty of Minister of Energy, Development and Environmental Protection of the Government of Serbia for only several months now, I am aware of the necessity for a settlement of the unresolved Case ECS 3/08 as soon as possible. As the state which is shortly taking over the Energy Community Presidency, we wish to give our own contribution to further upgrading of the organization work by, among other things, finding solutions for pending cases.

The Government of the Republic of Serbia is actively preparing for the opening of a concrete and constructive dialog between Belgrade and Pristina. The range of topics which will be discussed in an effort to resolve the outstanding issues will also include the energy field.

The Ministry of Energy, Development and Environmental Protection has proposed that the unresolved case be also placed on the energy sector agenda for the Belgrade-Pristina dialog. A settlement of this dispute is only one of the outstanding cases that need to be finalized, to the mutual satisfaction of both parties. Therefore, we believe that the dialog between Belgrade and Pristina, which will be conducted at top level, is the right path towards overcoming this dispute.

As the Minister in charge of energy, I will be on the Serbian negotiating team and I am ready to engage in finding a solution to this open case through the means of the mentioned dialog.

Sincerely,

MINISTER

Zorana Mihajlovic Ph.D. Professor

Mr. Slavtcho Neykov, Director
Energy Community Secretariat
Vienna

Cc: UNMIK

BOTSCHAFT
DER REPUBLIK SERBIEN
WIEN

АМБАСАДА
РЕПУБЛИКЕ СРБИЈЕ
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No: 558/2012 ES0100

Vienna, 7th December 2012.

ENERGY COMMUNITY
Energy Community Secretariat
Mr. Slavtcho Neykov, Director

Austria
Viena, Am Hof4, Level 5

Dear Mr. Neykov,

Please find enclosed the original Letter from Minister of Energy, Development and Enviromental Protection of the Government of Republic Serbia Zorana Mihajlovic concerning the Energy Community Secretariat Case ECS-3/08.

Respectfully,

Ambassador
Milovan Božinović

Energy Community

Energy Community Secretariat (ECS)
Am Hof 4, Level 5, 1010 Vienna, Austria
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Vienna, 3 October 2012
ECS-3_08_O_03-10-2012

Ref: Case ECS-3/08

EXCELLENCY,

By this letter I am following up on my previous letter from 03.08.2012 and our recent meeting in Belgrade where I expressed my concern as regards the unresolved Case ECS-3/08. As you are aware of, the Case concerns the obligation of the transmission system operator EMS, owned by the Serbian state, to compensate the transmission system operator of Kosovo*[1], KOSTT, for certain electricity transit through the network operated by it, as well as the lack of compliance by EMS with Regulation 1228/2006 for the use of revenues obtained in capacity allocation on interconnectors between the network operated by KOSTT and neighbouring systems. In the Secretariat's assessment, this case not only violates Energy Community law but also constitutes a serious obstacle to regional integration of electricity markets in South East Europe.

In 2011, the Secretariat sent a Reasoned Opinion to Serbia describing its concerns in great detail. The reply received by Serbia did not address these concerns. Instead, it was announced to solve the case by negotiations. While this approach is fully acceptable by the Secretariat and follows its clear preference for an agreement negotiated bilaterally between the two companies involved, it has not borne any fruits. Despite having urged Serbia repeatedly to come to meetings and to make proposals, the Secretariat is not aware that any reconciliation discussions have taken place for more than a year now.

Thus, I see myself compelled to submit a Reasoned Request under Article 28 of the Dispute Settlement Rules to the Ministerial Council.

H.E. MRS. ZORANA MIHAJLOVIC
MINISTER OF ENERGY, DEVELOPMENT AND ENVIRONMENTAL PROTECTION
REPUBLIC OF SERBIA

[1] *This designation is without prejudice to positions on status, and is in line with UNSCR 1244 and the ICJ Opinion on the Kosovo declaration of independence.*

Energy Community

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However, I was very encouraged by our recent meeting as to hear your personal readiness for concrete dialogue and for finding solutions as soon as possible. Therefore, I would like to invite you to finalize all open issues concerning the breach of the Energy Community law as identified in the Secretariat's Reasoned Opinion with the relevant counterpart authorities.

Please, notify the Secretariat about the outcome not later than 31 October 2012. In case there is no bilateral agreement reached, the Secretariat shall proceed by submitting the Reasoned Request to the MC immediately thereafter.

The Secretariat remains at full disposal for further discussion and assistance.

Please accept, Excellency, my highest considerations.

Yours sincerely,

Slavtcho Neykov
Director

Energy Community

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H.E. MR. MILUTIN MRKONJIC
MINISTER OF INFRASTRUCTURE AND ENERGY
REPUBLIC OF SERBIA

Vienna, 07 October 2011
SR-MC/O/sne/09/07-10-2011

REF. Serbia – reasoned opinion in relation to Case ECS-03-08

EXCELLENCY,

In attachment kindly find a reasoned opinion letter in relation to the Case ECS-03_08.

Best regards,

Slavtcho Neykov
Director

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Reasoned Opinion

in Case ECS-3/08

I. Introduction

1. According to Article 90 of the Treaty establishing the Energy Community ("the Treaty" or "EnC"),the Secretariat may bring a failure by a Party to comply with Energy Community law to the attention of the Ministerial Council. Pursuant to Article 10 of the Procedural Act No 2008/01/MC-EnC of the Ministerial Council of the Energy Community of 27 June 2008 on the Rules of Procedure for Dispute Settlement under the Treaty ("Dispute Settlement Procedures"), the Secretariat shall carry out a preliminary procedure before submitting a reasoned request to the Ministerial Council.
2. In August 2008, the Secretariat received a complaint against the Republic of Serbia by the company KOSTT ("the complainant"). The complainant alleged that Serbia, through actions taken by the public company EMS, fails to comply with Article 9 of the Treaty read in conjunction with Articles 3 and 6 of Regulation (EC) 1228/2003 on conditions for access to the network for cross-border exchanges in electricity ("Regulation 1228/2003"), by barring KOSTT from participating in the inter-TSO compensation agreement ("the ITC agreement"), and from allocating transmission capacity on the interconnectors with the Contracting Parties adjacent to UNMIK, namely Albania, the former Yugoslav Republic of Macedonia and Montenegro.
3. Before approaching the Secretariat, the complainant and UNMIK and Serbia, represented by the relevant institutions and companies, had already tried to solve the issues raised by the present complaint bilaterally, as well as with the support of ETSO and the European Commission. None of these attempts led to a mutually satisfactory solution.
4. The Secretariat tried to sound out the possibilities for a solution to the case before taking formal action under the Dispute Settlement Procedures. During 2008 and 2009, the Secretariat organized several meetings with representatives of KOSTT and the Government of Serbia and EMS, both separately and together. Possible approaches to the (re-)organisation of the bilateral relations between both companies were discussed, without agreement being possible. In early 2010, the Secretariat proposed a Memorandum of Understanding between EMS and KOSTT, on which again no agreement could be reached. Subsequently, the Secretariat once again confirmed its readiness to discuss alternative solutions proposed with all companies and institutions involved.
5. In the absence of any such proposal, the Secretariat sent an Opening Letter under Article 12 of the Dispute Settlement Procedures to the Republic of Serbia on 17 September 2010. In the Opening Letter, the Secretariat preliminarily concluded that the lack of compensation by EMS to KOSTT for costs incurred as a result of electricity transit on the network operated by it violates Article 3 of Regulation (EC) 1228/2003 in cases where the electricity flow originates or ends on EMS' system. The Secretariat further preliminarily concluded that EMS does not comply with Article 6(6) of Regulation 1228/2003 in its usage of revenues resulting from the allocation of interconnection capacity on the interconnectors with countries adjacent to UNMIK.
6. In a reply to the Opening Letter dated 17 November 2011, the Ministry of Mining and Energy ("the Ministry") essentially submitted that the Secretariat's arguments were factually and legally wrong, in particular that KOSTT is not a transmission system operator, and that Serbia complies with its obligations under Articles 3 and 6 of Regulation 1228/2003.
7. Having not been convinced by the Ministry's reply, the Secretariat decided to submit the present Reasoned Opinion.

II. Relevant Facts

1. The complainant's position within UNMIK

8. By an agreement signed by the Ministry of Energy and Mining of the Republic of Serbia ("MEM") and the Public Utilities Department of UNMIK ("PUD")[1] in 2001, PUD was designated for "*a limited time*" to maintain and operate the transmission within Kosovo. In October 2006, KOSTT was designated as the only transmission system operator ("TSO") in the area under UNMIK administration by a license issued by the Energy Regulatory Office ("ERO"). Whereas ERO itself is established by the Law on the Energy Regulator, the legal basis for issuing the license for electricity transmission system operation in UNMIK are to be found in Articles 16(2) of the Law on Energy of 2004,[2] 12(1) of the Law on Electricity of 2004[3] and 15(2), 28(2) and 37 of the Law on the Energy Regulator of 2004.[4] All three Laws were adopted by the Assembly of Kosovo as a provisional institution of self-government, and subsequently promulgated by the United Nations Interim Administration Mission pursuant to UNSC Resolution 1244 of 1999. They were subsequently repealed and replaced by Laws on Energy, on Electricity and on the Energy Regulator in October 2010. Articles 11 to 14 of the current Law on Electricity transpose the provisions of Directive 2003/54/EC regarding the tasks and responsibilities of transmissions system operators and make them binding on KOSTT.

9. In accordance with its license, KOSTT operates the transmission system in the territory of Kosovo administered by UNMIK. From a Serbian perspective, that network forms an integral part of EMS' system. This correlates with the Serbian position that the transmission network assets belong to EMS.

10. The transmission system located in Kosovo is currently interconnected with the transmission systems of Albania (220 kV interconnector), the former Yugoslav Republic of Macedonia (400 kV interconnector) and Montenegro (400 kV interconnector). As was confirmed by the Ministry in its reply, transmission capacity allocation on the part of these interconnectors located on the territory of Kosovo is not performed by KOSTT, but by the transmission system operator of Serbia, the fully State-owned company *Elektromreža Srbije* ("EMS"). The capacity allocation on all three borders relevant for the present case is performed by split auctions, where EMS and the respective other TSO each organize auctions for 50% of the total available cross-border capacity. For its part, EMS performs explicit auctions on yearly, monthly and weekly bases.[5]

11. In terms of system balancing, KOSTT balances the system by using ancillary services and real-time dispatching instructions. KOSTT performs primary regulation through generation units located in Kosovo, whereas secondary regulation is performed on the basis of a bilateral agreement with Serbia.[6] Instead of tertiary regulation, load-shedding is taking place, on account of the lack of domestic reserves and lack of access to non-domestic sources. Occasionally occurring inadvertent deviations are met by a compensation programme sent by EMS and applied by KOSTT.

