TO THE MINISTERIAL COUNCIL OF THE ENERGY COMMUNITY represented by the Presidency and the Vice-Presidency of the Energy Community

REASONED REQUEST

in Case ECS-3/08

Submitted pursuant to Article 90 of the Treaty establishing the Energy Community and Article 28 of Procedural Act No 2008/1/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, the

SECRETARIAT OF THE ENERGY COMMUNITY

against

REPUBLIC OF SERBIA

is seeking a Decision from the Ministerial Council 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 Secretariat of the Energy Community has the honour of submitting the following Reasoned Request to the Ministerial Council:

I. Relevant Facts

1. Introduction

(1) The present case concerns the failure of the transmission system operator for electricity in the Republic of Serbia, the fully state-owned company *Elektromreža Srbije* ("*EMS*"), to use the congestion revenue made through allocating capacity on the electricity interconnectors between the electricity system operated by the transmission system operator (*Operator*

Sistemi, Transmisioni dhe Tregu të Kosovës Sh.a, "*KOSTT*") of Kosovo*[1] and the electricity systems of three Contracting Parties adjacent to Kosovo*.

(2) This Reasoned Request originated in a complaint against the Republic of Serbia by *KOSTT* ("the complainant").[2]

(3) As the Secretariat explained in greater detail in the Opening Letter and Reasoned Opinion,[3] the complainant was established as the transmission system operator in Kosovo* under United Nations Interim Administration Mission in Kosovo ("UNMIK") administration and licensed by the Energy Regulatory Office ("ERO") of Kosovo*. In accordance with its license,[4] the complainant operates the transmission system in the territory of Kosovo* under the domestic legal framework, namely the Laws on Energy, on Electricity and on the Energy Regulator of October 2010.[5] Articles 11 to 14 of the Law on Electricity transpose the provisions of Directive 2003/54/EC regarding the tasks and responsibilities of transmission system operators and make them binding on *KOSTT*.[6]

(4) The complaint 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 Kosovo*, namely Albania, the former Yugoslav Republic of Macedonia and Montenegro.

(5) Following up on the complaint, the Secretariat and Serbia carried out the preliminary procedure as envisaged by Article 10 of the Rules of Procedure for Dispute Settlement under the Treaty and summarized below.[7] The preliminary procedure was accompanied by many bilateral and trilateral discussions and negotiations aiming at settling the present dispute amicably between the two transmission system operators involved, the Governments of Serbia and Kosovo*. These discussions and negotiations have taken place not only in the framework of the Energy Community and under the auspices of the Secretariat, but as well as part of the political dialogue between Serbia and Kosovo* facilitated by the the EU High Representative of the Union for Foreign Affairs and Security Policy and the European Commission. As all efforts made over the last eight years did ultimately not result in fully rectifying the breach of Energy Community law by Serbia, the Secretariat decided to submit the present Reasoned Request to the Ministerial Council.

(6) On the basis of the complaint, the Secretariat during the preliminary procedure had also pursued the claim that, "*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,*

[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.
[2] ANNEX 1.
[3] Paragraphs 8 to 30 of the Reasoned Opinion, ANNEX 2.
[4] ANNEX 3.
[5] To be found at http://www.assembly-kosova.org/common/docs/ligjet/2010-184-eng.pdf; http://www.assembly-kosova.org/common/docs/ligjet/2010-201-eng.pdf; http://www.assembly-kosova.org/common/docs/ligjet/2010-185-eng.pdf. Last visisted 12 May 2016.
[6] The historical background to the conflict is set out in more detail by a background paper submitted by KOSTT. Further documentation on the case history was submitted together with the complaint. In order not to overburden the present Reasoned Request, they have not all been attached. They are available at the Secretariat.
[7] Under point III.

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." The factual and legal reasons for this claim are set out extensively in the Opening Letter and the Reasoned Opinion.

(7) With effect of 1 January 2016, however, *KOSTT* became party to the ITC mechanism by acceding to the ITC Agreement of 3 March 2011. Under these circumstances, the Secretariat considers the requirements of Article 3 of Regulation (EC) 1228/2003 to be complied with,[8] and will not pursue this claim further.

2. Capacity allocation on the interconnectors with Albania, former Yugoslav Republic of Macedonia and Montenegro

(8) The transmission system located in Kosovo* is currently interconnected with the transmission systems of Albania[9] (220 kV interconnector), the former Yugoslav Republic of Macedonia (400 kV interconnector) and Montenegro (400 kV interconnector). As was confirmed by the Ministry during the preliminary procedure, [10] transmission capacity allocation as means of congestion management 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, *EMS*.

(9) The allocation of capacity between bidding zones forms an element of congestion management together with other operational (cross-border redispatch, curtailing of schedules, etc.) and commercial (countertrading, early closure of the nomination gate, etc.) means. The allocation of capacity between bidding zones includes in particular network modelling, the calculation of cross-zonal capacity [11], the allocation of said capacity, scheduling, and accounting. In order to assume responsibility for these procedures and to actually perform them, the network operator in question must have and exercise operational responsibility for a clearly defined part of the interconnected network.

(10) No capacity allocation takes place between the systems of Kosovo* and Serbia,[12] which (until the signature of the Framework Agreement in 2014[13]) was not recognised by *EMS* as an interconnector.).The capacity allocation/congestion management on the three "external" interconnectors relevant for the present case is performed by both split and joint auctions, whereby *EMS* and the respective other transmission system operators *OST* (Albania), *MEPSO* (the former Yugoslav Republic of Macedonia) and *CGES* (Montenegro) organize auctions for 50% or 100% of the total available cross-border capacity for a specific trading time frame. For its part, *EMS* performs explicit auctions on yearly, monthly and daily basis,

[8] In the meantime, the Regulation No 838/2010 on laying down guidelines relating to the inter-transmission system operator compensation mechanism and a common regulatory approach to transmission charging was incorporated in the Energy Community by Decision 2013/01-PHLG-EnC on the incorporation of Regulation (EU) No 838/2010 in the Energy Community.
[9] A new 400kV line between Kosovo* and Albania is expected to be commissioned in June 2016.
[10] Reply to the Opening Letter, ANNEX 4, at page 3.
[11] Covering both predominant approaches applied in the Energy Community, namely the calculation of cross-zonal capacity in a so-called flow-based manner or based on coordinated net transmission capacity.
[12] Connected by one 400 kV, one 220 kV and two 110 kV lines.
[13] See below at paragraphs 19-21. This recognition, however, fails to establish the necessary operational responsibility for *KOSTT* due to the pending entry into force of the Agreement on the Connection of the Kosovo* power system to the Continental Europe Synchronous Area.

as well as intra-day allocation [14] Successful participants in the capacity allocation procedures performed through pay-as-bid auctions subsequently conclude a contract with *EMS*, and pay a fee for the capacity usage rights allocated to them.[15] Capacity allocation on the three interconnectors subject to the present case is not being performed by a regional coordinated auction office such as the South East European Coordinated Auction Office ("CAO").

3. KOSTT's relations with ENTSO-E

(11) *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").[16] *EMS*, on the other hand, is a member of ENTSO-E.

(12) 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*".[17]

(13) 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*".[18] 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*."[19] Following the disintegration of Yugoslavia and the subsequent political and technical changes, *EMS* now (since 2006) acts as the coordinator of the "SMM" control block made up of three control areas, namely the ones of the transmission system operators of Serbia, the former Yugoslav Republic of Macedonia and Montenegro. The system operators of these countries are all members of ENTSO-E. As control block operator, *EMS* performs scheduling, load-frequency (secondary) control and settlement and accounting for the networks of the participating transmission system operators.[20]

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[14] Pursuant to *EMS*' "Rules for Allocation of Available Cross-Border Transfer Capacities on Borders of JP EMS Control Area from 01.01.2016 – 31.12.2016.", http://www.ems.rs/media/uploads/2015/11/Pravila-za-2016_50_e-29.10.2015.-cista.pdf.

[15] *EMS*' "Rules for Allocation of Available Cross-Border Transfer Capacities on Borders of EMS Control Area from 01/01/2013 till 31/12/2013" Paragraph 6.3 and Appendix 3.

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

[17] Glossary of the Continental Europe Operation Handbook "Control Area". Secondary control = load-frequency control; see https://www.entsoe.eu/publications/system-operations-reports/operation-handbook/.

[18] Glossary of the Continental Europe Operation Handbook "Control Block".

[19] Glossary of the Continental Europe Operation Handbook "Control Block Operator".

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

(14) *KOSTT* currently lacks the formal recognition as operator of a distinct part of the interconnected Continental European electricity grid, i.e. as a control area in accordance with the Continental Europe Operation Handbook. Without such recognition through the finalisation and entry into force of a Connection Agreement acknowledging that "*KOSTT is authorised* [...] *to perform the respective TSO functions for the Kosovar Power System*"[21] and that *KOSTT* "*ensures safe operation of the Kosovar Power System and preserve security in the neighbouring CESA [Continental Europe Synchronous Area]*"[22], *KOSTT* is prevented from allocating capacity on the interconnectors with the transmission systems of adjacent Contracting Parties. In administrative terms, this presupposes the issuance a so-called Area (10Y) 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.[23] ETSO (now ENTSO-E) acts as the Central Issuing Office of these codes. Whereas a 10Y EIC would identify a control area, *KOSTT* operates (only) under a 10X EIC[24] identifying a party. For the purposes of inter-system operator data interchange, however, a 10Y EIC is required. *EMS* operates under the 10Y EIC for the control area covering also the network on the territory operated by *KOSTT*.

(15) While possession of 10Y EIC is thus a prerequisite for interconnection capacity allocation by *KOSTT*, it proved not to be sufficient in itself. Following the 2014 Framework Agreement between *EMS* and *KOSTT* (see below at paragraph 30) the latter was indeed issued a 10Y EIC following a request of 24 March 2014 for issuance submitted by *CGES* to ENTSO-E in its role as central Issuing Office, without, however, having been able to engage in capacity allocation on the interconnectors with the adjacent systems.

(16) On 23 October 2014, following years of discussions and negotiations between *EMS* and *KOSTT* both under the auspices of the European Commission and the Secretariat,[25] negotiations between *KOSTT* and ENTSO-E about *KOSTT*'s future responsibilities stemming from the independent operation of a part of the synchronously connected transmission network of continental Europe started. The process led to the finalising of the Agreement on the Connection of the Kosovo* power system to the Continental Europe Synchronous Area ("the Connection Agreement").

(17) However, *EMS* submitted a change request (a so-called revision request) to the Connection Agreement on 22 July 2015, after the approval of the Connection Agreement by the relevant ENTSO-E body, the Regional Group Continental Europe on 9 July 2015. This request resulted in the introduction of a condition for the entry into force of the agreement not related to system operation which prevents the entry into force of the Connection Agreement.

(18) Article 16 of the Connection Agreement signed on 1 October 2015,[26] the change resulting from the revision request, reads:

"*(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*."

[21] *See Connection Agreement between* KOSTT and ENTSO-E, point F, Whereas Section, at paragraph 16 below.
[22] Ibid. 2(1)b).
[23] As further explained by ENTSO-E in the "EIC Manual", https://www.entsoe.eu/index.php?id=73&libCat=eic
[24] https://www.entsoe.eu/fileadmin/user_upload/edi/library/eic/cds/area.htm.
[25] See for the results of these negotiations below at paragraph 46 et seq.
[26] ANNEX 18.

(19) This latter condition has not been fulfilled to date. At the same time, it is not disputed that *KOSTT* fulfils all requirements related to operational security in compliance with the standards of ENTSO-E's Operation Handbook for the interconnected Synchronous Area Continental Europe.

(20) When asked to agree to a withdrawal of this condition which effectively makes progress towards *KOSTT* taking over the responsibility for congestion management and capacity at the three interconnectors with the systems of the adjacent countries all but impossible, *EMS* justified its insistence with the need to implement the 2013 Energy Arrangement,[27] a political agreement between Prime Ministers of Kosovo* and Serbia in Brussels which indeed makes reference to the establishment of a "*new electricity company to supply customers … in the four northern Serb majority municipalities*" supported by the Kosovo* authorities. However, linking this commitment to the unconditional support to *KOSTT*'s Connection Agreement with ENTSO-E was not required by the 2013 Energy Arrangement and is critical under the Third Energy Package's unbundling provisions. The Secretariat, in an e-mail dated 2 May 2016 explained that to the Regional Group Continental Europe of ENTSO-E. Attached to this e-mail was a clarification made by the EU facilitator of the energy dialogue between Kosovo* and Serbia confirming the Secretariat's view.[28]

(21) As a consequence, there has been no progress with regard to *KOSTT* becoming a control area as a precondition for being able to perform congestion management and capacity allocation on the interconnectors with the neighbouring electricity systems.

4. Bilateral agreements between EMS and KOSTT

(22) The bilateral relationship between *KOSTT* and *EMS* was initially governed by two agreements, the Temporary Energy Exchange Agreement of 2000 and the Temporary Technical Arrangement of 2001. Both agreements in place were entered into between the Public Utilities Department (PUD) of UNMIK and the Ministry of Energy and Mining of Serbia.

(23) The *Temporary Energy Exchange Agreement* of 29 June 2000[29] formed the basis on which both parties will, "*through their respective implementing agencies*", *"exchange, purchase and transit* electricity".[30]

(24) The *Temporary Technical Arrangement* of 26 March 2001[31] described 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*). Item 1.3 of the Arrangement determined that "*for the purposes of load-frequency control, spinning reserve and mutual emergency assistance, the Parties will be considered a single control*

[27] ANNEX 15, see paragraph 27 below. The political commitments made in this Arrangement were clarified further in 2015 by "Conclusions of the EU facilitator on the implementation of the 2013 Energy Agreement", see paragraph 37 below.
[28] ANNEX 21.
[29] ANNEX 2.
[30] Introduction to the Temporary Energy Exchange Agreement.
[31] ANNEX 3.

area coordinated by the MEM [the Ministry] *dispatch centre…*",[32] including also the utilities[33] of Montenegro and Republika Srpska. For the purposes of dispatching, on the other hand, Item 1.2.5 provided that both PUD and MEM are responsible for issuing dispatch instructions to generating stations "*in their control area*".