2. The complainant's position under international TSO cooperation schemes

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1 The PUD was established by Regulation UNMIK/REG/2000/49 in August 2000 to take care of the management oversight and regulatory matters relating to public utilities in Kosovo. The tasks assigned to it were later divided between the Kosovo Trust Agency, the Central Regulatory Unit, the Ministry of Energy and Mining of Kosovo and ERO.

2 Law No. 2004/8.

3 Law No. 2004/10.

4 Law No. 2004/9.

5 Pursuant to EMS' "Rules for Allocation of Available Cross-Border Transfer Capacities on Borders of Control Area of Republic of Serbia and Balancing of Market Participants Schedules from 01/01/2011 to 31/12/2011"

6 See below at paragraph 25.

12. In terms of international transmission system operators' cooperation, KOSTT is not a member of the European Network of Transmission System Operators for Electricity ("ENTSO-E"), nor has it been a member of its predecessor organizations, the Union for the Coordination of Transmission of Electricity ("UCTE") or the European Transmission System Operators ("ETSO").[7] EMS, on the other hand, is a member of ENTSO-E.

13. The synchronous system established through pan-European TSO cooperation now organized within ENTSO-E is based on control areas and control blocks for the purposes of load-frequency control. A control area is "*operated by a single TSO, with physical loads and controllable generation units connected within the control area*". It usually coincides "*with the territory of a company, a country or a geographical area, physically demarcated by the position of points for measurement of the interchanged power and energy to the remaining interconnected network*". A control area "*may be a coherent part of a control block that has its own subordinate control in the hierarchy of secondary control*".[8]

14. Consequently, a control block "*comprises one or more control areas, working together in the secondary control function with respect to the other control blocks of the synchronous area it belongs to*".[9] A control block requires an operator, i.e. a single TSO "*responsible for secondary control of the whole control block towards its interconnected neighbours/blocks, for accounting of all control areas of that block, for organisation of the internal secondary control within the block, and that operates the overall control of that block.*"[10] Following the disintegration of Yugoslavia and the subsequent political and technical changes, EMS now acts as the coordinator of the "SMM" control block made up of three control areas, namely the ones of the TSO of Serbia, the former Yugoslav Republic of Macedonia and Montenegro. The TSO of these countries are all members of ENTSO-E. As control block operator, EMS performs the load-frequency control for the networks of all participating TSO,[11] including the one operated by KOSTT.[12]

15. Not being considered as a control area in accordance with the UCTE terminology, KOSTT is prevented from allocating capacity on the interconnectors with the transmission systems of adjacent Contracting Parties. In administrative terms, this would require a so-called "EIC object" type Y under the Energy Identification Code ("EIC"). The EIC coding system was adopted in 2002 by ETSO for the purpose of electronic data interchange in the internal electricity market and management of schedules on the basis of the ETSO Scheduling System (ESS). ETSO (now ENTSO-E) acts as the Central Issuing Office of these codes. Whereas an EIC object type Y would identify a control area, KOSTT works (only) under an EIC object type X identifying a party, i.e. an individual company. For the purposes of inter-system operator data interchange, an EIC object type Y is required. Possession of an EIC object type Y is thus also a prerequisite for interconnection capacity allocation. EMS operates under the EIC object type Y for the control area covering also the network on the territory operated by KOSTT.

16. Besides the technical rules pertaining to the synchronization of European networks, and the organization of load-frequency control in particular, some commercial aspects of cross-border electricity flows are also being dealt with through voluntary TSO cooperation. Of relevance for the present case are the ITC agreements establishing a mechanism for arranging the compensation for electricity transit costs as stipulated by Article 3 of Regulation 1228/2003. Since 2002, several voluntary ITC agreements covering consecutive periods of time have been concluded within the framework of ETSO by the members to that organization (now ENTSO-E). Those agreements

[7] As of June 2007, KOSTT has been a member of the Southeastern Europe Transmission System Operators (SETSO) Task Force.

[8] Glossary of the UCTE Operation Handbook "Control Area". Secondary control = load-frequency control according to the UCTE Operation Handbook.

[9] Glossary of the UCTE Operation Handbook "Control Block".

[10] Glossary of the UCTE Operation Handbook "Control Block Operator".

[11] A task previously (until the reconnection of the two UCTE synchronous zones in 2007) performed by the Serbian Electricity Coordinating Center EKC.

[12] See Item 1.3. of the Temporary Technical Arrangement, below at paragraph 25.

used the term "Control Block" differently from the UCTE Operational Handbook. The definition reads: "*Country/Control Block" means the part of the electrical transmission grid delineated by the location of the reference counters for the measurement of electricity flows at the cross-border points on the tie lines* [...], *which is treated as a single unit for the purpose of this Agreement.*"[13]

17. Starting from 2004, ITC agreements were applied in South East Europe under the umbrella of SETSO. As of June 2007, the TSOs of South East Europe – with the exception of KOSTT – have been signatories to and thus fully participating in those agreements. On 3 March 2011, the currently applicable ITC agreement was signed by ENTSO-E and 39 transmission system operators. The contract is now a multiyear agreement, and replaces the previous voluntary agreement.[14] The subsequent ITC agreements were all signed by EMS only and make no reference to KOSTT. The TSO of the former Yugoslav Republic of Macedonia and Montenegro, on the other side, have been parties to the ITC agreements, despite being part of Serbia's control block.

18. In the ITC agreements, Serbia has always been designated as one of the "Countries/Control Blocks", without any special reference to the territory of Kosovo. EMS is listed as both ITC Party and "Country/Control Block Coordinator"[15] for Serbia. As such, and subject to the calculations carried out by the data administrators, EMS alone is the debtor or creditor party, liable to pay or eligible to be paid to/by other ITC parties compensation for hosting cross-border flows on its network, including also the network situated on the territory of Kosovo. In the past, EMS has always been a creditor party. Since 1 July 2004,[16] it has not made any transfers from the payments received to KOSTT. This has been explicitly confirmed by the Ministry.[17] Hence, potential costs relating to losses or infrastructure as defined by Article 3(6) of Regulation 1228/2003 incurred by KOSTT are not being compensated for.

19. Based on Regulation 1228/2003, the European Commission in September 2010 adopted guidelines on the establishment of an inter-transmission system operator compensation mechanism[18] to be implemented by the European transmission system operators under the surveillance of the respective regulatory authorities. Despite the fact that these guidelines have not (yet) been incorporated into the Energy Community, they provide that "*the transmission system operators operating in the territories referred to in Article 9 of the Energy Community Treaty shall be entitled to participate in the ITC mechanism*" "*on an equivalent basis to a transmission system operator of a Member State.*"[19] This includes the territory under the jurisdiction of UNMIK. Upon expiry of Commission Regulation No 774/2010 on 2 March 2011, Commission Regulation No 838/2010 laying down guidelines relating to the ITC mechanism entered into force.[20] The rules on participation of Energy Community Contracting Parties' transmission system operators remained unchanged. The currently applicable ITC agreement is based on Commission Regulation No 838/2010.

3. Bilateral agreements between EMS and KOSTT

[13] ITC Agreement for 2008 and 2009, Item 1.2.11.

[14] https://www.entsoe.eu/media/news/newssingleview/article/entso-e-puts-in-place-an-enduring-inter-tso-compensation-mechanism/

[15] See, for instance, ITC Agreement for 2008 and 2009, Item 1.2.11.

[16] See below at paragraph 23.

[17] Reply, at page 4.

[18] Commission Regulation (EU) No 774/2010 of 2 September 2010 on laying down guidelines relating to the inter-transmission system operator compensation mechanism and a common regulatory approach to transmission charging.

[19] Item 2.2 of Commission Regulation (EU) No 774/2010.

[20] Commission Regulation (EU) No 838/2010 of 23 September 2010 on laying down guidelines relating to the inter-transmission system operator compensation mechanism and a common regulatory approach to transmission charging. This Regulation is based on the new Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No 1228/2003.

20. The bilateral relationship between KOSTT and EMS is governed by two agreements, the Temporary Energy Exchange Agreement of 2000 and the Temporary Technical Arrangement of 2001. As the Ministry pointed out in its reply, a third agreement, the Temporary Agreement on Services, exists only in a draft version, and does therefore not play a role for the present case. Both agreements in place were entered into between the Public Utilities Department (PUD) of UNMIK and the Ministry of Energy and Mining of Serbia.

(1) Temporary Energy Exchange Agreement

21. The Temporary Energy Exchange Agreement of 29 June 2000 forms the basis on which both parties will, "*through their respective implementing agencies*", *"exchange, purchase and transit* electricity.[21]

22. With regard to electricity purchase, the Agreement provides for the parties to agree on annual procurement each year by 31 October of the preceding year, with the terms and conditions for such purchases to be determined by separate agreement.[22] As concerns electricity exchanges, the agreement aims at achieving an annual energy exchange balance of close to zero.[23] For the purposes of "*accounting and system analysis*", "*coordinating transmission system maintenance*", "*yearly reports on the operation of the interconnection*" and "*UCTE statistics*", PUD commits to providing certain data to the Serbian EKC, coordinator of the JIEL control block at the time.[24] The Temporary Energy Exchange Agreement also stipulates the conditions for emergency assistance between both parties.[25]

23. As concerns transit in particular, the parties agree to permit electricity transit for the purposes of the other party to and from third parties.[26] Item 1.4.2 stipulates that "*the Party for whom the electricity transit is performed shall reimburse the transit costs to the other Party, in kind or on a financial basis*". Compensation in kind is to be computed and paid in accordance with EKC by-laws. Until 1 July 2004, when EMS ceased to make transfers following the entry into force of the first ITC agreement, payment was made in kind by electricity supplies.