(25) The two agreements governing the bilateral relationship between the networks in Serbia and UNMIK are valid "*during the United Nations Interim Administration in Kosovo*"[34] and have not been terminated until the entry into force of the Inter-TSO Agreement on Network and System Operation Management (Operational Inter-TSO Agreement) on 15 September 2014, despite the fact that they were partly not complied with anymore[35].

(26) Neither agreement tasks or mandates *EMS* with performing capacity allocation on interconnectors with third parties, nor does the SMM control block arrangement, as the autonomy enjoyed by the transmission system operators of former Yugoslav Republic of Macedonia and Montenegro transmission system operators in that respect confirms.

(27) On 8 September 2013, a so-called Arrangement regarding Energy ("2013 Energy Agreement") was signed by the Prime Ministers of the two Contracting Parties Kosovo* and the Republic of Serbia, under the auspices of the High Representative of the Union for Foreign Affairs and Security Policy and the European Commission. The 2013 Energy Agreement stipulated that "*KOSTT will be recognized as the Transmission System Operator for the territory of Kosovo for the purpose of participation in all relevant mechanisms (ITC, Congestion Management etc.)".* Furthermore, the signatories promised that "*EMS will support KOSTT to become a member of ENTSO-E*."

(28) The 2013 Energy Agreement also envisaged then signature of a bilateral operational agreement between *EMS* and *KOSTT* repealing the Temporary Energy Exchange Agreement and the Temporary Technical Arrangement. Finally, both parties agreed "*to find a common settlement solution as regards KOSTT claims and EMS claims. KOSTT considers that these claims are for … unpaid interconnection allocation revenue….*"

(29) Both companies failed to sign said operational agreement within the timeline foreseen in the 2013 Energy Agreement. Instead representatives from both companies held several rounds of negotiations facilitated by the Secretariat.

(30) As a result of that process, on 12 February 2014 a legally binding "*Framework Agreement relating to the cooperation and coordination on the interconnected Transmission Systems of EMS and KOSTT*" was signed by both companies.[36] The Framework Agreement envisages that "*KOSTT assumes the responsibility for the its area within the Synchronous Area Continental Europe, and as part of the Control Block comprising the transmission systems of the Parties and the neighbouring CGES and MEPSO, subject to agreement of the TSOs of the other areas of the Control Block*" subject to compliance by both parties to the ENTSO-E Operation Handbook and a future Operational Inter-TSO Agreement to be concluded between both parties.

[32] However, EMS does not invoice KOSTT for these services as foreseen by Item 1.3. of the Temporary Technical Arrangement.
[33] At the time still vertically integrated companies.
[34] Item 2.5.2. of the Temporary Energy Exchange Agreement, Item 2.4.3. of the Temporary Technical Arrangement.
[35] Paragraph 12 of the Inter-TSO Agreement.
[36] ANNEX 16.

(31) The Framework Agreement in itself does not provide for an immediate change in control and responsibility over what the Agreement refers to as "*Congestion Management in the form of Capacity Allocation*".

(32) However, in Article 2.2 of the Framework Agreement, "*the Parties agree to continuously improve their cooperation in all areas of system operation with the aim to establish a Control Area operated by KOSTT in accordance with ENTSO-E's Operation Handbook. EMS will support KOSTT's membership in ENTSO-E*." Article 2.5 of the Framework Agreement delineates the two transmission system operator's system areas.

(33) For the congestion revenues collected by *EMS* in the past through capacity allocation on the three interconnectors of relevance for the present case, the Framework Agreement envisages that "[u]*ntil KOSTT becomes … solely responsible for Congestion Management in the form of Capacity Allocation, the Parties will settle both revenues received and costs accrued for … congestion revenues from the capacity allocation of interconnectors with OST, MEPSO and CGES, in line with the separate agreements on Congestion Management, as of 25 February 2014*". To date, the two transmission system operators have failed to finalise and sign such an agreement.

(34) After the signature of the Framework Agreement, a series of meetings between *EMS* and *KOSTT*, facilitated again by the Secretariat, took place in Vienna on 12 March 2014, 15 April 2014, 5 and 6 May 2014, and 3 October 2014, with the aim to negotiate and finalise the implementation agreements foreseen in the Framework Agreement.

(35) On 15 September 2014, *KOSTT* and *EMS* signed a legally binding "*Inter-TSO Agreement on Network and System Operation Management*",[37] the purpose of which is "*to stipulate the rules and routines applying to the cooperation between the EMS and KOSTT in order to ensure the secure operation of the interconnected transmission network*. *The earliest as of 1 January 2015, KOSTT and EMS will operate transmission systems under their responsibilities as two separate Control Areas, subject to KOSTT's commitment to comply with the applicable standards of ENTSO-E's Operation Handbook and any other requirements ENTSO-E may set.*"

(36) In a set of annexes, the Operational Inter-TSO Agreement covers the following issues: Load-Frequency Control and Performance, Scheduling and Accounting, Operational Security, Coordinated Operational Planning, Emergency Procedures, Communication Infrastructure, Data exchange and Operational Training. *KOSTT*'s involvement in congestion management and capacity allocation on the three interconnectors with adjacent Contracting Parties is not directly affected by the Inter-TSO Agreement.

(37) On 25 August 2015, another meeting between Serbia and Kosovo* in the framework of the political dialogue in Brussels resulted in "Conclusions of the EU facilitator on the implementation of the 2013 Energy Agreement".[38] These Conclusions identified the steps required to implement the open issues of the 2013 Energy Agreement. Among other commitments, the Conclusions include a pledge by "*Serbia, and EMS,* [to] *support KOSTT's application to sign an interconnection agreement with ENTSO-E, including in the appeal process*." On 1 October 2015, ENTSO-E and KOSTT signed the Connection Agreement referred to above,[39] which has never taken effect.

[37] ANNEX 17.
[38] ANNEX 19.
[39] At paragraph 16 et seq.

II. Relevant Energy Community Law

(38) Energy Community law is defined in Article 1 of the Rules of Procedure for Dispute Settlement under the Treaty ("Dispute Settlement Procedures")[40] 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).

(39) In the following, a selection of provisions of Energy Community law 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 legal assessment hereto. The Secretariat will discuss the applicable law to the present case as part of the Legal Assessment under point IV. below.

(40) 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.[41]

(41) 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.

(42) Article 6 of Regulation 1228/2003 reads:[42]

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.

[40] Procedural Act No 2008/01/MC-EnC of 27 June 2008.
[41] Annex I to the Treaty was subsequently replaced by Decision 2011/02/MC-EnC of the Ministerial Council of the Energy Community of 6 October 2011.
[42] The amendment in the relevant Article in the Third package's Regulation 714/2009, Article 16(6), on use of revenues resulting from the allocation of interconnection has no impact on the legal basis of this case.

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 16(6) of Regulation (EC) 714/2009, incorporated in the Energy Community by Decision 2011/02/MC-EnC of the Ministerial Council of the Energy Community of 6 October 2011, reads:

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

(a) guaranteeing the actual availability of the allocated capacity; and/or

(b) maintaining or increasing interconnection capacities through network investments, in particular in new interconnectors.

If the revenues cannot be efficiently used for the purposes set out in points (a) and/or (b) of the first subparagraph, they may be used, subject to approval by the regulatory authorities of the Member States concerned, up to a maximum amount to be decided by those regulatory authorities, as income to be taken into account by the regulatory authorities when approving the methodology for calculating network tariffs and/or fixing network tariffs.

The rest of revenues shall be placed on a separate internal account line until such time as it can be spent on the purposes set out in points (a) and/or (b) of the first subparagraph. The regulatory authority shall inform the Agency of the approval referred to in the second subparagraph.

(45) 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.

III. Preliminary Procedure

(46) In August 2008, the Secretariat received the complaint by *KOSTT* against the Republic of Serbia referred to above.[43]

(47) 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.

(48) 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 an agreement being possible. In early 2010, the Secretariat proposed a Memorandum of Understanding to govern the bilateral relations between *EMS* and *KOSTT*, on which again no agreement could be reached.

(49) In the absence of a solution to the dispute, the Secretariat sent an Opening Letter under Article 12 of the Dispute Settlement Procedures to the Republic of Serbia on 17 September 2010.[44] 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. 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 Kosovo*.

(50) In a reply to the Opening Letter dated 17 November 2011,[45] 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.

[43] Paragraph 2 above and ANNEX 1.
[44] ANNEX 4.
[45] ANNEX 5. The complainant submitted comments to this reply on 22 March 2011, at ANNEX 6.

(51) Having not been convinced by the Ministry's reply, the Secretariat submitted a Reasoned Opinion on 7 October 2011.[46] The Reasoned Opinion discussed the arguments put forward by Serbia. It essentially concluded that the legal concerns raised by the Secretariat had not been rebutted.

(52) In the reply to that Reasoned Opinion,[47] Serbia did not respond to the factual and legal statements made in the Reasoned Opinion. Instead, it stated that "*the Republic of Serbia is fully devoted to finding a swift and practicable solution aimed at settling the present dispute*."

(53) As announced in the reply, the Republic of Serbia proposed to UNMIK the conclusion of bilateral (technical) agreement between Serbia and UNMIK, which was not acceptable to the latter.

(54) In the absence of any further steps being taken to resolve the present dispute, the Secretariat offered to mediate negotiations for a bilateral agreement between the two companies with the involvement of the Ministry in charge of Energy of Serbia,[48] however, without concrete outcome.[49] In a letter sent by the Secretariat to Serbia on 3 October 2012,[50] the Secretariat deplored that a negotiated solution to the present dispute, as announced in Serbia's reply to the Reasoned Opinion, was not possible to be achieved.

(55) Subsequently, the Secretariat was informed about a political dialogue taking place between Kosovo* and Serbia under the auspices of the High Representative of the Union for Foreign Affairs and Security Policy. By a letter dated 7 November 2012, the Serbian Minister of Energy, Development and Environmental Protection announced to settle the present case in the framework of this dialogue.[51]

(56) For the continuation of the discussions and negotiations, reference is made to the account given in paragraph 27 *et seq*. above.

IV. Legal Assessment

1. Procedural issues

(57) As a point of departure, the Secretariat notes that the Dispute Settlement Procedures adopted by the Ministerial Council in 2008 have been amended in October 2015.[52] Pursuant to Article 46(2) of the Procedural Act of 2015 amending the Dispute Settlement Procedures, however, „[c]*ases initiated already before 16 October 2015 shall be dealt with in accordance with the Procedural Act applicable before the amendments adopted on that date*."

(58) The Secretariat thus submits that the present Reasoned Request is being decided by the Ministerial Council under the Dispute Settlement Procedures of 2008.

[46] ANNEX 7.
[47] ANNEX 8.
[48] Letter by the Secretariat to the Ministry of Energy, Development and Environmental Protection of 3 August 2012, ANNEX 9.
[49] See Letter by the Ministry of Energy, Development and Environmental Protection to the Secretariat of 9 August 2012, ANNEX 10.
[50] ANNEX 11.
[51] ANNEX 12.
[52] PA/2015/04/MC-EnC of 16 October 2015 amended Procedural Act No 2008/01/MC-EnC of 27 June 2008.

(59) Moreover, in its Reply to the Opening Letter, the Ministry doubts as to *KOSTT*'s legitimacy to submit a complaint under Article 90 of the Treaty.[53]

(60) 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 20(2) of the Dispute Settlement Procedures in the version applicable to the case at hand defines the notion of "private body" as encompassing "*all natural and legal persons as well as companies, firms or association having no legal personality*". The definition chosen by the Ministerial Council for the term "*private bodies*" evidently relies on form (in the sense of companies established under private law), not on ownership. The Secretariat notes that this definition was not affected by the amendments to the Dispute Settlement Procedures in 2015.

(61) *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 Kosovo*. It thus fulfils the definition in Article 20(2) of the Dispute Settlement Procedures.

(62) In any event, the Secretariat recalls that in order for it to initiate a preliminary procedure, it does not depend on a complaint but can do so by its own initiative.[54]

2. *Applicable Law*

(63) Firstly, the case leading to the present Reasoned Request was initiated in 2008, i.e. at a time when Article 11 of the Treaty as well as its Annex I still referred to the so-called Second Energy Package, i.e. for the purpose of the present case Directive 2003/54/EC and Regulation (EC) No 1228/2003. In July 2009, the so-called Third Energy Package was adopted in the European Union. In the area of electricity, this Package consists 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 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. In the European Union, this legislation entered into force on 3 March 2011.

(64) These legal acts were incorporated in the Energy Community *acquis communautaire* by Decision 2011/02/MC-EnC of the Ministerial Council of the Energy Community of 6 October 2011 on the implementation of Directive 2009/72/EC, Directive 2009/73/EC, Regulation (EC) No 714/2009 and Regulation (EC) No 715/2009 and amending Articles 11 and 59 of the Energy Community Treaty ("Decision 2011/02/MC-EnC"). Decision 2011/02/MC-EnC repealed Directive 2003/54/EC and Regulation (EC) No 1228/2003. The Decision and hence Directive 2009/72/EC and Regulation (EC) No 714/2009 were to be implemented by Contracting Parties by 1 January 2015.

(65) The Secretariat respectfully submits that despite the change in *acquis communautaire* in the course of the preliminary procedure, the relevant law under which this case should be decided is still the Second Energy Package and thus Directive 2003/54/EC and Regulation (EC) No 1228/2003.

[53] Reply to the Opening Letter, at page 1.
[54] Article 11(2) of the Dispute Settlement Procedures.

(66) According to settled case-law of the Court of Justice of the European Union, relevant to the case at hand under Article 94 of the Treaty, that, in the context of proceedings under Article 258 TFEU, the basis for infringement procedures in the European Union, "*the existence of a failure to fulfil obligations must be assessed in the light of the European Union legislation in force at the close of the period prescribed by the Commission for the Member State concerned to comply with its reasoned opinion*."[55]

(67) In the present case, that period closed on 7 December 2011. On that date Directive 2003/54/EC and Regulation (EC) No 1228/2003 were still in force.

(68) Moreover, it is to be noted that Decision 2011/02/MC-EnC incorporating Directive 2009/72/EC and Regulation (EC) No 714/2009 in the Energy Community did, in the most relevant provision for the decision of the present case, Article 6(6) of Regulation (EC) No 1228/2003 was replaced by Article 16(6) of Regulation (EC) No 714/2009. In determining how congestion revenue may be used, the latter provision applies stricter standards for the third option offered by Energy Community law, namely the reduction of the general level of network tariffs. Deciding the present dispute under the Second Energy Package is thus also more favourable to the Party concerned, Serbia.

(69) Should the Ministerial Council decide not to follow the jurisprudence of the Court of Justice of the European Union referred to above, the Secretariat submits that the present dispute should be decided based on Article 16(6) of Regulation (EC) No 714/2009. The arguments put forward in the present Assessment remain the same.

(70) Secondly, 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).

(71) The following set of rules, in particular, are outside the scope of Energy Community law and do not form the basis for the assessment of Serbia's compliance:

Rules pertaining to European TSO cooperation

(72) The technical 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 such as the Regional Group Continental Europe's Operation Handbook pursue primarily goals of technical nature. This does neither question their importance nor the increased tasks of ENTSO-E under the Third Energy Package. Those tasks, however, are not at stake in the present case.

[55] See, *inter alia*, Case ECLI:EU:C:2011:339 Commission v Germany, at paragraph 126; Case C 365/97 Commission v Italy [1999] ECR I 7773, paragraph 32; Case C 275/04 Commission v Belgium [2006] ECR I 9883, paragraph 34; and Case C 270/07 Commission v Germany [2009] ECR I 1983, paragraph 49).

Rules pertaining to network ownership

(73) The Secretariat has taken note of the conflicting views by Serbia and Kosovo* on ownership of transmission assets on the territory of Kosovo*.[56] 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. 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*.[57]

Rules pertaining to the bilateral agreements between KOSTT and EMS

(74) 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 relevance to the present case only for the establishment of the factual situation.

3. KOSTT's status as transmission system operator

(75) During the preliminary procedure, the question whether or not *KOSTT* is a transmission system operator was controversially discussed.[58] The Secretariat had consistently argued that *KOSTT* is indeed a transmission system operator within the meaning of Energy Community law. Following the conclusion of two bilateral agreements between *KOSTT* and *EMS* in their capacities as transmission system operators as well as a Connection Agreement between *KOSTT* and ENTSO-E, the Secretariat assumes that this status is no longer disputed by Serbia. Article 1.1 of the Inter-TSO Agreement, for instance, introduces the parties as follows: "*JP Elektromreža Srbije (EMS) and Operator Sistemi, Transmisioni dhe Tregu të Kosovës – KOSTT (KOSTT) (each a Party and together the Parties) are licensed Transmission System Operators (TSO) and Electricity Market Operators*." Should Serbia still maintain the view that *KOSTT* is not a transmission system operator within the meaning of Energy Community law, the Secretariat refers to its reasoning in the Opening Letter and the Reasoned Opinion.

4. Substance

(76) The subject matter of the present case concerns the use of revenues made from the allocation by *EMS* of transmission capacity on the interconnectors with the Contracting Parties adjacent to Kosovo*, namely Albania, the former Yugoslav Republic of Macedonia and Montenegro.

(77) Congestion management through capacity allocation on interconnectors are among 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

[56] The Serbian position is expressed, *inter alia*, in the Reply, at pages 2 and 7, whereas the position of Kosovo*/UNMIK is reflected in Article 11(1) of the Law on Electricity.
[57] Reply to the Opening Letter, at page 7.
[58] ANNEX 4. ANNEX 7.

to Regulation 1228/2003,[59] lays down rules for how congestion management and capacity allocation are to be performed.

(78) It is not disputed that *KOSTT*, as the transmission system operator of Kosovo*, was under a legal obligation to implement Regulation (EC) No 1228/2003 (now repealed and replaced by Regulation (EC) No 714/2009), including the operation of its interconnectors.[60] Article 9(c) of Directive 2003/54/EC requires that the transmission system operator in each Contracting Party "*shall be responsible for … managing energy flows on the system, taking into account exchanges with other interconnected systems*" as further defined by the provisions of Regulation 1228/2003.

(79) It is equally not disputed that *EMS*, and not *KOSTT*, performs congestion management and allocates (50% of) the available transfer capacities on the above-mentioned interconnectors in the absence of a formal recognition of *KOSTT* as control area pending the entry into force of the Connection Agreement with ENTSO-E.[61] For this purpose, *EMS* 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.

(80) For the sake of clarity, the Secretariat does not maintain in the present case that Serbia fails to comply with Energy Community law by performing congestion management through capacity allocation on the three interconnectors in question but by the usage of revenues resulting from the allocation of that interconnection.

(81) 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.

(82) It is not disputed that *EMS* obtains revenues from performing congestion management on the three specified interconnectors, including the allocation of capacity. This is evident from the Allocation Rules and the reported transactions as displayed on *EMS*' website and the central transparency platform operated by ENTSO-E,[62] and was also confirmed by the Ministry.[63] Allocated capacities and capacity prices for all relevant borders are also constantly published on the websites of the four transmission system operators. *EMS*' revenues is also confirmed by the Serbian regulatory authority.[64]

(83) In its reply to the Opening Letter, the Ministry 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

[59] Incorporated into the Energy Community *acquis communautaire* by Decision No 2008/02/MC-EnC of the Ministerial Council of 27 June 2008.
[60] See, to that effect, a letter by Deputy Director Barbaso of DG Energy to ENTSO-E dated 29 July 2009, ANNEX 13.
[61] See at paragraphs 3 and 4 above.
[62] *EMS*' "Rules for Allocation of Available Cross-Border Transfer Capacities on Borders of JP EMS Control Area from 01.01.2016 – 31.12.2016.", http://www.ems.rs/media/uploads/2015/11/Pravila-za-2016_50_e-29.10.2015.-cista.pdf.
[63] Reply to the Opening Letter, at page 12.
[64] Amongst others: *ECRB, Market Monitoring Report 2015 - gas and electricity wholesale and retail markets in Contracting Parties & Georgia*, page 27 et seq., https://www.energy-community.org/portal/page/portal/310EA70C92EB668EE053C92FA8C042FA.

revenues obtained on the interconnectors with Albania, former Yugoslav Republic of Macedonia and Montenegro.[65]

(84) The situation has not changed in the meantime.

(85) It is not necessary, for the purposes of the present case, to determine the total amount of the revenues made by *EMS* from allocation of capacities at the interconnectors with Albania, former Yugoslav Republic of Macedonia and Montenegro. Under the umbrella of the 2014 Framework Agreement concluded between *EMS* and *KOSTT*, both transmission system operators currently negotiate the amount of compensation owed by *EMS* to *KOSTT* since 2014.

(86) The Ministry further submitted that among other expenditures, the following costs were covered from the total 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;

- 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 increased the cross-border transmission capacity.

(87) Based on this submission, the Ministry concludes that it complies with Article 6(6) of Regulation 1228/2003.[66]

(88) The Secretariat 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.

(89) 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 the ones listed above may feature. 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.

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

(91) 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

[65] Reply to the Opening Letter, at page 12.
[66] Reply to the Opening Letter, at page 12.

obligation within the Continental Europe Synchronous Area for the entire control area for which it provided these services. 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 interconnectors, as would be required by Article 6(6)(a) of Regulation 1228/2003.[67]

(92) Under Article 6(6)(b), the revenue would need to be used for investments into network maintenance or increase of interconnection capacities. *EMS* evidently has not invested in or maintained transmission infrastructure on territory of Kosovo* since the entry into force of the Treaty. The 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 specifically aimed to relieve eventual bottlenecks on the congested interconnectors in question. The 400 kV interconnection between Serbia and the former Yugoslav Republic of Macedonia mentioned by the Ministry directly connects *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* (with the support of international donors), but not from the revenues obtained by capacity allocation. Finally, costs related to existing infrastructure on the territory of Kosovo*, i.e. costs incurred over 20 years ago, cannot be considered costs covered by revenues from the allocation of interconnection capacity which occurred after those investments, namely from 2006 onwards.

(93) 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. According to the "ECRB EWG Benchmarking Report on Compliance with Regulation (EC) No 1228/2003 and the Congestion Management Guidelines" of April 2008 and contrary to what the Ministry asserts in the Reply to the Opening Letter, the Serbian regulatory authority AERS 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*,"[68] i.e. the third option under Article 6(6) of Regulation 1228/2003. This is confirmed by the currently applied methodology for setting transmission tariffs, which explicitly foresees that congestion income is brought forward against the maximum allowed revenue and as such used for the reduction of network tariffs.[69]

(94) However, Article 6(6)(c) of Regulation 1228/2003 is based on the assumption that any income gained by way of allocating interconnection capacity is being used for the reduction of the tariffs applied by the transmission system operator of the system (in this case: *KOSTT*), and set by the regulatory authority of the territory (in this case *ERO*), interconnected with the adjacent systems and territories.

(95) The rationale behind that provision and the option it offers to Contracting Parties (which was limited significantly by Article 16(6) of Regulation 714/2009) is to reduce tariffs set on the basis of costs resulting from operating a network by income gained in connection with

[67] Namely by buying back capacity rather than cancelling capacity rights in the event of difficulties.
[68] ECRB EWG Benchmarking Report on Compliance with Regulation (EC) No 1228/2003 and the Congestion Management Guidelines, at point 3.2.1.4., at http://www.energy-community.org/pls/portal/docs/1952450.PDF.
[69] The currently applicable Methodology for Determining the Rates of Access to the Electricity Transmission System stipulates in point IV.2. that revenues from capacity allocation are understood as "other revenues" (point IV.2.7) which are deduced from the maximum allowed revenue determining the transmission network tariff.

operating the same network. In introducing that option, Article 6(6) of Regulation 1228/2003 presupposes that either (1) the operator of the transmission system is the same entity as the entity allocating interconnection capacity, or (2) where this is not the case – e.g. when interconnection capacity is allocated by a coordinated auction office – that the entity allocating interconnection capacity clears and transfers the revenue to the operator of the network. As for formal reasons – the absence of an effective Connection Agreement with ENTSO-E – the transmission system operator for the territory of Kosovo* *KOSTT* is not the entity allocating interconnection capacity even though obliged so under Energy Community law, *EMS* would need to transfer the revenue gained by allocating capacity on the three interconnectors concerned to KOSTT to be able to rely on Article 6(6)(c) of Regulation 1228/2003 as one of the three options for the usage of that revenue.

(96) 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 Kosovo*.

(97) Moreover, the entire Article 6(6) of Regulation 1228/2003, and its litera (c) in particular are based on the objective of reducing the costs for system users as ultimate beneficiaries of this option. The relevant system users, however, are those using the (transmission) system interconnected with neighbouring systems, which in the present case is the one operated by *KOSTT*. It is not disputed that, by reducing the tariffs for the usage of the network operated by *EMS* in Serbia, the relevant system users do not benefit from the cost reduction as intended by Article 6(6) of Regulation 1228/2003.

5. Conclusion

(98) According to Article 6(6) of Regulation 1228/2003, *EMS*, as the transmission system operator allocating capacity on three interconnectors of the system operated by *KOSTT* with adjacent systems, 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.

ON THESE GROUNDS

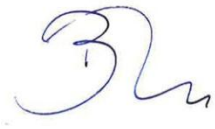
The Secretariat of the Energy Community respectfully requests that the Ministerial Council of the Energy Community declare in accordance with Article 91(1)(a) of the Treaty establishing the Energy Community that:

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.

On behalf of the Secretariat of the Energy Community

Vienna, 20 July 2016

Janez Kopač
Director



Dirk Buschle
Deputy Director / Legal Counsel

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OPERATOR SISTEMI, TRANSMISIONI DHE TREGU SH.A.
TRANSMISSION, SYSTEM AND MARKET OPERATOR J.S.C.
OPERATOR SISTEMA, PRENOSA I TRŽIŠTA A.D.

Mr. Slavtcho Neykov
Director of Energy Community Secretariat

Am Hof 4
1010 Vienna
Austria

Hon. Bushati
Acc. to the
Procedures.
11.08.08

06.08.2008

Complaint

Dear Mr. Neykov

Following the provisions of the Treaty establishing the Energy Community, KOSTT is approaching the Secretariat with the formal complaint concerning the failure of a contracting party (the Republic of Serbia) to comply with the Energy Community Law.

Complaint documents comprise:

- Table of Content
- Complaint Concerning failure of an Energy Community contracting party to Comply with the Energy Community Law
- Annex A (main document, including Annexes A1 – A15)
  Background of electricity industry in Kosova and Establishment of KOSTT
- Annex B (main document)
  ITC Agreements for the period July 2004 – December 2009
- Annex C (main document, including Annexes C1 – C4)
  Procedures for allocation of interconnection transmission capacities by Serbian TSO

KOSTT kindly asks the Secretariat to evaluate this complaint and to bring to the attention of the relevant institutions of the Energy Community in accordance with the Treaty provisions and with a view to resolve the matter as expeditiously as possible.