(2) Temporary Technical Arrangement

24. The Temporary Technical Arrangement of 26 March 2001 describes PUD as the provisional transmission system operator ("*PUD* [...] *will maintain and operate the transmission within Kosovo*"), a task later conferred on KOSTT by the licence issued by ERO, and the Ministry as provisional system coordinator of the (then) 2nd UCTE synchronous zone (a task later conferred on EKC and subsequently on EMS). In that respect, Item 1.3 of the Arrangement determines that "*for the purposes of load-frequency control, spinning reserve and mutual emergency assistance, the Parties will be considered a single control area coordinated by the MEM* [the Ministry] *dispatch centre...*",[27] including also the utilities[28] of Montenegro and Republika Srpska. For the purposes of dispatching, on the other hand, Item 1.2.5 explicitly provides that both PUD and MEM are responsible for issuing dispatch instructions to generating stations "*in their control area*".

[21] Introduction to the Temporary Energy Exchange Agreement.
[22] Item 1.1. of the Temporary Energy Exchange Agreement.
[23] Item 1.2.3. of the Temporary Energy Exchange Agreement.
[24] Supplement to the Temporary Energy Exchange Agreement.
[25] Item 1.3. of the Temporary Energy Exchange Agreement.
[26] Item 1.4.1. of the Temporary Energy Exchange Agreement.
[27] However, EMS does not invoice KOSTT for these services as foreseen by Item 1.3. of the Temporary Technical Arrangement
[28] At the time still vertically integrated companies.

25. KOSTT is obliged to remunerate EMS for the provision of its services,[29] including the procurement of secondary regulation by KOSTT from the Serbian utility *Elektroprivreda Serbia* (EPS). KOSTT ceased to pay for these services in April 2007.

26. The Arrangement further covers details regarding maintenance and operation of the circuits connecting PUD and MEM as well as circuits interconnecting PUD and other (external) utilities in the former Yugoslav Republic of Macedonia, Montenegro and Albania.[30] With regard to so-called "*operating manipulations of the interconnections*", Item 2.1.3. of the Temporary Technical Arrangement provides that they shall be performed "*by each implementing agency* [i.e. KOSTT and EMS] *with respect to its equipment in a fully cooperative and suitable manner.*"

27. Another key purpose of the Arrangement is to enable the data exchange between PUD and the Serbian side for the purpose of coordination of the UCTE synchronous zone by the latter, as well as to specify the data provided to EKC for accounting and for harmonisation of electricity exchange programmes.[31]

(3) Conclusion

28. The two agreements governing the bilateral relationship between the networks in Serbia and UNMIK are valid "*during the United Nations Interim Administration in Kosovo*"[32] and have never been terminated despite the fact that they are partly not complied with anymore. They continue regulating the bilateral relationship between KOSTT and EMS. This has been contested by the Ministry, arguing that neither EMS nor KOSTT have signed the agreements. Having been signed by the Ministry and PUD of UNMIK, they fall in the domain of international law.[33] Without contradicting to this, the Secretariat submits that as forming part of international law, they are applicable and need to be complied with within the domestic legal orders of both Serbia and UNMIK. Having been concluded by their respective Contracting Parties, they are thus binding on both EMS and KOSTT, even more so as both are public companies. Furthermore, they have been, and still are – in the area of data exchanges etc. – complied with in practical terms, which evidences the common understanding between both companies that these agreements are relevant for the relation between them.

29. Moreover, it is to be noted that by an exchange of letters between the signatories, entities charged to implement the agreements were appointed, namely KEK by UNMIK[34] and EMS by Serbia.

30. The review of the agreements in force reveals that they establish a common control area between EMS and KOSTT "*for the purposes of load-frequency control, spinning reserve and mutual emergency assistance*",[35] but not for other purposes such as dispatching. In any event, the network currently operated by KOSTT forms part of what is now the SMM control block, coordinated by EMS. Neither the common control area nor the control block cover transits, for which a specific bilateral compensation rule is in place,[36] nor capacity allocation on interconnectors with third parties, as the autonomy of former Yugoslav Republic of Macedonia's and Montenegro's transmission system operators in that respect confirms.

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[29] Item 1.3. of the Temporary Technical Arrangement.
[30] Item 1.2 of the Temporary Technical Arrangement.
[31] Introduction and "Supplement" to the Temporary Technical Arrangement
[32] Item 2.5.2. of the Temporary Energy Exchange Agreement, Item 2.4.3. of the Temporary Technical Arrangement.
[33] Reply, at pages 4 and 5.
[34] Following unbundling of the vertically integrated KEK, KOSTT was designated as transmission system operator in UNMIK by a license issued by ERO in October 2006.
[35] Item 1.3 of the Temporary Technical Arrangement.
[36] Item 1.4.2 of the Temporary Energy Exchange Agreement. As was set out above, the mutual obligations thereunder are not honoured anymore in practice.

III. Relevant Energy Community Law

31. In the following, a selection of provisions of Energy Community relevant for the present case is compiled. This compilation is for convenience only and does not imply that no other provisions may be of relevance for its assessment.

32. Energy Community Law is defined in Article 1 of the Rules of Procedure for Dispute Settlement under the Treaty ("Dispute Settlement Procedures")[37] as "*a Treaty obligation or* [...] *a Decision addressed to* [a Party]". A violation of Energy Community Law occurs if "[a] *Party fails to comply with its obligations under the Treaty if any of these measures (actions or omissions) are incompatible with a provision or a principle of Energy Community Law*" (Article 2(1) Dispute Settlement Procedures).

33. Article 9 of the Treaty reads:

> *The provisions of and the Measures taken under this Title shall apply to the territories of the Adhering Parties, and to the territory under the jurisdiction of the United Nations Interim Administration Mission in Kosovo.*

34. Article 6 of the Treaty reads:

> *The Parties shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of this Treaty. The Parties shall facilitate the achievement of the Energy Community's tasks. The Parties shall abstain from any measure which could jeopardise the attainment of the objectives of the Treaty.*

35. Article 10 of the Treaty reads:

> *Each Contracting Party shall implement the acquis communautaire on energy in compliance with the timetable for the implementation of those measures set out in Annex I.*

36. Article 94 of the Treaty reads:

> *The institutions shall interpret any term or other concept used in this Treaty that is derived from European Community law in conformity with the case law of the Court of Justice or the Court of First Instance of the European Communities. Where no interpretation from those Courts is available, the Ministerial Council shall give guidance in interpreting this Treaty. It may delegate that task to the Permanent High Level Group. Such guidance shall not prejudge any interpretation of the acquis communautaire by the Court of Justice or the Court of First Instance at a later stage.*

37. Article 2 of Directive 2003/54/EC reads:

> *For the purpose of this Directive*
>
> *...*
>
> *3. 'transmission' means the transport of electricity on the extra high-voltage and high-voltage interconnected system with a view to its delivery to final customers or to distributors, but not including supply;*
>
> *4. 'transmission system operator' means a natural or legal person responsible for operating, ensuring the maintenance of and, if necessary, developing the transmission system in a given area and, where applicable, its interconnections with other systems, and for ensuring the long term ability of the system to meet reasonable demands for the transmission of electricity;*
>
> *...*
>
> *13. 'interconnectors' means equipment used to link electricity systems;*
>
> *...*

38. Article 8 of Directive 2003/54/EC reads:

> *Member States shall designate, or shall require undertakings which own transmission systems to designate, for a period of time to be determined by Member States having regard to considerations of*

[37] Procedural Act No 2008/01/MC-EnC of 27 June 2008.

efficiency and economic balance, one or more transmission system operators. Member States shall ensure that transmission system operators act in accordance with Articles 9 to 12.

39. Article 9 of Directive 2003/54/EC reads:

Each transmission system operator shall be responsible for:

...

(c) managing energy flows on the system, taking into account exchanges with other interconnected systems. To that end, the transmission system operator shall be responsible for ensuring a secure, reliable and efficient electricity system and, in that context, for ensuring the availability of all necessary ancillary services insofar as this availability is independent from any other transmission system with which its system is interconnected;

40. Article 2 of Regulation 1228/2003 reads:

For the purpose of this Regulation, the definitions contained in Article 2 of Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity and repealing Directive 96/92/EC (1) shall apply with the exception of the definition of 'interconnector' which shall be replaced by the following:

'interconnector' means a transmission line which crosses or spans a border between Member States and which connects the national transmission systems of the Member States;.

The following definitions shall also apply:

...

(b) 'cross-border flow' means a physical flow of electricity on a transmission network of a Member State that results from the impact of the activity of producers and/or consumers outside of that Member State on its transmission network. If transmission networks of two or more Member States form part, entirely or partly, of a single control block, for the purpose of the inter-transmission system operator (TSO) compensation mechanism referred to in Article 3 only, the control block as a whole shall be considered as forming part of the transmission network of one of the Member States concerned, in order to avoid flows within control blocks being considered as cross-border flows and giving rise to compensation payments under Article 3. The regulatory authorities of the Member States concerned may decide which of the Member States concerned shall be the one of which the control block as a whole shall be considered to form part of;

...

41. Article 3 of Regulation 1228/2003 reads:

1. Transmission system operators shall receive compensation for costs incurred as a result of hosting cross-border flows of electricity on their networks.

2. The compensation referred to in paragraph 1 shall be paid by the operators of national transmission systems from which cross-border flows originate and the systems where those flows end.

3. Compensation payments shall be made on a regular basis with regard to a given period of time in the past. Ex-post adjustments of compensation paid shall be made where necessary to reflect costs actually incurred. The first period of time for which compensation payments shall be made shall be determined in the guidelines referred to in Article 8.

4. Acting in accordance with the procedure referred to in Article 13(2), the Commission shall decide on the amounts of compensation payments payable.

5. The magnitude of cross-border flows hosted and the magnitude of cross-border flows designated as originating and/or ending in national transmission systems shall be determined on the basis of the physical flows of electricity.

6. The costs incurred as a result of hosting cross-border flows shall be established on the basis of the forward looking long-run average incremental costs, taking into account losses, investment in new infrastructure, and an appropriate proportion of the cost of existing infrastructure, as far as infrastructure is used for the transmission of cross-border flows, in particular taking into account the need to guarantee security of supply. When establishing the costs incurred, recognised standard-costing methodologies shall

be used. Benefits that a network incurs as a result of hosting cross-border flows shall be taken into account to reduce the compensation received.