We remain at your disposal for any further information you should need.

Sincerely

Fadil Ismajli
Managing Director
KOSTT

Enclosed:
- Complaint Documents
- CD (electronic copy)

Cc. Ms. Justina Pula, Minister, Ministry of Energy and Mining of Kosova
Mr. Ali Hamiti, Head of Energy Regulatory Office of Kosova
Mr. Renzo Daviddi, Head of the European Commission Liaison Office to Kosova
Mr. Kjartan Bjornsson, Head of Operations, EC Liaison Office to Kosova
Mr. Andreas Wittkowsky, Head of the Economic Policy Office, UNMIK/EU Pillar
Mr. Fabrizio Barbaso, Deputy Director-general, DG TREN/EC
Ms. Genoveva Ruiz Calavera, Head of Kosovo Issues Unit, EC - DG ELARG C3
Mr. Nicholas Cendrowicz, Policy Officer – Kosovo Issues, EC - DG ELARG C3
Mr. Pierre Bornard, Chairman of Steering Committee, ETSO
Mr. Gabriele Manduzio, Convenor, SETSO TF
Mr. Michael Farbman, Director of USAID/Kosovo Mission
Mr. Michael Trainor, Senior Energy Advisor, USAID/Kosovo Mission

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17. Annex A15
    Data requested by DG TREN on the meeting of January 2008

Folder of Annex B – Arguments

18. Annex B
    ITC agreements for the period July 2004 – December 2009

Folder of Annex C – Arguments

19. Annex C
    Procedures for Allocation of Interconnection Transmission Capacities by Serbian TSO

20. Annex C1
    Temporary rules for allocation of available transfer capacities on interconnections for 2006

21. Annex C2
    Temporary rules for allocation of available transfer capacities on interconnections for 2007, 1st half

22. Annex C3
    Temporary rules for allocation of available transfer capacities on interconnections for 2007, 2nd half

23. Annex C4
    Temporary rules for allocation of available transfer capacities on interconnections for 2008

Temporary Energy Exchange Agreement
BAR 16-8-2000
29 June 2000

Having regard to Resolution 1244 (1999) of 10 June 1999, whereby the United Nations Security Council, acting under Chapter VII of the Charter of the United Nations, authorized the Secretary-General to establish an international civil presence in Kosovo, known as the United Nations Interim Administration Mission in Kosovo (UNMIK), in order to provide an interim administration in Kosovo with the mandate as described in the resolution, and taking into consideration:

- that the United Nations Interim Administration Mission in Kosovo supports the reconstruction of infrastructures including electric power facilities, lines and installations for generation, transmission and distribution of electric energy and production, processing and transportation of coal; and

- that UNMIK/PCK and EPS recognise the necessity of increasing the level of co-operation in the utilisation of generating capacity and the transmission system with the purpose of improving the reliability and quality of supply.

The UNITED NATIONS INTERIM ADMINISTRATION MISSION IN KOSOVO
on behalf of the POWER COMPANY OF KOSOVO
(Further UNMIK/PCK)

And

ELECTRIC POWER INDUSTRY OF SERBIA (Further EPS)

hereby enter into this

TEMPORARY ENERGY EXCHANGE AGREEMENT

Mutual Exchange, Purchase and Transit of Electric Energy

Introduction

This Temporary Agreement (herein after referred to as the Agreement) forms the basis under which UNMIK/PCK and EPS will exchange, purchase and transit electrical energy.

1 Scope of the Agreement

1.1 Electricity Purchase
1.2 Electricity Exchange
1.3 Emergency Assistance
1.4 Electricity Transit

SECTION 1

1.1 ELECTRICITY PURCHASE

1.1.1 Electricity purchase shall be agreed and performed between the Parties to this agreement for a period of one year beginning on the effective date of this Agreement.

The Parties to this agreement shall provide all the necessary and relevant information to each other no later than October 31, 2000 in order to determine the possibilities and commercial terms for electricity purchase for the year 2001,

The amount, monthly demands, (time schedule of supply), price, and other electricity purchase conditions shall be defined and set in a separate Annex to this agreement which shall be signed by 15 December, 2000 for the year 2001.

1.1.2 The Parties may also agree to further purchases of electricity within the current year, subject to the conditions of their electric power systems.

The purchasing conditions and electricity price shall be set out in writing by the Parties;

e-mail and fax transmission are acceptable forms of communication.

1.2 ELECTRICITY EXCHANGE

1.2.1 Electricity exchange between the Parties shall be carried out in such manner as to optimize the use of the generating and transmitting capacities of the Parties.

UNMIK/PCK and EPS shall agree to details of the energy exchange programme by facsimile for the period one to seven days ahead for each day within a given week.

In accordance with the practices of other power utilities in the Interconnection, UNMIK/PCK shall send their agreed hourly based exchange programmes for the following day to EKC. On Fridays and before holidays these will extend through the close of the next normal working day. UNMIK/PCK shall also send the hourly

programmes for planned generation at Kosovo A, Kosovo B and Gazivode generation stations.

This schedule for electricity exchange shall be forwarded by 12:00 hours. The schedule for each following week shall be forwarded by 12:00 hours on the previous Friday.

1.2.2 For energy exchanges within the same tariff and time season, a ratio of 1:1 shall apply to energy exchanges.

Energy exchanges in different tariff or time seasons shall be subject to an agreed exchange ratio, which shall be dependent on the time of day and seasonal tariff applicable at the time when the energy exchange is repaid. See paragraph 1.2.4.

1.2.3 Both Parties shall aim to achieve an annual energy exchange balance of close to zero. In the event that the balance is not zero, then the party with the net export balance at the year end may decide either to take payment or to transfer the balance to the exchange balance account for the following year.

An initial limit of 50 GWh of stored debt shall apply to both Parties. This limit can be increased by mutual agreement between the Parties.

In exceptional cases, the agreed stored debt limit can be exceeded if remaining within the limit would result in transfers being scheduled that would cause demand disconnection or breach of a transmission constraint. Exchange programmes which breach the agreed stored debt level will be accepted only for day-ahead scheduling.

1.2.4 The ratio applied to energy exchanges will be set when the exchange is negotiated. In cases where there is no agreement, then the following ratios will apply:

Winter Season:Summer Season = 1.5:1
High Tariff:Low Tariff = 1.5:1

High Season 1st October – 31st March
Low Season 1st April – 30th September

High Tariff Monday – Saturday 0600 - 2200 hours.

Low Tariff Monday – Saturday 2200 - 0600 hours and 0001 - 2400 on Sundays

1.3 EMERGENCY ASSISTANCE

1.3.1 In the case of a breakdown of a generating unit, or the outage of a transmission line, the Parties shall assist each other in supplying electricity and power to the extent of their capabilities at the time.

1.3.2 Emergency assistance shall be established as soon as possible, the target time period being within one hour of the request, and be sustained for a period of 8 hours. The Parties may agree to extend the emergency assistance beyond 8 hours.

1.3.3 Emergency energy shall be repaid as emergency energy, if possible within the same tariff and time period at the exchange ratio of 1:1.

1.3.4 Balance assessed at the end of the year on the account of emergency assistance shall be subject to payment at the average price valid at the Amsterdam exchange, multiplied by two.

1.4 ELECTRICITY TRANSIT

1.4.1.The Parties agree to permit transit for the purposes of the other Party to the Agreement, to and from third party companies.

1.4.2 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.

1.4.3 In the event reimbursement for the electricity transit shall be computed and paid in kind, such reimbursement shall take place in accordance with the applicable provisions of the EKC By-Laws.

The shortest transmission route for the part of the system run by UNMIK/PCK shall be defined in a separate Annex to the By-Laws of EKC.

1.5 DELIVERY AND MEASUREMENT POINT

1.5.1 The places of electricity measuring shall be SS Kosovo B, SS Valac, SS Gnjilane, SS Nis 2, SS Krusevac, SS Novi Pazar and SS Bujanovac.

1.5.2 Each Party shall cover losses that occur on its own portion of interconnection lines.

1.5.3 Energy accounts for every account shall be made according to adjusted exchange programmes.

1.6 TECHNICAL POSSIBILITIES FOR TRANSIT

1.6.1 Supply and receipt of electricity directly between the Parties may be carried out through the transmission lines as follows:

400 kV Kosovo B - Nis 2 Transmission Line no 407,
220 kV Kosovo B - Krusevac Transmission Line no 205,
110 kV Valac - Novi Pazar Transmission Line non 155/2,
110 kV Gnjilane - Bujanovac Transmission Line no 1140/1

1.6.2 The supply and receipt of electricity may be performed also through the electric power systems of third countries and other interconnecting circuits.

1.6.3 The method and conditions of transmission line exploitation provided in sub-section 1.6.1 herein are defined by general technical rules for operation contained in section 1.2 of the Temporary Technical Agreement.

SECTION 2

Transitional and Final Provisions

2.1 IMPLEMENTATION OF ENERGY EXCHANGE AGREEMENT

2.1.1 This Agreement shall be implemented by the relevant technical department of each Party.

2.1.2 The time-hour schedules for electricity supply and/or receipt shall be prepared and provided by noon on Friday for the weekly schedules, and by noon on the previous day for daily schedules. The daily schedule provided on a Friday shall include programmed energy exchanges up to the close of the next working day.

In the event of changes in the timetable that might occur during execution of any programme, the Parties shall be notified of such changes by telephone and such changes shall be confirmed by facsimile according to the notice provisions of this Agreement.

The agreed timetable shall be binding for both Parties.

2.1.3 The monthly quantities of electricity received/delivered in the previous month shall be agreed to by EPS and UNMIK/PCK by the 10th day of the current month.

2.2 DAMAGE LIABILITY

EPS and UNMIK/PCK shall not be exempted from liability for non-compliance with the provisions or part of them in the Agreement, unless conditions occur which cannot be foreseen prior to the signature of this Agreement or in case of conditions which cannot be avoided or remedied.

2.3 DEVELOPMENT OF BUSINESS RELATIONS

2.3.1 For the purpose of successful resolution of all technical-energy, financial, economic and other matters related to common co-operation under this Agreement, the signatories to the Agreement shall maintain mutual contacts through representatives of the departments responsible for implementing this Agreement and when need arises through representatives of the Parties to the Agreement.

~~2.4~~

2.4 DISPUTE RESOLUTION PROCEDURE

The Parties shall always try to settle any dispute in an amicable and co-operative manner. However, any dispute which the Parties do not resolve between themselves within three months of the first written application for consultations on the disputed

issue shall be settled through third party, neutral, binding arbitration conducted in Vienna, Austria.

Arbitration shall be initiated in the following manner: the initiating party (the "Claimant") shall provide the other party (the "Respondent") with written notice of its intention to exercise the dispute resolution -provision of this Agreement. The notice of intention to arbitrate is called a "Demand" and said Demand shall contain a concise statement of the nature of the dispute, the monetary amount involved, and the remedy sought by the Claimant.

The arbitration shall be conducted pursuant to the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL). The dispute shall be settled by an arbitral tribunal consisting of three members, fluent in the English language and appointed in the following manner. Each Party shall appoint one member and those two members shall then appoint a third member who shall act as chairman of the tribunal. The Parties shall each select a member who it believes to be qualified to hear the subject matter of the dispute and able to assess the merits of the dispute in an impartial, objective manner. If within two months, the requisite appointments have not been made, the Parties may request that another entity, such as the Secretary-General of the International Centre for Settlement of Investment Disputes, make the appointments. Alternatively, the Parties may agree upon the appointment of a specified, sole arbitrator.

A decision of any applicable arbitration tribunal or body shall be binding, final and enforceable.

2.5 AMENDMENTS

2.5.1 Amendments and supplements to this Agreement may be made only through a writing signed by both parties which shall then become an annex to this Agreement.

2.5.2 This Agreement shall enter into force on the date that both Parties have affixed their signatures thereon.

2.5.2 The validity of this Agreement is during the United Nations interim administration Mission in Kosovo.

2.5.4 This Agreement may become invalid upon three months' written notice of one Party or at any time upon the mutual consent of both Parties.

2.5.5 This Agreement has been made in three (3) copies, each of which is deemed an original.

2.5.6 Notice under this Agreement is given by one Party transmitting a signed writing which is timely received by the other Party.

SUPPLEMENT TO TEMPORARY ENERGY EXCHANGE AGREEMENT

Provision of data from UNMIK/PCK to EKC

For the purposes of accounting and system analysis, UNMIK/PCK shall provide the following data to EKC on an hourly summary basis; the data will be submitted in four hour blocks starting with the period 0000 – 0400hrs.

- total active and reactive electrical energy generated in thermal power plants Kosovo A and Kosovo B.

- total active and reactive electrical energy generated in Hydro Power Plant Gazivode.

- energy exchange on the following transmission circuits –

  Line 420 – Kosovo B – Skopje 4
  Line 437 – Kosovo B – Ribarevena
  Line 407 – Kosovo B – Nis 2
  Line 205 - Kosovo B - Krusevac 1
  Line 212 – Kosovo B – Skopje 1
  Line 215 – Kosovo B – Skopje 1
  Line 2303 – Prizren – Fierza
  Line 155/2 – Valac – Novi Pazar 2
  Line 1140/1 – Gnjilane – Bujanovac
  Line 118/4 – Deneral Janković (Sharri) – Skopje 1

The water level at Gazivode Power Station, measured at 2400 hours, will be included in the final four hour submission block of each day.

For the purposes of co-ordinating transmission system maintenance, UNMIK/PCK shall provide anticipated maintenance requirements on the following transmission circuits by the end of November for the following year. A final maintenance plan, agreed with all affected parties, will be published by the end of December for the following year.

The following data are required:

- planned terms for maintenance works on transmission circuits, relevant for the operation of the main Interconnection
- protection settings on interconnection lines

Line 420 – Kosovo B – Skopje 4
Line 437 – Kosovo B – Ribarevena
Line 407 – Kosovo B – Nis 2
Line 205 - Kosovo B - Krusevac 1

Line 212 – Kosovo B – Skopje 1
Line 215 – Kosovo B – Skopje 1
Line 2303 – Prizren – Fierza
Line 155/2 – Valac – Novi Pazar 2
Line 1140/1 – Gnjilane – Bujanovic
Line 118/4 – Deneral Janković (Sharri) – Skopje 1

In line with all power utilities within the Interconnection the following are also required by the end of January for long-term operational planning:

- setting levels for under--frequency protection.
- Kosovo A and Kosovo B turbine regulator settings.
- Gazivode turbine regulator settings.

For the purpose of the Yearly Reports on the operation of the Interconnection, all power utilities in the Interconnection send the following data for the previous year, by March 31st of the current year:

- monthly totals of actual production in HPPs, TPPs and NPPs
- load data for interconnection lines, production and consumption in typical hours (third and eleventh) on the third Wednesday of the month, for four typical months during a year
- actual exchanges on interconnection lines etc.

For the purpose of UCTE statistics, electric power utilities within the control block of JIEL-EKC send the following data by the 15th of each month, for the previous month:

- monthly totals of actual production in HPPs and TPPs
- status of reservoirs in HPPs at the end of the month (energy capacity in GWh)
- exchanged energy on interconnection lines on a monthly basis (commercial data), harmonized with the partners
- data on modifications of basic parameters of installed units (installed capacity, capacity at the terminal, unit parameters etc)
- load flows (active and reactive), loads in nodes, power injections in the system in 400 kV, 220 kV networks and one part of 110 kV network for the typical day (third Wednesday in January at 10:30 h and, if required, more often)
- instantaneous load value on interconnection lines at 03:00 and 11:00 h on the third Wednesday of each month.

In accordance with the Temporary Technical Arrangement signed by Public Utility Department of the United Nations Interim Administration Mission in Kosovo (PUD) and Ministry of Energy and Mining of the Republic of Serbia (MEM) in which the scope of work of Electricity Co-ordinating Center Belgrade (EKC) was précised and EKC's responsibility for global monitoring of the power system operation for the Second UCTE synchronous zone (further: Interconnection), as a whole, and specially, for JIEL Control Block, as well as, EKC's functions of the Service for Coordination of Accounts within Interconnection:

The Public Utilities Department of the United Nations Interim Administration Mission in Kosovo
(hereinafter referred as PUD)

and

Electricity Coordinating Center Belgrade
(hereinafter referred as EKC)

Agreed to sign:

TEMPORARY AGREEMENT ON SERVICES

Article 1

PUD will organize the load frequency control through the control area which coordinator is MEM. This control area, together with the second area, co-ordinated by Electric power utility of Macedonia (further: ESM) creates JEIL Control Block co-ordinated by EKC.

MEM will carry out the role of system co-ordinator in full toward the other partners within the Second UCTE synchronous zone (further: Interconnection).

MEM and PUD will be considered as a single accounting area toward other partners in the Interconnection.

Article 2

PUD will communicate every day to EKC the following operational data:

- Average hourly values of power exchange on OHLs (already harmonized for the purpose of accounting):
    a. 110 kV Gnjilane – Bujanovac
    b. 110 kV Valač – Novi Pazar

c. 110 kV Đeneral Jankovič – Skopje
d. 220 kV Kosova A – Skopje (both)
e. 220 kV Prizren – Fierza
f. 400 kV Kosovo B – Skopje
g. 400 kV Kosovo B – Ribarevina

- Average hourly values of active and reactive energy production of all power units, given separately
- Average hourly values of the total load (losses included)
- Voltage profile and load flow three times a day

PUD will communicate every day by 12:00 for the next day and on Friday for the whole weekend and for the first working day the following data – scheduled programmes:

- Average hourly scheduled programmes with all partners already harmonized with them, given separately
- Average hourly schedule of power units, given separately
- Average hourly schedule of the total load (losses included)

Article 3

EKC will communicate every day, except Saturday and Sunday by 11:00 inadvertant deviations review for the previous day. On Monday by 11:00, this review will be communicated for previous Friday, Saturday and Sunday.

EKC will communicate every day by 16:00 for the next day and on Friday for the whole weekend and for the first working day total scheduled programmes.

Article 4

EKC will make all necessary accounts on daily, weekly, monthly and yearly basis under UCTE standards and procedures.

EKC will make accounts of compensation programmes every Tuesday and will communicate programmes till 12:00. PUD is obliged to follow these programmes towards MEM.

PUD is obliged, on EKC request, to send all necessary data to prepare daily, monthly and annual reports and statistics. EKC will continue to make reports in the existing format but with addition of separate data for PUD. Statistics for UCTE will be made in the formats already established by UCTE.

Article 5

PUD will follow all procedures and agreements made within JIEL-EKC Control Block and Interconnection as a whole in the field of:

- co-ordination of maintenance of the OHLs in the loops within Interconnection
- co-ordination of maintenance of production units within JIEL-EKC Block
- co-ordination of protection settings on OHLs within JIEL-EKC Block and Interconnection
- spinning reserve and mutual emergency assistance
- load frequency control organization
- droop adjustment at the production units
- under frequency protection settings
- prompt announcement of the tripping of production units and transmission units

EKC is obliged to communicate PUD agreements already made within Interconnection as a whole, as well as, agreements made within JIEL-EKC Control Block.

Article 6

In order to provide necessary conditions for the organization of the load frequency control for JIEL – EKC Block, PUD is obliged to transmit to EKC in the real-time (sample: 1s) the power flow on the OHL Prizren – Fierza.

In order to provide conditions for monitoring joint parallel operation, PUD is obliged to transmit to EKC in real time the circuit breaker status of the all OHLs in the substations Kosovo B and Kosovo A, as well as, active and reactive power production in TPPs Kosovo A and B.

Article 7

It is agreed that PUD will cover additional material expenses of EKC with sum of DEM xx. xxx (xxxxxx thousand German marks) per month.

PUD undertakes the obligation to pay money transfer to the account of EKC in the amount of DEM xx. Xxx (xxxxxx thousand German marks) per month, by 15th of the current month for the previous month.

EKC shall invoice PUD for the sum from the paragraph 1 and 2 hereof, by 5th of the current month for the previous month.

The payment instruction is:

Beneficiary's bank: Kapital Banka AD Beograd
DEM acc.no. 97798.000
EUR acc.no. 9779.018

Receiver's bank

correspondent: LHB Internationale Handelsbank AG
Frankfurt am Main
SWIFT Code: LHBIDEFF

Article 8

Amendments and supplements to this Arrangement may be made only through a signed writing by the Parties which shall then become an annex to this Arrangement.

This Arrangement shall enter into force on the date that both parties have affixed their signatures thereon.

The validity of this Arrangement is during the United Nations Interim Administration Mission at Kosovo.

This Arrangement may become invalid upon three months written notice of one party or at any time upon the mutual consent of both parties.

This Arrangement has been made in three copies, each of which is deemed an original.

PUD EKC

- operatori të ardhur

Enënshkruar

The Public Utilities Department of the United Nations Interim Administration Mission in Kosovo (PUD) and the Ministry of Energy and Mining of the Republic of Serbia (MEM)

RECOGNIZING the importance of the adherence to the terms of the United Nations Security Council Resolution 1244,

HAVE AGREED as follows:

The PUBLIC UTILITIES DEPARTMENT
OF THE UNITED NATIONS INTERIM ADMINISTRATION MISSION IN KOSOVO

(Further PUD)

And

THE MINISTRY OF ENERGY AND MINING OF THE REPUBLIC OF SERBIA

(Further MEM)

hereby enter into this

TEMPORARY TECHNICAL ARRANGEMENT

Introduction

dulet të përcaktohet

This Temporary Arrangement (hereinafter the "Arrangement") forms the basis on which PUD through its implementing agency, to be nominated within a limited time after the signing of this Arrangement, will maintain and operate the transmission within Kosovo. The arrangements under which PUD will trade energy are set out in a separate Temporary Energy Exchange Agreement. MEM, through its implementing agency, to be nominated within a limited time after signing of this Agreement, will carry out the role of system co-ordinator in full, within the Second UCTE Synchronous zone (hereinafter referred to as Interconnection). The Union for the Co-ordination of Transmission of Electricity (UCTE) co-ordinates the interests of transmission system operators in 16 European countries. Their common objective is to guarantee the security of operation of the interconnected power system. This Arrangement specifies the operational data that PUD will provide in order that MEM can carry out this role. The data that PUD will provide to the Electricity Co-ordinating Centre (hereinafter "EKC") for the purpose of accounting which is under its responsibility and for harmonisation of electric energy exchange programmes are also set out in this Arrangement. Both Parties to this Arrangement will make a written request to EKC to provide the facilities specified under this Arrangement.

1. Scope of the Arrangement

Section 1 - Operational Co-ordination and Data Exchange

1.1 Data Exchange
1.2 Operational Co-ordination
1.3 Load-frequency Control, Spinning Reserve and Mutual Emergency Assistance

Section 2 - Transitional and Final Provisions

2.1 Implementation of Operational Agreement
2.2 Damage Liability
2.3 Development of Business Relations
2.4 Amendments

SECTION 1

Operational Co-ordination and Data Exchange

1.1 DATA EXCHANGE

PUD and MEM shall exchange operational data as specified in the Supplement to this Arrangement. In addition, PUD shall provide data as specified in the Supplement to the Temporary Energy Exchange Agreement to EKC to enable EKC to fulfil its accounting and scheduling role in the Interconnection.

1.2 OPERATIONAL COORDINATION

PUD and MEM are responsible, each in their respective area of responsibility, for ensuring that operating practices, procedures and data exchange comply with the demands, rules and regulations of UCTE.

1.2.1 Switching Manipulations on Circuits Interconnecting PUD and MEM

For the circuits listed below (hereinafter "Interconnecting Circuits") switching manipulations shall be co-ordinated in agreement between the PUD dispatch centre and MEM dispatch centre:

Line 407 TS Kosovo B – TS Nis 2
Line 205 TS Kosovo B – TS Krusevac 1
Line 155/2 TS Novi Pazar 2 – TS Valac
Line 1140/1 TS Bujanovac – TS Gnjilane

Switching manipulations shall not take place on these lines without operational agreement between the two dispatch centres except to prevent equipment damage, to prevent personal injury

or to preserve supply continuity. In these cases, the other dispatch centre must be informed as soon as possible after the switching manipulation is completed.

Neither Party shall refuse to carry out switching manipulations on the above circuits which have been advised to EKC as forming part of the annual plan at the year-ahead stage, except as specified above. Such notification shall take place in December for the following year.

Switching manipulations that were not notified when the annual plan was drawn up will only be permitted with the agreement of the MEM and PUD dispatch centres, except as detailed above.

1.2.2 Maintenance of the Interconnecting Circuits

MEM and PUD are responsible, each in their respective area of responsibility, for carrying out maintenance on the interconnecting circuits.

1.2.3 Circuits Interconnecting the PUD network to other utilities

In addition to the circuits mentioned in 1.2.1, PUD shall co-ordinate with MEM at the year-ahead stage the maintenance schedule for the following circuits, which form part of the Interconnection, and shall promptly inform EKC of the approved schedule.

Line 212 - Kosovo A - Skopje 1
Line 215 - Kosovo A - Skopje 1
Line 420 - Kosovo B - Skopje 4
Line 437 - Kosovo B - Ribarevina
Line 2303 - Prizren - Fierza
Line 118/4 - General Jankovic (Sharri) - Skopje 1

Except in the emergency conditions specified in section 1.2.1 above, neither Party will carry out switching manipulations without consulting the other Party. In the case of work advised as being part of the annual maintenance plan, neither party will be entitled to refuse to agree to carry out switching manipulations except in an emergency. Additional work will only be carried out by agreement between the dispatch centres of both Parties.

1.2.4 Operational Management of Energy Interchange

MEM despatch centre will carry out the role of co-ordinator of energy interchanges for the Interconnection. Specifically, MEM shall be responsible for monitoring compliance with the agreed energy interchange schedule advised to EKC under the Supplement to the Temporary Energy Exchange Agreement.

PUD shall be responsible for their programme of exchange of energy such that the total average hour deviation does not exceed +/- 20MWh/h.

In the event that the deviation exceeds this level, and the error is not corrected within four hours, then MEM is entitled to acquire/deliver energy in the name of, and for the account of PUD, on the best terms available in the market at the time in order to eliminate the deviation.

In order to eliminate cumulative or inadvertent deviations from the previous period, EKC shall establish, according to UCTE rules, compensation programmes based on the best possible price as agreed by PUD.

1.2.5 Issue of Despatch Instructions to Generating Stations

Each Party shall be responsible for issuing the necessary dispatch instructions to generating stations in their control area in order to meet the specifications of the energy interchange programmes.

1.3 LOAD-FREQUENCY CONTROL, SPINNING RESERVE AND MUTUAL EMERGENCY ASSISTANCE

For the purposes of load-frequency control, spinning reserve and mutual emergency assistance, the Parties will be considered a single control area co-ordinated by the MEM dispatch centre in the manner described in the By-Laws on the performance of EKC's functions as laid out in Article 4 of the Contract on Establishment of EKC (hereinafter referred to as: By-Laws of EKC). Provision of services of load-frequency control is subject to payments. For the purpose of load-frequency control, this control area also includes the electric power utilities of Montenegro and the Republic of Srpska, which operate within the control block of JIEL-EKC.