42. Article 6 of Regulation 1228/2003 reads:

1. Network congestion problems shall be addressed with non-discriminatory market based solutions which give efficient economic signals to the market participants and transmission system operators involved. Network congestion problems shall preferentially be solved with non transaction based methods, i.e. methods that do not involve a selection between the contracts of individual market participants.

2. Transaction curtailment procedures shall only be used in emergency situations where the transmission system operator must act in an expeditious manner and redispatching or countertrading is not possible. Any such procedure shall be applied in a non-discriminatory manner. Except in cases of 'force-majeure', market participants who have been allocated capacity shall be compensated for any curtailment.

3. The maximum capacity of the interconnections and/or the transmission networks affecting cross-border flows shall be made available to market participants, complying with safety standards of secure network operation.

4. Market participants shall inform the transmission system operators concerned a reasonable time ahead of the relevant operational period whether they intend to use allocated capacity. Any allocated capacity that will not be used shall be reattributed to the market, in an open, transparent and non-discriminatory manner.

5. Transmission system operators shall, as far as technically possible, net the capacity requirements of any power flows in opposite direction over the congested interconnection line in order to use this line to its maximum capacity. Having full regard to network security, transactions that relieve the congestion shall never be denied.

6. Any revenues resulting from the allocation of interconnection shall be used for one or more of the following purposes:

(a) guaranteeing the actual availability of the allocated capacity;

(b) network investments maintaining or increasing interconnection capacities;

(c) as an income to be taken into account by regulatory authorities when approving the methodology for calculating network tariffs, and/or in assessing whether tariffs should be modified.

43. Item 6 of the so-called Congestion Management Guidelines annexed to Regulation 1228/2003, as incorporated into the Energy Community *acquis communautaire* by Decision No 2008/02/MC-EnC of the Ministerial Council of 27 June 2008 reads:

6. Use of congestion income

6.1. Congestion management procedures associated with a pre-specified timeframe may generate revenue only in the event of congestion which arises for that timeframe, except in the case of new interconnectors which benefit from an exemption under Article 7 of the Regulation. The procedure for the distribution of these revenues shall be subject to review by the Regulatory Authorities and shall neither distort the allocation process in favour of any party requesting capacity or energy nor provide a disincentive to reduce congestion.

6.2. National Regulatory Authorities shall be transparent regarding the use of revenues resulting from the allocation of interconnection capacity.

6.3. The congestion income shall be shared among the TSOs involved according to criteria agreed between the TSOs involved and reviewed by the respective Regulatory Authorities.

6.4. TSOs shall clearly establish beforehand the use they will make of any congestion income they may obtain and report on the actual use of this income. Regulatory Authorities shall verify that this use complies with the present Regulation and Guidelines and that the total amount of congestion income resulting from the allocation of interconnection capacity is devoted to one or more of the three purposes described in Article 6(6) of Regulation.

6.5. On an annual basis, and by 31 July each year, the Regulatory Authorities shall publish a report setting out the amount of revenue collected for the 12-month period up to 30 June of the same year and the use made of the revenues in question, together with verification that this use complies with the present

Regulation and Guidelines and that the total amount of congestion income is devoted to one or more of the three prescribed purposes.

6.6. The use of congestion income for investment to maintain or increase interconnection capacity shall preferably be assigned to specific predefined projects which contribute to relieving the existing associated congestion and which may also be implemented within a reasonable time, particularly as regards the authorisation process.

44. Article 2(2) of the Dispute Settlement Procedures reads:

Failure by a Party to comply with Energy Community law may consist of any measure by the public authorities of the Party (central, regional or local as well as legislative, administrative or judicative), including undertakings within the meaning of Article 19 of the Treaty, to which the measure is attributable.

IV. Legal Assessment

45. The subject matter of the present case falls in two parts, namely the non-payment of compensation received by EMS for costs incurred for electricity transit through the transmission network located on the territory of Kosovo, as discussed in section (3.) and the allocation by EMS of interconnection transmission capacity on the interconnectors with the Contracting Parties adjacent to UNMIK, namely Albania, the former Yugoslav Republic of Macedonia and Montenegro, as discussed in section (4.). Prior to the assessment on substance, one procedural point raised by the Ministry in its reply will be briefly discussed under (1.) In order to avoid possible misunderstandings, the scope of the present case will also be demarcated and clarified in section (2.)

1. Procedural issues

46. In its reply, the Ministry raises doubts as to KOSTT's legitimacy to submit a complaint under Article 90 of the Treaty.[38]

47. In that respect, the Secretariat recalls that, in line with Article 90(1) EnC, Article 19(1) of the Dispute Settlement Procedures states that "[p]*rivate bodies may lodge a complaint with the Secretariat against a Party arising from any measure the complainant considers incompatible with Energy Community law.*" Article 19(2) of the Dispute Settlement Procedures defines the notion of "private body" as encompassing "*all natural and legal persons as well as companies, firms or association having no legal personality*". KOSTT j.s.c. is an energy undertaking organized as a joint stock company and performing the activities of transmission system operator and market operator under the legal framework of UNMIK. It thus fulfils the definition in Article 19(2) of the Dispute Settlement Procedures.

2. Scope

48. Disputes initiated under Article 90 of the Treaty concern the application or interpretation of Energy Community law as defined by Article 1 of the Dispute Settlement Procedures. Consequently, the present case is about compliance of Serbia with the Energy Community *acquis communautaire* only, and not with any other legal order, national or international. Energy Community law establishes an autonomous legal order the interpretation of which is bound only to the case law of the Court of Justice of the European Union and, as the case may be, the Ministerial Council (Article 94 of the Treaty).

[38] Reply, at page 1.

49. The following set of rules, in particular, are outside the scope of the present case in the sense that they do not form the basis for the assessment of Serbia's compliance:

(1) Rules pertaining to European TSO cooperation

50. The rules pertaining to and adopted by ENTSO-E and its predecessor organizations, UCTE and ETSO, do not form part of Energy Community law. The rules of these organisations fundamentally differ from the *acquis communautaire* in terms of purpose and context, The Energy Community establishes a legal order *sui generis* aimed at integrating the energy sectors of its Parties and implementing the rules and principles developed within the European Union. More particular, the *acquis communautaire* relevant to the present case pursues the objective of establishing open and integrated electricity markets. By contrast, the rules of inter-TSO cooperation pursue primarily goals of technical (UCTE) or commercial (ITC) nature. This does neither question their importance nor the increased tasks of ENTSO-E under the so-called third package. Those tasks, however, are not at stake in the present case.

51. The present assessment does not provide an interpretation of, or pronounces itself on compliance with, rules adopted within the framework of pan-European TSO cooperation, such as the UCTE Handbook or the ITC Agreements. This seems important to clarify, as both companies involved in the present case extensively expressed themselves on their respective interpretation of terms defined in the UCTE Handbook such as "control area" or "control block". Their importance for the operation and development of the synchronous electricity transmission grid in continental Europe as coordinated by UCTE (now ENTSO-E) notwithstanding, these terms and concepts are only relevant for the purpose of the present assessment to the extent they are incorporated in the Energy Community *acquis communautaire*. This is without prejudice to the relevance of ENTSO-E's rules for establishing the factual background, as was underlined by the Ministry.[39]

52. Moreover, the present assessment has no bearing on the complainant's aspired membership in ENTSO-E, an association with its own and autonomous Articles of Association, nor does it affect its participation in cooperation schemes such as the ITC agreements. Furthermore, the complainant has not adduced evidence for its claim that "*the Republic of Serbia, through its TSO permanently obstructed the participation of KOSTT in the ITC mechanism*". Hence, whether and to what extent Serbia disregarded the duty of cooperation between Contracting Parties following from Article 6 of the Treaty obstructing the participation of the transmission system operator of KOSTT in an international cooperation scheme such as the ITC agreements does not form part of the present case.

(2) Rules pertaining to network ownership

53. The Secretariat has taken note of the conflicting views by Serbia and UNMIK on ownership of transmission assets on the territory of UNMIK.[40] As has been consistently emphasized by the Secretariat, the present assessment has no bearing and is not dependent on the question of ownership of the transmission network. As a general rule, Energy Community law is neutral towards the question of ownership, which remains to be determined in accordance with general law of property. For lack of competence, the Secretariat thus cannot accept the Ministry's invitation to express itself on the question of who owns the network assets on the territory of Kosovo.[41]

(3) Rules pertaining to the bilateral agreements between KOSTT and EMS

54. Finally, the Secretariat's legal assessment in the present case does not concern the contractual relations between KOSTT and EMS. The bilateral agreements as summarized above are of

[39] Reply, at page 6.
[40] The Serbian position is expressed, *inter alia*, in the Reply, at pages 2 and 7, whereas the position of UNMIK is reflected in Article 11(1) of the Law on Electricity.
[41] Reply, at page 7.

relevance to the present case only for the establishment of the factual situation. As follows from Article 101 of the Treaty in particular, agreements concluded by Contracting Parties prior to the signature of the Treaty are independent of the latter and need to be adapted or terminated to the extent they do not comply with Energy Community law.

3. The non-payment of compensation for electricity transit

55. It is not disputed that EMS currently does not pay any compensation to KOSTT for costs incurred for electricity transit through the transmission network located on the territory of Kosovo, nor does it forward to KOSTT the respective share of the net compensation it receives from the ITC funds.

56. Article 3(1) of Regulation 1228/2003 stipulates that transmission system operators shall receive compensation for costs incurred as a result of hosting cross-border flows of electricity on their networks. This right to compensation follows directly from Energy Community law. It is independent of any rights deriving from contractual arrangements, such as Item 1.4.2 of the Temporary Energy Exchange Agreement of 2000,[42] or the ITC agreements. The Ministry's claim that the ITC agreement's have only *inter partes* effect, and do not create rights and obligations for KOSTT as a non-signatory[43] is correct. It is, however, without relevance to the present case, which concerns Energy Community law, and more particularly Article 3(1) of Regulation 1228/2003, alone.

57. For the purpose of the present case, the right to compensation under Article 3(1) of Regulation 1228/2003 requires KOSTT to be a transmission system operator. As KOSTT's status as a transmission system operator is disputed by the Ministry, this will be assessed in more detail at (1) below. The second requirement of Article 3(1) of Regulation 1228/2003 is the incurrence of costs on the network operated by KOSTT as a result of hosting cross-border flows of electricity. This will be discussed at (2) below. Finally, a conclusion will be drawn at (3).

(1) KOSTT's status as transmission system operator

58. The Secretariat submits that the company KOSTT is the transmission system operator, within the meaning of Energy Community law, established under the jurisdiction of UNMIK. This finding rests on two reasons: KOSTT fulfills the definition of Article 2 No 4 of Directive 2003/54/EC, and was designated by UNMIK in accordance with Article 8 of that Directive. Before going into details of interpretation, some remarks on the status of UNMIK as a Contracting Party to the Treaty establishing the Energy Community seem appropriate.

(a) UNMIK as a Contracting Party

59. In the following, the Secretariat will argue that KOSTT is the transmission system operator designated by UNMIK as a Contracting Party to the Energy Community Treaty. The Secretariat and the Ministry seem to concur insofar as, for the purpose of implementing the Energy Community *acquis communautaire*, references to Member States in the original Directives and Regulations need to be understood as references to Contracting Parties.[44] That said, the Ministry seems to insist that UNMIK is not a Contracting Party to the Treaty. The Secretariat respectfully objects. While it is true that all Contracting Parties other than UNMIK are referred to as "Adhering Parties" in the Preamble of the Treaty, both those "Adhering Parties" and UNMIK are designated as Contracting Parties in the very same Preamble which, together with the European Union, are Parties to the Treaty. According to Article 9 EnC, the provisions of Title II of the Treaty, which constitute the legal framework for the present case (in particular the *acquis communautaire* on energy, Article 10 EnC), apply to the Adhering Parties and the territory under jurisdiction of UNMIK. The same holds true for participation in the so-called 8th Region according to Article 2(1) of Decision 2008/02/MC-EnC. In terms of legal obligations, there is thus no difference between

[42] See above at paragraphs 21 *et seq.*
[43] Reply, at page 4.
[44] Reply, at pages 7 and 8.

UNMIK and other Contracting Parties. The Ministry's dissenting view would have as a consequence that UNMIK is under no obligation to implement the Treaty. This is incorrect.

(b) Definition of transmission system operator

60. Energy Community law contains a definition of transmission system operator in Article 2 No 4 of Directive 2003/54/EC. This definition is autonomous from other legal orders such as the one established by the technical rules applicable within ENTSO-E.

61. A transmission system operator is defined as "*a natural or legal person responsible for operating, ensuring the maintenance of and, if necessary, developing the transmission system in a given area and, where applicable, its interconnections with other systems, and for ensuring the long term ability of the system to meet reasonable demands for the transmission of electricity*". Article 2(1) No 32 of the Law on Energy and Article 2(1) No 38 of the Law on Electricity reproduce that definition *verbatim*. Articles 12 of the Law on Electricity, complemented by other provisions, lists the responsibilities of the TSO, including operation, maintenance, and development of the transmission system and its interconnectors with other systems, in order to ensure operational system security and security of supply, management of energy flows on the transmission system, cross-border flows and congestion, balancing of the energy system and adoption of balancing rules, maintenance of technical transmission reserve capacity, ensuring availability of ancillary services, coordinating with operators of neighbouring systems, including the provision of necessary information, establishment of a mechanism for emergency supply interruption, ensuring non-discrimination, publishing daily data on transmission capacity, transfer capacity and reliability, management of congestion on the interconnectors, providing system users with information, dispatching, give priority to electricity generated from renewable sources, proposing tariffs and tariff methodologies to ERO, arranging financing of new transmission lines, interconnectors and other facilities necessary for the transmission system in Kosovo, developing ten-years system development plans, adopting and complying with the grid code, international cooperation etc. Furthermore, KOSTT has been unbundled in line with the requirements of Directive 2003/54/EC and is under an obligation to provide third-party access. In sum, the laws applicable to KOSTT transpose the Energy Community *acquis* relevant for transmission system operators, including Directive 2003/54/EC and Regulation 1228/2003. The review of the legislation in place in UNMIK thus confirms that from that Contracting Party's perspective, KOSTT is a transmission system operator within the meaning of Energy Community law, subject to all relevant tasks and obligations, and under surveillance by the regulatory authority ERO.

62. That KOSTT, in practical terms, operates, maintains and develops the transmission network in UNMIK in accordance with the applicable law – with the exception of the activities under dispute in the present case – is evident from the latter's statutes, codes and reports,[45] the statements issued by the regulatory authority ERO,[46] as well as the Secretariat's own involvement in the framework of, e.g., the development of a market model currently under discussion in UNMIK. KOSTT is an active participant in the energy markets on both a domestic and regional level. The Ministry has not put forward claims or facts corroborating the opposite.[47] Furthermore. KOSTT (alone) has also invested in and developed the transmission system on the territory of Kosovo over the last decade.

63. KOSTT's capacity as a transmission system operator is not affected by the fact that it does not perform the activities and functions carried out by EMS, including balancing (secondary regulation) of the network in Kosovo and capacity allocation and congestion management on the interconnectors with neighbouring countries. The latter activity in particular forms the very subject-matter of the present case. To argue, as the Ministry does, that KOSTT does not perform

[45] http://www.kostt.com. One of the key documents providing evidence for KOSTT's activities as a transmission system operator is the Development Plan for 2010-2019, as approved by ERO.

[46] http://www.ero-ks.org. In particular, ERO is responsible of monitoring whether KOSTT performs its activities in accordance with its license, where all duties related to transmission system operation are set out.

[47] Reply, at page 8.

certain activities typical for transmission system operators, and that only EMS is recognized internationally as the transmission system operator responsible for the allocation of cross-border capacity with all neighbouring countries,[48] ignores the fact that KOSTT does not refuse these activities, but is prevented from doing so primarily for legal reasons (non-membership in ENTSO-E and the lack of an EIC object type Y).[49]

64. Whether or not the lack of ENTSO-E membership is owed to purely technical reasons, as alleged by the Ministry,[50] or due to the fact that EMS is unduly "pre-empting" KOSTT's membership in ENTSO-E, as maintained by the complainant, is not to be decided in the context of the present dispute.

65. Firstly, it is to be recalled that neither secondary regulation, nor capacity allocation and congestion management are constitutive elements of the definition of a transmission system operator under Energy Community law. Contrary to what the Ministry contends,[51] a TSO does not necessarily have to perform all tasks referred to by the *acquis by itself* to be considered a TSO within the meaning of Energy Community law. This follows already from the fact that the definition in Article 2 No 4 of Directive 2003/54/EC very broadly refers to the responsibility for "*operating, ensuring the maintenance and, if necessary, developing the transmission system*", whereas the detailed list of tasks listed in Articles 9 to 12 of the Directive impose specific obligations on transmission system operator designated by the Contracting Party in question. Even these provisions express a certain flexibility, such as "*where applicable*" (Article 2 No 4), "*insofar as*" (Article 9(c) second sentence) "*where it has this function*" (Article 11(1)) or "*whenever they have this function*" (Article 11(6)). To the extent the transmission system operator has been given the responsibility for concrete activities, it can rely on services provided by other parties without losing its status as a transmission system operator. In fact, the provision of such services is one of the key objectives of the bilateral agreements applicable between KOSTT and EMS which, at the same time, do assume that an entity other than EMS is the transmission system operator in the territory of Kosovo.[52] Furthermore, there are other examples in the Energy Community where transmission system operators "outsource" e.g. the provision of balancing services to other operators,[53] without their status as TSO being put into question. Other recognized transmission system operators in Contracting Parties operate networks not even part of the (former) UCTE (now ENTSO-E) system.[54]

66. Secondly, any potential technical, commercial or legal reasons for KOSTT not performing all system balancing tasks, such as secondary and tertiary control, but also capacity allocation may change over time. Making the status of the transmission system operator dependent on such volatile circumstances would not only run counter to the general principle of legal certainty, it would also deprive the Contracting Party in question of the possibility to fulfil all other tasks to be assigned to a transmission system operator, and thereby of implementing Energy Community law.

67. The fact that "*for the purposes of load-frequency control, spinning reserve and mutual emergency assistance, the Parties will be considered a single control area coordinated by the MEM [the Ministry] dispatch centre…*"[55] does also not call into question KOSTT being the transmission system operator of UNMIK. As has been reasoned above,[56] the Energy Community establishes

[48] Reply, at page 3.
[49] See above at paragraph 15.
[50] Reply, at page 3.
[51] Reply at page 8.
[52] The Temporary Technical Arrangement of 26 March 2001 provides that "*PUD* [of UNMIK, KOSTT's predecessor organization] *will maintain and operate the transmission within Kosovo*".
[53] E.g. the case of Montenegro.
[54] Namely OST of Albania.
[55] However, EMS does not invoice KOSTT for these services as foreseen by Item 1.3. of the Temporary Technical Arrangement
[56] See at paragraph 48 above.

an autonomous and distinct legal order, pursuing objectives related to market integration and market reform in accordance with European Union law and principles. As follows from the Treaty, and Article 94 in particular, the terms and concepts derived from European Union law is to be interpreted in homogeneity with the latter, and not with the rules of a third-party institution, let alone bilateral agreements. Both the rules established under UCTE and the bilateral agreements as summarized above[57] serve different purposes, namely the technical functioning of a synchronous system, and the cooperation of two neighbouring transmission systems following their disintegration in the late 1990s, respectively. Consequently, the definition of a transmission system operator in Article 2 No 4 of Directive 2003/54/EC is independent of the definition of a control area given in the UCTE Handbook or the bilateral agreements.[58] Unlike other, more technical provisions of Energy Community law,[59] Article 2 No 4 of Directive 2003/54/EC does not refer to control areas. Rather, that Article defines a transmission system operator on the basis of its "responsibilities", thus using a normative and not a technical criterion. Responsibility is determined by designation, a concept which will be discussed below.[60] This approach is in line with the EU's/Energy Community's general objective of making natural monopolies accessible by imposing concrete responsibilities on each and all Contracting Parties, to be passed on to their transmission system operators.[61]

68. Further, the Ministry's claim that "recognition" of KOSTT as a transmission system operator would entail the "creation" of a "new" electricity border, namely the one between the systems operated by EMS and KOSTT respectively, and would further fragment the market by introducing additional barriers to free electricity flows,[62] is also to be rejected in the context of the present case. KOSTT's status as a transmission system operator follows directly from the fact that Serbia and UNMIK are two, and not one, Contracting Parties to the Energy Community. Electricity flows between the two systems involved fulfil *eo ipso* the definition of "cross-border flows" in Article 2(2)(b) of Regulation 1228/2003. As regards the purported "market fragmentation", the Secretariat would like to recall that the Energy Community, within the so-called 8th region established by the Ministerial Council, pursues the objective to integrate that region, most notably through a project for common and regionally coordinated congestion management and capacity allocation.