MEM and PUD are responsible, each in their area of responsibility, for ensuring that under-frequency protection settings and turbine regulator settings are applied as specified in Annexes 2 and 3 of the articles of the By-Laws of EKC.

PUD and MEM shall provide details to EKC to enable EKC to prepare its annual report. EKC will continue to make annual reports for the Interconnection in the existing format but with the addition of separate data for PUD.

SECTION 2
Transitional and Final Provisions

2.1 IMPLEMENTATION OF TECHNICAL ARRANGEMENT

2.1.1 This Arrangement shall be implemented by the implementing agencies of each of the Parties.

2.1.2 The time-hour schedules for electricity supply and/or receipt shall be prepared by noon on Friday for the weekly schedules, and by noon on the previous day for daily schedules. The daily schedule provided on a Friday shall include programmed energy exchanges through the close of the next working day.

In the event of changes in the timetable that might occur during execution of any programme, the implementing agencies shall be notified by telephone and such notification shall then be confirmed by facsimile within two hours.

The timetable agreed shall be binding on the Parties.

2.1.3 The operating manipulations of the interconnections shall be performed by each implementing agency with respect to its equipment in a fully co-operative and suitable manner, in compliance with the general operating rules of the transmission lines and the rules set out in Section 1 of this Agreement.

2.1.4 The maintenance of the transmission lines provided for in sub-section 1.2.1 of the Agreement is the responsibility of PUD and MEM in their respective areas of responsibility.

2.2 DAMAGE LIABILITY

MEM and PUD shall not be exempted from liability for non-compliance with the provisions or part of them in the Agreement, unless conditions occur which cannot be foreseen prior to the signature of this Agreement or in case of conditions which cannot be avoided or remedied.

2.3 MAINTENANCE OF SUCCESSFUL WORKING RELATIONS

2.3.1 For the purpose of the successful resolution of all technical-energy, financial, economic and other matters related to common co-operation under this Arrangement, the Parties shall maintain mutual contacts between themselves in addition through representatives of departments of the implementing agencies responsible for implementing this Arrangement.
2.3.2 In the event that a difference is not resolved in the manner set out in the previous paragraph, MEM and PUD agree to form a common body which will come to an agreement on the interpretation of provisions of this Arrangement which are in question.

2.4 AMENDMENTS

2.4.1 Amendments and supplements to this Arrangement may be made only through a signed writing by the Parties, which shall then become an annex to this Arrangement.

2.4.2 This Arrangement shall enter into force on the date that both Parties have affixed their signatures thereon.

2.4.3 The validity of this Arrangement is during the United Nations Interim Administration Mission in Kosovo.

2.4.4 This Arrangement may become invalid upon three months' written notice of one Party or at any time upon the mutual consent of both Parties.

2.4.5 This Arrangement has been made in three (3) copies, each of which is deemed an original.

SUPPLEMENT TO TEMPORARY TECHNICAL ARRANGEMENT

Data Exchange Between PUD and MEM for Ensuring Overall Security of Operation of the Main Interconnection

Subject to (permanently) improved current technical possibilities, PUD will provide MEM with:

Real time Telemetered data for:

- Active and reactive power flows on the following transmission circuits

  Kosovo B – Nis, Line 407
  Kosovo B – Krusevac, Line 205
  Valac – Novi Pazar 2, Line 155/2
  Gnjilane – Bujanovac, Line 1140/1
  Deneral Janković - Skopje 1, Line 118/4
  Kosovo B – Skopje 4, Line 420
  Kosovo A – Skopje 1, Line 212
  Kosovo A – Skopje 1, line 215
  Prizren – Fierza, Line 2303
  Kosovo B – Ribarevina, Line 437

- Details of any electricity trades carried out which amend the agreed-upon programme of exchange. The information exchanged shall be the quantity, time of delivery and the destination of the trade. This information is to be exchanged immediately following the agreement of the trades.

- Any changes to the availability of generation capacities, size of spinning reserve, or possibility for emergency assistance.

- Changes from the hourly programme of generation commitment.

Also, to allow MEM to carry out security assessment studies for the main interconnection the following instantaneous operating parameters at the times specified in the table below will need to be forwarded.

Months	Time		
	I	II	III
January, February	0400	1200	1900
March	0400	1300	2000
April, May	0400	1300	2100
June, July	0400	1200	2200
August, September	0400	1200	2100
October	0400	1200	1900
November, December	0400	1200	1800

The data provided shall be the instantaneous values of the active and reactive power flows on the following transmission lines:

Line 420 – Kosovo B – Skopje 4
Line 437 – Kosovo B – Ribarevina
Line 407 – Kosovo B – Nis 2
Line 205 - Kosovo B - Krusevac 1
Line 212 – Kosovo B – Skopje 1
Line 215 – Kosovo B – Skopje 1
Line 2303 – Prizren – Fierza
Line 155/2 – Valac – Novi Pazar 2
Line 1140/1 – Gnjilane – Bujanovac
Line 118/4 – Deneral Janković (Sharri) – Skopje 1

Also the instantaneous active and reactive power in the following:

- 400-220kV transformers in TS Kosovo B.
- Generators at TPP Kosovo A and B.
- 220/110kV transformers in TPP Kosovo A and tap position.
- 220kV lines 267 and 2306 (TS Kosovo B to TPP Kosovo A).
- 220/110kV transformers at TS Prizren 2 and tap position.
- 220/110kV transformers at TS Pristina 4.

WHEREUPON, THE DULY-AUTHORIZED REPRESENTATIVES OF THE PARTIES HEREBY AGREE TO THIS ARRANGEMENT:

FOR AND ON BEHALF OF
PUD

JO TRUTSCHLER,
CO-HEAD, a.i.
PUBLIC UTILITIES
DEPARTMENT

26.03.01.
DATE

FOR AND ON BEHALF OF
MEM

GORAN NOVAKOVIC
MINISTER
MINISTRY OF ENERGY AND
MINING

26/03/01
DATE

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Opening Letter

in Case ECS-3/08

The Energy Community Secretariat, in August 2008, received a complaint under Article 90 of the Treaty establishing the Energy Community ("the Treaty") against the Republic of Serbia by KOSTT ("the complainant").

The complainant maintains 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.

I. Facts

1. The complainant's position under domestic legislation

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.[2] In October 2006, KOSTT was designated as the only transmission system operator ("TSO") in UNMIK by a license issued by the Energy Regulatory Office ("ERO"). Whereas ERO itself is established by the Law on the Energy Regulator,[3] 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,[4] 12(1) of the Law on Electricity[5] and 15(2), 28(2) and 37 of the Law on the Energy Regulator. 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. Articles 12 to 16 Law on Electricity transpose the provisions of Directive 2003/54/EC regarding the tasks and responsibilities of transmissions system operators, as well as on unbundling.

In accordance with its license, KOSTT operates the transmission system in Kosovo as the territory covered by UNMIK. That system 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). According to the information provided by the complainant, 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 state-owned company Elektromreža Srbije ("EMS").

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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 Temporary Technical Arrangement, see below at point I. 3. (2).

3 Law No. 2004/9.

4 Law No. 2004/8.

5 Law No. 2004/10.

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From a Serbian perspective, the transmission network on the territory of Kosovo forms an integrated part of EMS' system as one of six local sub-divisions ("PDZ Prishtina"). This correlates with the Serbian claim that the transmission network assets belong to EMS.

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

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 ENTSO-E's predecessor organizations, the Union for the Coordination of Transmission of Electricity ("UCTE") and the European Transmission System Operators ("ETSO").[6] EMS, on the other hand, is a member of ENTSO-E.

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*".[7][8]

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]

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. This would require a so-called "EIC object" type Y under the Energy Identification Code ("EIC").[13] 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

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

[7] Glossary of the UCTE Operation Handbook "Control Area".

[8] Secondary control = load-frequency control, for a definition see Glossary of the UCTE Operation Handbook "Secondary control".

[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 point I.3. (2).

[13] See, for the version of 8 June 2009, http://www.swissgrid.ch/power_market/commercial_grid_management/eic_issuing_office/document/etso_common_identification.pdf.

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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 territory operated by KOSTT.

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. In the absence of the guidelines mentioned in Article 8 of Regulation 1228/2003, the ITC agreements have been concluded within the framework of ETSO by the members to that organization (now ENTSO-E). Since 2002, several ITC agreements covering consecutive periods of time have been concluded. 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 have been signatories to and thus fully participating in those agreements. In December 2009, the currently applicable ITC agreement for 2010 was signed. It is supposed to apply until the date the EU's guidelines for ITC compensation enter into force.[14] The subsequent ITC agreements were all signed by EMS only and make no reference to KOSTT.

The ITC agreements use 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.*"[15] Serbia is 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"[16] for Serbia. As such, and subject to the calculations carried out by the data administrators,[17] 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 2004,[18] it has not made any transfers from the payments received to KOSTT. 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.

3. Bilateral agreements on the relationship between EMS and KOSTT

The bilateral relationship between KOSTT and EMS is governed by three agreements concluded in the years 2000 and 2001. These agreements were signed by different institutions and/or companies from UNMIK and Serbia. Despite predating the existence of KOSTT and EMS, they are binding on both companies which succeeded in the tasks subject to those agreements. The three agreements are valid "during the United Nations Interim Administration in Kosovo"[19] and have never been terminated.

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[14] A draft Commission Regulation laying down these guidelines is publicly available at http://ec.europa.eu/energy/gas_electricity/doc/el_cross-border_committee/el_cross-border_committee_17_12_09_itc_draft_en.pdf.

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

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

[17] RWE Transportnetz Strom and swissgrid.

[18] See below point I.3.(1).

[19] Item 2.5.2. of the Temporary Energy Exchange Agreement, Item 2.4.3. of the Temporary Technical Arrangement.

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(1) Temporary Energy Exchange Agreement

The Temporary Energy Exchange Agreement of 29 June 2000 was concluded between UNMIK on behalf of "the Power Company of Kosovo" (later unbundled in KEK and KOSTT) and the Electric Power Industry of Serbia (later unbundled in EPS and EMS). It forms the basis on which both parties "*will exchange, purchase and transit*" electricity.[20]

With regard to electricity purchase, the Agreement only covers the year 2001.[21] As concerns electricity exchanges, the agreement aims at achieving an annual energy exchange balance of close to zero.[22] 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 EKC.[23] Finally, the Temporary Energy Exchange Agreement also stipulates the conditions for emergency assistance between both parties.[24]

As concerns transit in particular, the parties agree to permit electricity transit for the purposes of the other party to and from third parties.[25] 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 July 2004, when EMS ceased to make transfers following the entry into force of the ITC agreements, payment was made in kind by electricity supplies.

(2) Temporary Technical Arrangement

The Temporary Technical Arrangement of 26 March 2001 was signed by the Ministry of Energy and Mining of Serbia and the PUD of UNMIK. PUD was described 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*...",[26] including also the utilities[27] 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*".

KOSTT is obliged to remunerate EMS for the provision of its services.[28] According to the complainant, the Temporary Technical Arrangement also provides the legal basis for KOSTT to procure secondary regulation from *Elektroprivreda Serbia* (EPS). KOSTT ceased to pay for these services in April 2007.

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.[29] With regard to so-called "*operating*

[20] Introduction to the Temporary Energy Exchange Agreement.

[21] Item 1.1.1. of the Temporary Energy Exchange Agreement.

[22] Item 1.2.3. of the Temporary Energy Exchange Agreement.

[23] Supplement to the Temporary Energy Exchange Agreement.

[24] Item 1.3. of the Temporary Energy Exchange Agreement.

[25] Item 1.4.1. of the Temporary Energy Exchange Agreement.

[26] However, EMS does not invoice KOSTT for these services as foreseen by Item 1.3. of the Temporary Technical Arrangement

[27] At the time still vertically integrated companies.

[28] Item 1.3. of the Temporary Technical Arrangement.

[29] Item 1.2 of the Temporary Technical Arrangement.

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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.*"

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.[30]

(3) Temporary Agreement on Services

In its preamble, the Temporary Agreement on Services signed by the PUD of UNMIK and EKC makes reference to the Temporary Technical Arrangement and the "*EKC's responsibility for global monitoring of the power system operation for the Second UCTE synchronous zone* [...] *as a whole, and specially, for JIEL Control Block*". This control block is defined in Article 1 of the Agreement as consisting of two control areas, one of which is the one coordinated by MEM (including PUD of UNMIK) and a second one coordinated by (the predecessor of) the transmission system operator of the former Yugoslav Republic of Macedonia. MEM and PUD are to be considered also as "*a single accounting area toward other partners in* [the Second UCTE Synchronous Zone]". The entire control block is coordinated by EKC.

Under the Temporary Agreement on Services, PUD commits itself to follow all agreements made within the control block and the synchronous zone with regard to, *inter alia*, maintenance, protection settings, spinning reserve and mutual emergency assistance, and load frequency control organization (Article 5). The Agreement further specifies the data to be communicated by PUD to EKC on a daily basis (Articles 2 and 3), including for the purpose of load frequency control to be preformed by EKC (Article 6). Article 4 obliges EKC "*to make all necessary accounts on daily, weekly, monthly and yearly basis under UCTE standards and procedures*". EKC is tasked also to weekly "*make accounts for compensation programmes*".

Finally, the Temporary Agreement on Services provides for the payment of a specified monthly fee by PUD to EKC for providing the agreed services. To the Secretariat's knowledge, KOSTT does not make any payments anymore.