69. Finally, and contrary to what the Ministry puts forward in its reply,[63] ownership over the network assets is irrelevant for the definition and designation of transmission system operators. It is neither required by Article 2 No 4 of Directive 2003/54/EC, nor is it of no relevance under Article 8 of Directive 2003/54/EC. Quite the contrary, that provision requires Contracting Parties to either designate transmission system operators or "*require undertakings which own transmission systems*" to do so. Hence, the Directive assumes that transmission system operation and ownership can be independent of one another, and that a transmission system operator does not necessarily have to own the transmission assets it operates. This is confirmed by Recital 10 of

[57] See at paragraphs 20 *et seq.*
[58] See at paragraph 24 above.
[59] The fact that the so-called Congestion Management Guidelines in two places (Items 1.7 and 1.8) make reference to "control areas" is not such as to challenge the autonomy of the definition of a transmission system operator given in Article 2 of Directive 2003/54/EC. The Guidelines to Regulation 1228/2003 are of a technical nature adopted under comitology procedure and do not intend to, nor can, affect the provisions of the Directive.
[60] See below at paragraphs 71 et seq.
[61] For the sake of completeness, it is to be noted that also the bilateral agreements, and more precisely the Temporary Technical Arrangement of 26 March 2001, also uses a normative TSO definition by stating that "*PUD* [of UNMIK, KOSTT's predecessor organization] *will maintain and operate the transmission within Kosovo*". As regards the UCTE definition of a control area displayed above (an area "*operated by a single TSO* ..."), one may also note that that definition relies on the definition of transmission system operator as a prerequisite, rather than introducing additional criteria for the TSO definition.
[62] Reply, at pages 2 and 3.
[63] Reply, at page 2, second indent.

Directive 2003/54/EC, according to which "*the designated system operators **may** be the same undertakings owning the infrastructure.*"[64]

70. The Ministry's argument that KOSTT could not comply with the requirement of ownership unbundling, nor become an independent system operator under Directive 2009/72/EC due to the lack of ownership or Serbia's consent respectively,[65] must also be rejected. Firstly, this Directive is not (yet) to be implemented by the Energy Community Contracting Parties. The Ministerial Council on 7 October 2011 decided for a general implementation deadline of 1 January 2015. Secondly, as has been mentioned above, UNMIK does assume that KOSTT owns the transmission assets in Kosovo.[66] Whether and to what extent this is the case is not part of the subject-matter of this dispute. Thirdly, and only for the sake of completeness, it is to be noted that EMS currently does not own the network operated by it.

(c) Designation of transmission system operators

71. It follows from the above that the designation of a transmission system operator determines its responsibility, a constitutive element of its definition. Without designation, a company cannot be regarded as a transmission system operator. Following unbundling of the formerly vertically integrated company KEK carried out by the *Kosovo Trust Agency (KTA)* of UNMIK, KOSTT was designated as transmission system operator in UNMIK by a license issued by ERO in October 2006.

72. Based on the Serbian Constitution, the Ministry in its reply argues that all government agencies within the Serbian Province of Kosovo and Metohija are bound to represent and protect the interests of the Serbian State.[67] By this, the Ministry evidently questions ERO's legitimacy to designate transmissions system operators, in particular if against the interests of the Republic of Serbia. In that respect, the Secretariat recalls that designation of a transmission system operator falls within the prerogative of each Contracting Party under Article 8 of Directive 2003/54/EC. It is undisputed that "*the United Nations Interim Administration Mission in Kosovo pursuant to United Nations Security Council Resolution 1244*" is a Contracting Party to the Treaty. Under Resolution 1244, to which the Treaty makes explicit reference, organizing the "*development of provisional institutions for democratic and autonomous self-government*" and "*transferring, as these institutions are established, its administrative responsibilities*"[68] rank among the key goals and tasks of UNMIK. On this basis, the Special representative adopted Regulation 2001/9, which promulgated the Constitutional Framework of UNMIK. The Constitutional Framework empowers the Assembly of Kosovo to adopt legislation which would have the force of law within UNMIK,[69] and envisages "*ministries and other executive agencies*" to exercise executive authority and implement Assembly laws.[70] The energy laws of 2004 and 2010, establishing ERO as an executive agency and tasking it with, *inter alia*, licensing a transmission system operator, were adopted by the Assembly. The Secretariat has no doubts that this legal framework, which was meant to transpose European energy legislation, was also in line with the Constitutional Framework of UNMIK. The same goes for the designation of KOSTT as a transmission system operator under this legal framework.

73. For similar reasons, the Ministry's argument that, besides the energy legislation applicable in UNMIK, also the Energy Law of Serbia provides for a legal basis for the licensing, by the Serbian energy regulatory authority, of a transmission system operator operating the network on the entire territory of Serbia (i.e. including the territory of Kosovo),[71] is to be rejected. By this

[64] Emphasis added.
[65] Reply, at page 2.
[66] See paragraph 61 above.
[67] Reply, at page 2, first indent.
[68] Items 10 and 11(c) and (d) of UNSCR 1244.
[69] See also the Advisory Opinion of the International Court of Justice of 22 July 2010, at paragraph 89.
[70] Item 9.33 of the Constitutional Framework.
[71] Reply, at page 2, second indent.

argument, the Ministry assumes that its own legislation takes precedence over legislation promulgated by UNMIK.

74. In this regard, the Secretariat, firstly, recalls that the International Court of Justice recently clarified that "*the object and purpose of resolution 1244 (1999) was to establish a temporary, exceptional legal regime which, save to the extent that it expressly preserved it,* ***superseded the Serbian legal order*** *...*".[72]

75. Secondly, Energy Community law is equally opposed to the purported precedence of Serbian law over UNMIK legislation and administrative action based upon it. Articles 8 and 2 No. 4 of Directive 2003/54/EC clearly require Contracting Parties to designate one or more transmission system operators for "*a given area*". This obligation can only be fulfilled by the Contracting Party having jurisdiction over the area where the network is located. Again, the only Contracting Party with jurisdiction on the territory of Kosovo in the context of the Energy Community is UNMIK. By assigning clear responsibilities to the Contracting Parties along their respective jurisdictions, Energy Community law thus excludes any possible conflict of domestic legislations, and even more so, precedence of one Contracting Party's legislation and administrative practice over the territory falling under the jurisdiction of another Contracting Party. The Ministry's argument that Serbian law prevails over the laws and administrative decision taken within the constitutional framework of UNMIK must thus be rejected.

76. Finally, the review of the bilateral agreements concluded between UNMIK and Serbia, as summarized above,[73] also shows that both parties, including Serbia, recognized the existence of a transmission system operator other than EMS in UNMIK. It may be recalled that the Temporary Technical Arrangement stipulates that "*PUD* [of UNMIK] *will maintain and operate the transmission within Kosovo*", a task later conferred on KOSTT by the licence issued by ERO. Within the framework for inter-TSO coordination established by these agreements, the signatories agreed, among other things, that the UNMIK transmission system operator performs key activities pertaining to system operation such as maintenance,[74] dispatching,[75] operating manipulations of the interconnections[76] and covering the losses on interconnection lines.[77]

(2) Costs incurred as a result of hosting cross-border flows of electricity on the network operated by KOSTT

77. For the purpose of the following assessment, the Secretariat will assess the remaining two requirements of Article 3(1) of Regulation 1228/2003, namely the occurrence of cross-border flows (a) and the inccurrence of costs as a result of that (b).

(a) Cross-border flows on the network operated by KOSTT

78. It is not disputed that electricity flows (transits) take place through the network assets located on Kosovo territory. In fact, this is acknowledged by both Serbia and UNMIK in the context of their bilateral agreements. In the Temporary Energy Exchange Agreement of 2000, both parties agreed not only to permit electricity transit for the purposes of the respective other party to and from third parties,[78] but also to reimburse the transit costs.

79. The Secretariat submits that these transits constitute "cross-border flows" within the meaning of Article 3 of Regulation 1228/2003.

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[72] Advisory Opinion of the International Court of Justice of 22 July 2010, at paragraph 100, emphasis added.
[73] See at paragraphs 20 *et seq.* above.
[74] As acknowledged by Items 1.2.1 and 2.1.4. of the Temporary Technical Arrangement.
[75] As acknowledged by Item 1.2.5 of the Temporary Technical Arrangement.
[76] Item 2.1.3. of the Temporary Technical Arrangement.
[77] "Each party shall cover losses that occur on its own portion of interconnection lines", Item 1.5.2. of the Temporary Energy Exchange Agreement.
[78] Item 1.4.1. of the Temporary Energy Exchange Agreement.

80. The notion of "cross-border flows" is defined by Article 2(2)(b)of Regulation 1228/2003 as follows: "'*cross-border flow' means a physical flow of electricity on a transmission network of a Member State that results from the impact of the activity of producers and/or consumers outside of that Member State on its transmission network. If transmission networks of two or more Member States form part, entirely or partly, of a single control block, for the purpose of the inter-transmission system operator (TSO) compensation mechanism referred to in Article 3 only, the control block as a whole shall be considered as forming part of the transmission network of one of the Member States concerned, in order to avoid flows within control blocks being considered as cross-border flows and giving rise to compensation payments under Article 3. The regulatory authorities of the Member States concerned may decide which of the Member States concerned shall be the one of which the control block as a whole shall be considered to form part of*".

81. As stated above, and generally accepted by the Ministry, the term "Member States" is to be understood as referring to the Contracting Parties in the context of the *acquis*' incorporation in the Energy Community, and in particular Title II of the Treaty. Hence, a cross-border flow as defined by the first sentence of Article 2(2)(b) of Regulation 1228/2003 is the physical flow of electricity on the transmission network of one Contracting Party (UNMIK) resulting from the impact of producer and/or consumer activities outside the relevant territory on UNMIK's transmission network. Again, it is not disputed that such cross-border flows affecting the transmission network operated by KOSTT take place.

82. The term "cross-border" does not necessarily require borders between states. The definition given by Article 2(2)(b)of Regulation 1228/2003 is neutral with respect to political borders by referring only to transmission networks within one Contracting Party and activities outside that Contracting Party. For the purpose of the compensation right under Article 3 of Regulation 1228/2003, cross-border flows are thus those electricity flows on the network operated by KOSTT which result from the impact of a producer and/or consumer activities outside the territory. This includes all Contracting Parties (including Serbia) and Parties to the Energy Community Treaty, but also third parties.

83. Finally, it is to be noted that the second sentence of Article 2(2)(b)of Regulation 1228/2003 excludes flows between transmission networks of two or more Contracting Parties forming part "*of a single control block, for the purpose of the inter-transmission system operator (TSO) compensation mechanism referred to in Article 3 only*". However, the review of the two bilateral agreements in place reveals that a single control block within the meaning of Article 2(2)(b)of Regulation 1228/2003 is not established. To the Secretariat's understanding, the Ministry concurs with that finding in its reply.[79] In that case, the following remarks on the (non-)applicability of the second sentence of Article 2(2)(b)of Regulation 1228/2003 to the present case are for the sake of completeness only.

84. In this respect, it may be recalled that the second sentence of Article 2(2)(b)of Regulation 1228/2003 was tailored to the special case of Germany, the only country including more than one ITC party, some of which are located outside the German territory. The ITC agreements concluded under ETSO and ENTSO-E were signed jointly by the "German ITC Party" consisting of the four network operators in Germany, as well as the Luxembourg network operator and two Austrian TSO, "*acting for the purposes of this Agreement as one single party and accepting to be bound for their respective obligations and liabilities hereunder on the basis of joint and several liability.*"[80] Similar arrangements exist between the TSO of the Baltic States. The purpose of the second sentence of Article 2(2)(b)of Regulation 1228/2003 is basically to accommodate these constellations. It may be added that, unlike in the German or Baltic cases, the ITC agreements do not make any reference to KOSTT as being linked to and/or represented by EMS, and thus do not acknowledge the existence of a control block within the meaning of the definition given in the

[79] Reply, at pages 9 and 10.

[80] ITC Agreement for 2008 and 2009. It needs to be underlined in that respect that the non-German parties of the "German ITC Party" are actually compensated for electricity transits through their networks.

agreements.[81] That does not mean that an arrangement similar to the German or Baltic one could not apply between EMS and KOSTT in the future.[82]

85. Furthermore, the bilateral agreements between KOSTT and EMS do not establish a single control block for ITC purposes only, as would be required by the second sentence of Article 2(2)(b)of Regulation 1228/2003. This is not disputed. First of all, they were concluded in the years 2000 and 2001 and thus predate both Regulation 1228/2003 and the ITC agreements. Secondly, only the Temporary Energy Exchange Agreement of 29 June 2000 contains provisions on electricity transit. That agreement, however, falls short of establishing a "*control block for ITC purposes only*", as it "only" provides for the possibility of electricity transit, and lays down rules on compensation. To the extent the bilateral agreements may be considered as establishing or extending a control block (the former JIEL and now SMM control block) under the coordination of EMS, this is a control block within the UCTE definition, i.e. coordination of the secondary (load-frequency) control function in the UCTE synchronous area,[83] but not a control block "*for ITC purposes only*". The bilateral agreements are also not in line with the definition of "control block" given in the ITC agreement, as given above.[84] Finally, if the SMM control block were to be considered as an ITC control block, this would mean that also the TSO of the former Yugoslav Republic of Macedonia and Montenegro would not independently participate in the ITC scheme, which is the case in practice.

(b) Transit costs

86. Article 3(6) of Regulation 1228/2003 establishes the methodology for calculating the costs to be taken into account for compensation under Article 3(1) of Regulation 1228/2003. Costs to be compensated need to relate to the costs of losses incurred by transmission systems as a result of the transit, and the costs of making infrastructure available to host such transits.

87. As was already explained in the Opening Letter, it is not necessary, for the purpose of the present case, to establish the total amount of costs due under this provision.[85] In its reply, the Ministry challenges the methodology used by KOSTT when calculating the costs under Article 3(6) of Regulation 1228/2006.[86] The present dispute is not a damage claim against the Republic of Serbia, but a case for non-compliance of Serbia with the Energy Community *acquis*, and namely Article 3(1) of Regulation 1228/2003. Any claim for compensation of KOSTT against EMS would have to be made in front of domestic courts or an arbitration tribunal. Evidently, the calculation to be made in these fora will be a complex one, and will have to take into account all circumstances of the case, including – as stipulated by Article 3(6) of Regulation 1228/2003 – "*an appropriate proportion of the cost of existing infrastructure, as far as infrastructure is used for the transmission of cross-border flows*".

88. In that context, the Secretariat would like to reiterate that the total costs does not necessarily have to correspond to the ITC payments received by EMS for the parts of the network operated by KOSTT, as Article 3 of Regulation 1228/2003 is applicable *ipso iure*, i.e. without any further implementation by the main addressees of Regulation 1228/2003, the transmissions system operators. In the future, i.e. if the Commission Regulation laying down guidelines relating to the ITC mechanism[87] is incorporated in the Energy Community, legally binding criteria for calculating the costs under what is now Article 3(6) of Regulation 1228/2006 may also apply to EMS and KOSTT. Furthermore, the Secretariat reiterates that Article 3(1) of Regulation 1228/2003 cannot be used as a basis for the compensation of costs incurred before the entry into force of the Treaty. And finally, the Secretariat cannot and will not pronounce itself on any counter-claims

[81] See ITC Agreement for 2008 and 2009, Item 1.2.11 and paragraphs 17 and 18 above.
[82] This is also indicated in a letter of 16 November 2010 by the Secretary-General of ENTSO-E to KOSTT.
[83] Glossary of the UCTE Operation Handbook "Control Block".
[84] See at paragraph 16 above.
[85] The complainant claims compensation of some € 8.500.000 for the period of July 2004 - July 2009.
[86] Reply, at page 9.
[87] See at paragraph 19 above.

EMS may have against KOSTT on other grounds, such as the provision of secondary control services, network ownership etc.

89. That said, and for the purpose of the present case, it is not disputed that costs were and are incurred as a result of hosting cross-border flows on the network operated by KOSTT. The occurrence of "*transit costs*" triggered the compensation scheme stipulated in Item 1.4.2 of the Temporary Energy Exchange Agreement between UNMIK and Serbia. The occurrence of costs due to electricity transits on the network operated by KOSTT, including a high level of transmission losses, is further confirmed by the energy regulatory authority of UNMIK, ERO.[88] It is finally not disputed that KOSTT – and ultimately the electricity customers in Kosovo through the transmission tariffs – bears the costs for operation, losses and maintenance as a result of hosting transit flows.

(3) Conclusion

90. It follows from the above that KOSTT, as the transmission system operator designated under the constitutional framework of UNMIK, is entitled to compensation for the costs incurred as a result of electricity flows on its network resulting from the impact of producer and/or consumer activities outside the Kosovo territory.

91. According to Article 3(2) of Regulation 1228/2003, EMS as the transmission system operator designated by the Republic of Serbia is under an obligation to compensate KOSTT for all cases where the electricity flow originates or ends on its system. By failing to do so, the Republic of Serbia, to which actions and non-actions of its state-owned transmission system operator are imputable under Article 2(2) of the Dispute Settlement Procedures, fails to comply with Article 3 of Regulation 1228/2003.

4. The capacity allocation on the interconnectors with third parties

92. The second part of the subject-matter of the present case concerns capacity allocation on the interconnectors[89] between the transmission system operated by KOSTT and the transmission systems of the adjacent Albania, former Yugoslav Republic of Macedonia and Montenegro.

(1) Preliminary remarks

93. It is not disputed that EMS, and not KOSTT, performs congestion management and allocates (50% of) the available transfer capacities on these interconnectors.[90] For this purpose, EMS on a monthly basis, following a pre-determined procedure published on its website, and subject to pre-determined terms and conditions, concludes contracts on the right of cross-border capacity use with interested market participants.

94. Congestion management and capacity allocation on interconnectors fall within the tasks of transmission system operators under Directive 2003/54/EC and Regulation 1228/2003. The latter, including the so-called Congestion Management Guidelines annexed to Regulation 1228/2003,[91] lays down rules for how congestion management and capacity allocation are to be performed. The fact that Serbia (and other Contracting Parties) have not fulfilled their obligation to perform common coordinated congestion management methods and procedures for allocation

[88] Letter by the Chairman of ERO dated 15 November 2010.

[89] Article 2(1) of Regulation 1228/2003 defines an interconnector as "*a transmission line which crosses or spans a border between Member States and which connects the national transmission systems of the Member States*". In the context of the Energy Community, the term "Member States" is to be understood as "Contracting Parties", including UNMIK. The term "border" does thus not necessarily relate to a boundary between states, but between Contracting Parties. In any event, it is not disputed to the Secretariat's knowledge, that the three interconnectors at issue in the present case each cross or span a border between states.

[90] See at paragraph 10 above.

[91] Incorporated into the Energy Community *acquis communautaire* by Decision No 2008/02/MC-EnC of the Ministerial Council of 27 June 2008.

of capacity as required by Item 3.2 of the Congestion Management Guidelines and Article 2(2) of Decision 2008/02/MC-EnC, forms the subject matter of a different dispute in Case ECS-6/11.

95. In the Opening Letter, the Secretariat, based on Regulation 1228/2003 and the Congestion Management Guidelines set out its understanding that, until the time a regionally coordinated scheme takes effect, (bilaterally coordinated) congestion management methods and procedures for allocation of capacity fall within the responsibility of "the transmission system operators involved", i.e. the transmission system operators between whose transmission systems the interconnector in question is situated, without prejudice to possible delegation of this responsibility by one of the transmission system operators involved to a third party These explanations were related to the respective controversy between EMS and KOSTT at the informal stage of the procedure.