(4) In summing up, it is to be concluded that the three bilateral agreements regulate the bilateral relationship between KOSTT and EMS as successors of the respective contractual parties, and form the legal basis for both companies' participation in a common control area and common control block in accordance with the UCTE terminology.

In terms of *coordination*, the agreements establish a common control area "*for the purposes of load-frequency control, spinning reserve and mutual emergency assistance*".[31] Consequently, the network operated by KOSTT also forms part of what is now the SMM control block. Both are coordinated by the Serbian transmission system operator EMS.

In terms of *cooperation*, the agreements stipulate the rules necessary to develop the common control area/block, with a particular focus on data exchange. The agreements do not contain rules covering capacity allocation on interconnectors with third parties. With regard to electricity transit, there is a basic rule providing for mutual compensation for electricity transits,[32] which in practical terms is not complied with anymore.

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[30] Introduction and "Supplement" to the Temporary Technical Arrangement

[31] Item 1.3 of the Temporary Technical Arrangement.

[32] Item 1.4.2 of the Temporary Energy Exchange Agreement.

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II. Procedure

Before approaching the Secretariat, the complainant and UNMIK and Serbia, represented by the relevant institutions and companies, 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, which is why KOSTT submitted the complaint resulting in the present procedure.

In line with its general practice, 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 had several meetings with representatives of both KOSTT and the Government of Serbia and EMS separately in Vienna, Belgrade and Pristina. On 18 September 2009, the Secretariat organized a joint meeting between all parties involved.

On the initiative of the Secretariat, representatives of the Government of Serbia, EMS and KOSTT on 30 October 2009 held a meeting in Skopje where possible approaches to the (re-)organisation of the bilateral relations were discussed. Subsequently, KOSTT and EMS exchanged their respective drafts for a new set of bilateral agreements to replace the existing ones. An agreement on a common approach could not be reached.

Following another round of discussions in March 2010 in Vienna, the Secretariat, in a further attempt to find a way out of the deadlock in the negotiations, proposed a Memorandum of Understanding between EMS and KOSTT. The proposed Memorandum attempted to find a fair and balanced solution, at the same time avoiding any prejudice to the question of infrastructure ownership. The draft Memorandum proposed the establishment of a single control block for ITC purposes between EMS and KOSTT, with a mandate to the former also to allocate interconnector capacity. The envisaged rules on the apportionment of compensation and revenues foresaw the establishment of an escrow account for all monies depending on infrastructure ownership disputed between the parties. Whereas the complainant submitted comments on the draft, the Ministry of Energy and Mining of the Republic of Serbia on 7 April 2010 rejected the Memorandum on principle grounds. In its response of 20 April 2010, the Secretariat asserted its readiness to discuss all alternative solutions proposed and with all companies and institutions involved. In the absence of any proposal, and being concerned about the far-reaching consequences this protracted dispute has for the development of the electricity market, not only in UNMIK but in the whole region, the Secretariat decided to send the present Opening Letter under Article 12 of the Dispute Settlement Procedures.

III. Relevant Energy Community Law

Energy Community Law is defined in Article 1 of the Rules of Procedure for Dispute Settlement under the Treaty ("Dispute Settlement Procedures")[33] 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).

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.*

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

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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.

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.

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;

...

Article 8 of Directive 2003/54 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 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.

Article 9 of Directive 2003/54 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;

Article 2 of Regulation 1228/2003 reads:

1. 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:

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'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;.

2. 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;

...

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.

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.

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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.

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

The subject matter of the present case falls in two parts, namely (2.) the non-payment of compensation received by EMS for costs incurred for electricity transit through the transmission network located on the territory of Kosovo and (3.) 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. In the following, these two circumstances will be dealt with separately. By way of a common introduction, and in order to avoid possible misunderstandings, the scope of the present case will be demarcated (1.)

1. Scope

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 the two circumstances identified above with the Energy Community *acquis communautaire* only, and not with any other legal order, national or international. Energy Community law

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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. The following set of rules, in particular, are outside the scope of the present case and are not considered by the Secretariat:

(1) Rules pertaining to European TSO cooperation

The set of rules pertaining to and adopted by ENTSO-E and its predecessor organizations, UCTE and ETSO, do not form part of Energy Community law. In terms of purpose and context, the rules of these organisations fundamentally differ from the *acquis communautaire*. The Energy Community establishes a legal order sui generis aimed at integrating the energy markets of its Parties and following the rules and principles developed within the European Union. More particular, the *acquis communautaire* relevant for the present case pursues the objective of establishing open and integrated electricity markets. By contrast, the rules of inter-TSO cooperation are predominantly of technical (UCTE) or commercial (ITC) relevance.

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 key 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*.

Moreover, the present assessment has no bearing on the complainant's 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, the Secretariat, at this point of the procedure, cannot express itself on whether the duty of cooperation between the Parties in Article 6 of the Treaty includes an obligation on the transmission system operator of one Party to not obstruct the participation of the transmission system operator of another Party in an international cooperation scheme such as the ITC agreements or ENTSO-E.

(2) Rules pertaining to network ownership

As has been repeatedly emphasized during the informal discussions with all parties involved, 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. The present assessment does not touch upon the question who owns the transmission network and assets located on the territory of Kosovo, nor does it investigate to what extent the general entitlement of the owner to use his property commercially may be affected or overruled by principles of public international law.

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

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 relevance to the present case only for the establishment of the factual situation. Consequently, the present case is without prejudice to possible arbitration under, or re-negotiation of these agreements.

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2. The non-payment of compensation for electricity transit

It is not disputed that EMS 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.

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 is independent of any rights deriving from contractual arrangements, such as Item 1.4.2 of the Temporary Energy Exchange Agreement of 2000.[34] 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 (1), the incurrence of costs on its network (2) as a result of hosting cross-border flows of electricity (3).

(1) KOSTT's status as transmission system operator

In contrast to what the Serbian Government maintained during the informal discussions, the Secretariat does not see any reason not to consider KOSTT a transmission system operator within the meaning of Energy Community law.

Energy Community law contains an autonomous definition of transmission system operator in Article 2 No 4 of Directive 2003/54/EC. 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 3 of the Law on Electricity reproduces that definition verbatim. Articles 13 of the Law on Electricity lists the responsibilities of the TSO, including "*operating, maintaining, and if necessary, developing the transmission network and its inter-connectors with other networks, in order to guarantee security of supply*" (a), "managing *energy flows on the transmission network, taking into account exchanges with other interconnected networks, and maintaining a balance*" (b), "*ensuring the availability of all necessary ancillary services*" (c), "*providing to the operator of any other system with which its system is interconnected sufficient information to ensure the secure and efficient operation, coordinated development and interoperability of the interconnected system*" (d), "*ensuring non-discrimination between system users or classes of system users*" (e), and "*providing system users with the information they need for efficient access to the system*" (f). The Law on Electricity thereby transposes Article 9 of Directive 2003/54/EC. Furthermore, KOSTT was designated as transmission system operator in UNMIK by a license issued by ERO in October 2006, i.e. by a provisional institution of self-government established on the basis of an implementing legislation promulgated by the United Nations Interim Administration Mission pursuant to UNSC Resolution 1244 of 1999.

The Secretariat has not been made aware of any circumstances indicating that KOSTT, as a matter of principle, is not operating the transmission network in UNMIK in accordance with these rules and its license.

Furthermore, the analysis of the bilateral agreements concluded between UNMIK and Serbia shows that these agreements establish the framework for a coordination of transmission system operators rather than denying the existence of a transmission system operator in UNMIK. Quite the contrary, the Temporary Technical Arrangement stipulates that "*PUD* [...] *will maintain and operate the transmission within Kosovo*", a task later conferred on KOSTT by the licence issued by ERO. More specifically, the agreements confirm among other things that KOSTT performs key activities pertaining to system

[34] Above, point I. 3.(1).

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operation such as maintenance,[35] dispatching,[36] operating manipulations of the interconnections[37] and covering the losses on interconnection lines.[38]

In practical terms, it is also not disputed that KOSTT (alone) has invested in and developed the transmission system on the territory of Kosovo over the last decade.

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…*",[39] on the other hand, does not call into question KOSTT's capacity as the transmission system operator of UNMIK. First of all, the definition of a transmission system operator in Article 2 No 4 of Directive 2003/54/EC does not require conformity with the definition of a control area given in the UCTE Handbook.[40] As has already been reasoned above,[41] the rules constituting the body of Energy Community law and those pertaining to the synchronous system established under UCTE follow different objectives and are not dependent on one another. More particular, the control areas established within the UCTE synchronous system are established for the purpose of load-frequency control, an activity not necessarily constitutive for the definition given in Article 2 No 4 of Directive 2003/54/EC.[42]

KOSTT's capacity as a transmission system operator is also not affected by the fact that it does not perform capacity allocation on the parts of the interconnectors with neighbouring countries. KOSTT does not by choice renounce the possibility for this particular aspect of commercial use of the transmission system operated by it, but is prevented from doing primarily for legal reasons (non-membership in ENTSO-E), as will be analyzed under point 3. below. Similarly, the fact that KOSTT currently does not balance the network on the territory of Kosovo does not, in itself, affect its TSO quality. Firstly, balancing is again not a constitutive element of the definition of a transmissions system operator. A TSO does not necessarily have to perform all ancillary services by itself. This is expressed in various provisions of Directive 2003/54/EC, e.g. Article 9(c) second sentence (…"*insofar as*"…) and Article 11(6) (… "*whenever they have this function*"). In fact, there are other examples in the Energy Community where transmission system operators "outsource" the provision of balancing services to other operators,[43] without their quality as TSO being put into question. Secondly, the reason for KOSTT not balancing the system lies in lack of electricity generation suitable for balancing purposes with UNMIK, which might change in the future. Making the TSO quality dependent on volatile circumstances such as the temporary lack of appropriate generation capacity in a Contracting Party would not comply with the general principle of legal certainty.

Finally, ownership over the network assets is irrelevant for the definition of transmission system operator. It is not required by Article 2 No 4 of Directive 2003/54/EC. The irrelevance of ownership follows also

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[35] As acknowledged by Items 1.2.1 and 2.1.4. of the Temporary Technical Arrangement.

[36] As acknowledged by Item 1.2.5 of the Temporary Technical Arrangement.

[37] Item 2.1.3. of the Temporary Technical Arrangement.

[38] "*Each party shall cover losses that occur on its own portion of interconnection lines*", Item 1.5.2. of the Temporary Energy Exchange Agreement.

[39] However, EMS does not invoice KOSTT for these services as foreseen by Item 1.3. of the Temporary Technical Arrangement

[40] Above, point I.2. 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.

[41] Above, point IV.1.(1).

[42] See next paragraph.

[43] E.g. the case of Montenegro.

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from Article 8 of Directive 2003/54/EC. According to that provision, as applicable in an Energy Community context, Contracting Parties shall either designate transmission system operators or "*require undertakings which own transmission systems*" to do so. Consequently, 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.[44] This is confirmed by Recital 10 of Directive 2003/54/EC, according to which "*the designated system operators **may** be the same undertakings owning the infrastructure.*"[45]

(2) The incurrence of costs on the network operated by KOSTT

According to Article 3(6) of Regulation 1228/2003, the costs to be taken into account for compensation under Article 3(1) of Regulation 1228/2003 "*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.*"

In its complaint and in subsequent submissions to the Secretariat, the complainant claims a substantial amount of costs (some € 8.500.000 for the period of July 2004[46]-July 2009) from the Republic of Serbia on account of the withholding of ITC payments by EMS. Without further specification, the Secretariat at this point of the procedure cannot express itself on the adequacy and the legitimacy of these alleged costs under the calculation methodology set out in Article 3(6) of Regulation 1228/2003. Moreover, as past experience with the various ITC agreements shows, Article 3(6) of Regulation 1228/2003 may be approached and implemented in different ways.

For the purpose of the present case, it suffices to state that KOSTT bears the costs for operation, losses and maintenance as a result of hosting transit flows. The Republic of Serbia, in following up on the present Opening Letter, may request a detailed and comprehensible calculation from the complainant. It may be noted that under Article 3(6) of Regulation 1228/2003, those costs must not necessarily be consistent with the payments received by EMS under the ITC Agreements for the Kosovo part of the network. The principle statement that KOSTT incurs costs on the network operated by it is also without prejudice to any counter-claims EMS may have against KOSTT on other grounds, such as the provision of secondary control services etc.

(3) Hosting cross-border flows of electricity

It is not disputed that electricity flows take place through the network assets located on the territory of Kosovo. However, the Republic of Serbia in the informal discussions contested that these transits constitute "cross-border flows" within the meaning of Article 3 of Regulation 1228/2003.

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*

[44] An Independent System Operator would be one example.

[45] Emphasis added.

[46] N.b. before the entry into force of the Energy Community Treaty.

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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"

In the context of its incorporation in the Energy Community, the term "Member States" is to be read as "Contracting Parties". Hence, a cross-border flow as defined by the first sentence of Article 2(2)(b)of Regulation 1228/2003 is the physical flow electricity on the transmission network of one Contracting Party (UNMIK) resulting from the impact of producer and/or consumer activities outside UNMIK on UNMIK's transmission network. It is not disputed that such cross-border flows affecting the transmission network operated by KOSTT take place. The objection by the Republic of Serbia based on the wording "cross-border" must be rejected. 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 UNMIK. This includes all Contracting Parties (including Serbia) and Parties to the Energy Community Treaty, but also third parties.

It may further be added that the Republic of Serbia accepted the existence of transit flows, as in the Temporary Energy Exchange Agreement of 2000, and agreed not only to permit electricity transit for the purposes of the respective other party to and from third parties,[47] but also to reimburse the transit costs to KOSTT.

For the sake of completeness, 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 Secretariat cannot see how the bilateral agreements in place between EMS and KOSTT establish a single control block for ITC purposes.