96. At the same time, the Opening Letter concluded that – as the lack of KOSTT's involvement in managing congestion and allocating capacity on the three specified interconnectors is directly linked to the lack of recognition as a control area under the UCTE handbook, and the non-issuance of an EIC object type Y by ENTSO-E – the lack of power to allocate interconnection capacity cannot be clearly and unequivocally attributed to an action or non-action by EMS and thus the Republic of Serbia as would be required under Article 6 of the Treaty. There have been no new findings in that respect.

(2) Usage of revenues resulting from the allocation of interconnection

97. Article 6(6) of Regulation 1228/2003 requires that any revenues resulting from the allocation of interconnection "*shall be used for one or more of the following purposes: (a) guaranteeing the actual availability of the allocated capacity; (b) network investments maintaining or increasing interconnection capacities; (c) as an income to be taken into account by regulatory authorities when approving the methodology for calculating network tariffs, and/or in assessing whether tariffs should be modified.*" This limitation of possible usage is further specified in Item 6 of the Congestion Management Guidelines.

98. It is not disputed that EMS obtains revenues from performing congestion management on the three specified interconnectors, including the allocation of capacity. This is implicitly confirmed by the Ministry,[92] without it being necessary, for the purposes of the present case, to determine the total amount of those revenues.[93]

99. In its reply, the Ministry, contesting any failure to comply with Article 6(6) of Regulation 1228/2003, submitted that the total revenues of EMS, as approved by the regulatory authority, include – among other positions – also the revenue from allocation of cross-border transmission capacity, which, in turn, also includes the revenues obtained on the interconnectors with Albania, former Yugoslav Republic of Macedonia and Montenegro.[94]

100. The Ministry went on to state that among other things, the following costs were also covered from the total approved revenues:

- Costs related to infrastructure, including the cost of construction of the existing transmission network, which includes the transmission network in the territory of Kosovo built up to the year 1999;

- Costs related the provision of ancillary services, including primary, secondary and tertiary reserves and regulation (also) for the territory of Kosovo. Provision of these ancillary services by EMS guarantees for the transmission cross-border capacity, including on the borders with Albania, former Yugoslav Republic of Macedonia and Montenegro;

[92] Reply at page 12.
[93] KOSTT claims an amount of some € 10 mio for the period of 2004-2008 of revenue from the Republic of Serbia. In the context of the present procedure, it is not for the Secretariat to express itself on that amount.
[94] Reply at page 12.

- Costs related to the construction of new interconnectors power lines, such as the construction of a 400 kV interconnection between Serbia and the Former Yugoslav Republic of Macedonia, which increasing the cross-border transmission capacity.

101. Based on this submission, the Ministry concludes that it complies with Article 6(6) of Regulation 1228/2003.[95]

102. The Secretariat respectfully objects to that. The usage by EMS of the revenues from allocating capacity on the three specified interconnections is not in line with what is required by said provision.

103. Firstly, Article 6(6) of Regulation 1228/2003 requires that "any" revenues resulting from the capacity allocation on interconnectors are used for at least one of the purposes specified in that provision. As follows from the Ministry's submission, the revenue obtained from capacity allocation on the three interconnectors subject to the present dispute becomes part of EMS' overall revenues, which are then spent to finance all of EMS' activities, among which are the ones listed above. This approach does not ensure that any and all revenues resulting from interconnection capacity allocation on the three interconnectors in question are used for the required purposes. On the contrary, they may well, and are likely to be used to finance (also) other activities.

104. In that respect, it may be recalled that Item 6.4. of the Congestion Management Guidelines requires transmission system operators to "*clearly establish beforehand the use they will make of any congestion income they may obtain and report on the actual use of this income.*" The national regulatory authority is responsible for reviewing "*the procedure for the distribution of ... revenues*" (Item 6.1. of the Congestion Management Guidelines). It "*shall be transparent regarding the use of revenues resulting from the allocation of interconnection capacity*" (Item 6.2. of the Congestion Management Guidelines), and "*shall verify that this use complies with* [Regulation 1228/2003 and the Congestion Management Guidelines] *and that the total amount of congestion income resulting from the allocation of interconnection capacity is devoted to one or more of the three purposes described in Article 6(6) of Regulation* [1228/2003]" (Item 6.4. of the Congestion Management Guidelines). Furthermore, the regulatory authority shall publish, "*on an annual basis, and by 31 July each year, ... a report setting out the amount of revenue collected for the 12-month period up to 30 June of the same year and the use made of the revenues in question, together with verification that this use complies with* [Regulation 1228/2003 and the Congestion Management Guidelines] *and that the total amount of congestion income is devoted to one or more of the three prescribed purposes*" (Item 6.5. of the Congestion Management Guidelines). These requirements, which the regulatory authority has not fulfilled, serve precisely the purpose to ensure transparency of the use of congestion revenue, as well as its specificity in the sense that the entire congestion revenue is used for the purposes listed in Article 6(6) of Regulation 1228/2003 only. For the lack of transparency and specificity alone, Article 6(6) of Regulation 1228/2003 is not properly implemented.

105. Secondly, the usages offered by the Ministry do not correspond to the ones listed in Article 6(6) of Regulation 1228/2003.

106. Under Article 6(6)(a), the revenue would need to be used for guaranteeing the actual availability of the allocated capacity. Making available primary, secondary and tertiary reserves and regulation helps maintaining the frequency, alleviating imbalances or substantial congestion in the network. However, by doing so, EMS fulfils a general obligation within the UCTE synchronous zone for the entire control area for which it provides these services, as well as under the bilateral agreements between UNMIK and Serbia.[96] Neither does it earmark the revenues from capacity allocation on the interconnectors in question, nor does it use them in a specific manner to specifically guarantee the availability of the allocated capacity on these, as

[95] Reply, at page 12.
[96] Namely the Temporary Technical Arrangement.

would be required by Article 6(6)(a) of Regulation 1228/2003, i.e. by buying back capacity rather than cancelling capacity right in the event of difficulties.[97]

107. Under Article 6(6)(b), the revenue would need to be used for investments into network maintenance or increase of interconnection capacities. Construction of new interconnectors between Serbia and neighbouring countries may increase the interconnection capacity on the network operated by EMS, but not on the network operated by KOSTT, and is not meant to relieve eventual bottlenecks on the congested interconnectors in question. The planned 400 kV interconnection between Serbia and the Former Yugoslav Republic of Macedonia mentioned by the Ministry would be directly connecting EMS' network with that of MEPSO, without connection to the network operated by KOSTT. Furthermore, it is undisputed that all investments in interconnectors with the network operated by KOSTT, including the construction of new interconnectors, are financed solely by KOSTT, and not from the revenues obtained by capacity allocation. Finally, costs related to existing infrastructure on the territory of Kosovo, i.e. costs incurred over ten years ago, can evidently not be considered costs financed revenues from the allocation of interconnection capacity which occurred after those investments, namely from 2006 onwards.

108. Under Article 6(6)(c), the revenue would need to be used as an income to be taken into account by regulatory authorities in setting/modifying the network tariffs or the methodologies for their calculation. The revenue would thus have to be an income capable of reducing the overall level of transmission tariffs on the network operated by KOSTT. This is obviously not the case, as the revenues obtained by EMS are not passed on to KOSTT, and are thus not reflected in the tariff decisions by ERO, the regulatory authority in UNMIK.

109. Finally, the Secretariat would like to point to the „ECRB EWG Benchmarking Report on Compliance with Regulation (EC) No 1228/2003 and the Congestion Management Guidelines" of April 2008. Contrary to what the Ministry asserts in the reply, the Serbian regulatory authority stated in its reply to a questionnaire related to the use of congestion income that "*Congestion management income is used as an income to be taken into account by regulatory authorities when approving the methodology for calculating network tariffs, and/or in assessing whether tariffs should be modified,*"[98] i.e. third option under Article 6(6) of Regulation 1228/2003. As follows from the preceding paragraph, however, this does not affect the transmission tariffs on the network operated by KOSTT interconnected by the three lines in question, and does thus not qualify under Article 6(6) of Regulation 1228/2003.

(3) Conclusion

110. According to Article 6(6) of Regulation 1228/2003, EMS, as the transmission system operator allocating capacity on three interconnectors operated by KOSTT, is under an obligation to use the revenues received for at least one of the purposes specified in that provision. By not doing so, the Republic of Serbia, to which actions and non-actions of its state-owned transmission system operator are imputable under Article 2(2) of the Dispute Settlement Procedures, fails to comply with Article 6 of Regulation 1228/2003.

V. Conclusion

111. In the light of the foregoing, the Secretariat concludes that the Republic of Serbia has failed to fulfil its obligations under the Energy Community Treaty as follows:

[97] That the latter is the method applied by EMS in such cases is confirmed by Section 8 of its "Rules for Allocation of available Cross-Border Transfer Capacities on Borders of Control Area of Republic of Serbia and Balancing of Market Participants Schedules from 01/01/2011 – 31/12/2011".

[98] ECRB EWG Benchmarking Report on Compliance with Regulation (EC) No 1228/2003 and the Congestion Management Guidelines, at point 3.2.1.4.

1. By not paying compensation to KOSTT for costs incurred as a result of hosting cross-border flows of electricity on the network operated by KOSTT in cases where the electricity flow originates or ends on EMS' system, the Republic of Serbia, to which actions and non-actions of its state-owned transmission system operator are imputable, fails to comply with Article 3 of Regulation 1228/2003.
2. By not using the revenues resulting from the allocation of interconnection on the interconnectors with Albania, the former Yugoslav Republic of Macedonia and Montenegro for one or more of the purposes specified in Article 6(6) of Regulation 1228/2003, the Republic of Serbia, to which actions and non-actions of its state-owned transmission system operator are imputable, fails to comply with Article 6 of Regulation 1228/2003.

112. In accordance with Article 13(2) of the Rules of Procedure for Dispute Settlement, the Republic of Serbia is requested to rectify the breaches identified in the present Reasoned Opinion, or at least make clear and unequivocal commitments in that respect, within a time-limit of two months, i.e. by

7 December 2011.

and notify the Secretariat of all steps undertaken in that respect.

113. It is recalled that, throughout the preliminary procedure, the Secretariat is willing to discuss swift and practicable solutions with all parties involved. Any initiative by the Ministry aimed at settling the present dispute in line with the Energy Community *acquis*, including further negotiations, will be actively supported by the Secretariat.

Vienna, 7 October 2011

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