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 German TSO EnBW Transportnetze, E.on Netz, RWE Transportnetz Strom and Vattenfall Europe Transmission, as well as the Luxembourg TSO CEGEDEL, the Austrian TSO TIWAG-Netz and VKW-Netz "*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.*"[48] Similar arrangements exist between the TSO of the Baltic States. Hence, 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 represented by EMS, and thus do not acknowledge the existence of a control block within the meaning of the definition given in the agreements.[49]

Furthermore, the bilateral agreements between KOSTT and EMS do not establish a single control block for ITC purposes only, as required by the second sentence of Article 2(2)(b)of Regulation 1228/2003. First of all, they were concluded in the years 2000 and 2001 and thus predate both Regulation

[47] Item 1.4.1. of the Temporary Energy Exchange Agreement.

[48] ITC Agreement for 2008 and 2009.

[49] See ITC Agreement for 2008 and 2009, Item 1.2.11 and above point I.2.

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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 other two 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,[50] but not a control block "*for ITC purposes only*". Thirdly, 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.

(4) Conclusion

It follows from the above that KOSTT, as the transmission system operator designated by 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.

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 pay such compensation to KOSTT for all cases where the electricity flow originates or ends on its system. Consequently, by not paying such compensation to KOSTT in those cases, and for costs to be substantiated by KOSTT, 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.

3. The capacity allocation on the interconnectors with third parties

The second part of the subject-matter of the present case concerns capacity allocation on the interconnectors between the transmission system operated by KOSTT and the transmission systems of the adjacent Albania, former Yugoslav Republic of Macedonia and Montenegro. It is not disputed that EMS, and not KOSTT, allocates (half of) the available transfer capacities on these interconnectors.[51] 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.

For the purpose of the present case, it is to be assessed whether the allocation of interconnection capacity falls within the responsibility of EMS or KOSTT (1) and the consequences of a finding that the latter is responsible for capacity allocation (2).

(1) Responsibility for capacity allocation on interconnectors

Regulation 1228/2003 does not specifically pronounce itself on the allocation of responsibilities for capacity allocation on interconnectors, but lays down rules for how capacity allocation is to be performed, in itself or in combination with congestion management (in particular Article 6 of Regulation

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

[51] 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 also cross or span a border between states.

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1228/2003 and the so-called Congestion Management Guidelines annexed to Regulation 1228/2003[52]). However, the Congestion Management Guidelines in particular clearly address the TSO as being in charge of capacity allocation and congestion management throughout the entire text.

Most pertinent to the case at issue is item 3.1. of the Congestion Management Guidelines, requiring that "*Capacity allocation at an interconnection shall be coordinated and implemented using common allocation procedures by* ***the TSOs involved***."[53] This bilateral coordination rule applies until the common coordinated congestion management method and procedure for allocation of capacity mentioned in item 3.2 of the Congestion Management Guidelines are implemented.[54] Under a bilateral coordination scheme, the term "the TSOs involved" cannot reasonable be understood in any other way than addressing the transmission system operators between whose transmission systems the interconnector in question is situated. This understanding is supported by an interpretation of Directive 2003/54/EC, listing the (minimum) tasks to be performed by each TSO as part of network operation, among which are "*managing. energy flows on the system, taking into account exchanges with other interconnected systems*" (Article 9(c) of Directive 2003/54/EC) and the granting of non-discriminatory third-party access to the network (Article 20 of Directive 2003/54/EC).

These provisions are to be read against the background of the main objective pursued by Directive 2003/54/EC, namely the establishment of an open and integrated electricity market. In order to reach that objective, Directive 2003/54/EC (as well as Regulation 1228/2003) rely on transmission system operators to fulfill certain requirements, such as managing energy flows and granting third-party access.[55] Capacity allocation is an important element in both the management of energy flows and third-party access.[56] From the perspective of Directive 2003/54/EC, capacity allocation thus goes beyond the commercial use of the network, but is an essential duty imposed on TSO to attain key objectives pursued by the Energy Community. Clear and unequivocal allocation of this duty to individual transmission system operators is a prerequisite for its fulfillment in an interconnected system. Clear allocation of responsibilities is the reason why Directive 2003/54/EC, in its Article 8, specifically requires designation, directly or indirectly, of transmission system operators by Member States/Contracting Parties. Thus, the designation by a Contracting Party of one or more transmission system operators[57] certifies that this particular – and only this – operator is in charge of fulfilling, on a given territory, the obligations imposed on it by the *acquis*, including the allocating of capacities on ("its" part of) the interconnector.

It follows from the above that under the relevant provisions of the *acquis communautaire*, KOSTT as the transmission system operator is responsible for allocating capacity on the three specified interconnectors. This is expressly specified and required by its license.[58] To what extent it could possibly delegate this responsibility to another transmission system operator by way of a bilateral agreement needs not to be decided here. The bilateral agreements in place between EMS and KOSTT do not, in any way, entail the delegation of the competence to allocate interconnection capacity.

(2) Consequences for the present case

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

[53] Emphasis added.

[54] The Contracting Parties to the Energy Community Treaty had to implement that obligation by 31 December 2009, see Article 2(2) of Decision No 2008/02/MC-EnC of the Ministerial Council of 27 June 2008, but failed to do so.

[55] See, with respect to third-party access, Recital 7 of Directive 2001/54/EC and, *inter alia*, the judgment of the Court of Justice of the European Union of 22 May 2008 in Case C-439/06 *citiworks*, at paragraph 44.

[56] See for example Recital 4 of Regulation 1228/2003.

[57] It may be recalled in this context that the definition of transmission system operator does not depend on the ownership of the network assets, see above point IV. 2.(1).

[58] Article 10 of the ERO Transmission System Operator License of 2006.

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Article 6 of the Treaty requires the Parties to the Treaty to facilitate the achievement of the Energy Community's tasks and to abstain from any measure which could jeopardise the attainment of the objectives of the Treaty. Consequently, the Republic of Serbia and its state-owned transmission system operator EMS may not obstruct KOSTT, as the transmission operator designated by UNMIK, in performing its duties in allocating interconnector capacity on the three specified interconnectors.

As set out above,[59] however, allocating capacity on the three specified interconnectors does not directly depend on actions or non-actions of the Republic of Serbia, but on the initiative by a third party, namely the recognition as a control area under the UCTE handbook and the issuance of an EIC object type Y by ENTSO-E. Under those circumstances, and a closer analysis of Article 6 of the Treaty notwithstanding,[60] 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.

This finding, however, is without prejudice to the complainant's claim to receiving the revenues resulting from the allocation of interconnection under Article 6(6) of Regulation 1228/2003. According to this provision, such revenues "*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 the use of revenues is reiterated and further specified in Item 6 of the Congestion Management Guidelines. In accordance with the analysis made above, the network mentioned in Article 6(6) of Regulation 1228/2003 can only be the one to which the interconnector belongs to, and not the transmission system situated in another Contracting Party and operated by another TSO. The decisive criterion in that respect is again the designation by a Contracting Party, and not ownership of the assets. In the absence of any information on how EMS actually uses the revenues resulting from allocation capacity on the three interconnectors in question, the Secretariat assumes that they are not used for the benefits of either the availability of the allocated capacity, nor investments into the network operated by KOSTT, nor as an income taken into account to reduce the overall level of transmission tariffs on the network operated by KOSTT.

(3) Conclusion

According to Article 6(6) of Regulation 1228/2003, the revenues received from allocating capacity on the three interconnectors in question are to be used 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 3 of Regulation 1228/2003.

In its complaint, KOSTT claims an amount of some € mio 10.360.000 for the period of 2007-2009 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.

V. Conclusion

Under the Dispute Settlement Procedures as adopted by the Ministerial Council in June 2008, the Secretariat is called upon to initiate a preliminary procedure against a Party before seeking a decision by the Ministerial Council under Article 91 of the Treaty. According to Article 12 of these Rules, such a procedure is initiated by way of an Opening Letter.

[59] Point I.2.

[60] See above, point IV.1.(1).

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As its information presently stands, the Secretariat must conclude that, by

(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, and

(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 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.

In accordance with Article 12 of the Dispute Settlement Procedures, the Republic of Serbia is requested to submit its observations on the points of fact and of law raised in this letter within two months, i.e by

17 November 2010.

It is recalled that, according to Article 10(2) of the Dispute Settlement Procedures, the purpose of the procedure hereby initiated is to establish the factual and legal background of the case, and to give the Party concerned ample opportunity to be heard. In this respect, the preliminary procedure shall enable the Republic of Serbia to comply of its own accord with the requirements of the Treaty or, if appropriate, justify its position.

Throughout the preliminary procedure, the Secretariat is willing to discuss swift and practicable solutions with all parties involved. Any initiative by the Government aimed at settling the dispute forming the subject matter of Case ECS-3/08 in line with the Energy Community *acquis*, including further negotiations, will be actively supported by the Secretariat.

Vienna, 17.09.2010

Slavtcho Neykov

Director
Energy Community Secretariat

Dirk Buschle

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Energy Community Secretariat

ECS - 3/08 I 30.11.2010

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Beilage

Die Botschaft der Republik Serbien in Österreich entbietet dem Sekretariat der Energiegemeinschaft ihre Empfehlungen und beehrt sich beiliegend eine Kopie des Schreibens des Ministers für Bergbau und Energetik der Republik Serbien, Herrn Petar Škundrić, an Herrn Direktor Slavtcho Neykov, Zahl 312-01-00760/2010-01, vom 17. November 2010, sowie ein dokument betitelt „Response to the Case ECS-3/08 Opening Letter", in englischer Sprache, zu übermitteln.

Die Originale werden nach Eintreffen in der Botschaft nachträglich zugestellt.

Die Botschaft der Republik Serbien benützt auch diese Gelegenheit, dem Sekretariat der Energiegemeinschaft die Versicherung ihrer vorzüglichen Hochachtung zu erneuern.

Wien, am 29. November 2010

An das Sekretariat der
Energiegemeinschaft
z.Hd. Herrn Direktor Slavtcho Neykov
Wien

BOTSCHAFT DER REPUBLIK SERBIEN IN ÖSTERREICH - WIEN
АМБАСАДА РЕПУБЛИКЕ СРБИЈЕ У АУСТРИЈИ - БЕЧ

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Beilage

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An das Sekretariat der
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Министарство рударства и енергетике
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Бр/№: 312-01-00760/2010-01
Датум/Date: 17 November 2010

ENERGY COMMUNITY SECRETARIAT
Mr Slavtcho Neykov, Director

AUSTRIA
1010 VIENNA
Am Hof 4, Level 5

Dear Mr. Neykov,

Please find attached a document made by the Ministry of Mininig and Energy as response on Opening Letter submited by the Energy Community Secretariat in September 2010.

Respectfully yours,

Dr. Petar Škundrić

Minister

Response to the Case ECS-3/08 Opening Letter

The Republic of Serbia, as a signatory of the Treaty establishing the Energy Community, is acquainted through the Government of the Republic of Serbia in the capacity of holder of executive power in the Republic of Serbia, with the contents of the Opening Letter sent by the Energy Community Secretariat and starting up the procedure for settlement of the dispute in connection with the complaint made by KOSTT against the Republic of Serbia (Case ECS 3/08) in which it is stated that through the actions taken by Elektromreža Srbije (hereinafter: EMS) public enterprise, the Republic of Serbia is not acting in keeping with Article 9 of the Treaty read in conjunction with Articles 3 and 6 of Regulation (EC) 1228/1228.

It has been found that material facts have been erroneously and incompletely set out in the Opening Letter and that the provisions of the Treaty establishing the Energy Community (hereinafter; the Treaty) and the Procedural Act No. 2008/01/MC-EnC of the Energy Community Ministerial Council (hereinafter: the Procedural Act) have not been properly applied.

In view of that, we are presenting our comments and detailed explanation by points in some chapters of the Opening Letter.

Essentially speaking, the claims made in the complaint that the Republic of Serbia is violating the provisions of the treaty are hereby being contested wholly. We are of the opinion that by giving this appraisal, the Energy Community Secretariat has overstepped the limits of its authority arising from the Treaty and the Procedural Act and indulged in the appraisal of violations of the Treaty provisions, even though the Procedural Act shows clearly and unambiguously that the final position on that can be taken by the Ministerial Council alone.

Furthermore, we are of the opinion that it would be necessary to show clearly in what capacity had KOSTT lodged the complaint, i.e., that it had lodged it in the capacity of a private body which is not a party to the Treaty.

We present below the individual comments by chapters on the claims set out in the Opening Letter, as follows:

Chapter I – Facts

The position of KOSTT under domestic legislation is described in Item 1 of this Chapter and it is stated that KOSTT was designated as the sole transmission system operator (hereinafter: the TSO) on the basis of the licence issued by the Energy Regulatory Office, whereby KOSTT is to operate the transmission system in Kosovo as a

territory covered by UNMIK. The thus stated position of the complainant is unfounded and incorrect for several reasons, including:

- Under the Constitution of the Republic of Serbia, the Province of Kosovo and Metohija is an integral part of the territory of Serbia and enjoys essential autonomy in the scope of the sovereign state of Serbia and on the basis of such status of the Province of Kosovo and Metohija, all government agencies are constitutionally bound to represent and protect the state interests of Serbia in Kosovo and Metohija in all internal and external political relations;

- Under the Energy Law (Republic of Serbia Official Gazette No. 84/2004), the electric power system of the Republic of Serbia is unified in the whole territory of the Republic of Serbia and pursuant to Article 91 of the mentioned law, the transmission system in the territory of the Republic of Serbia is operated by EMS transmission system operator on the basis of the licence issued by the Energy Agency of the Republic of Serbia as a regulatory body.

In view of that, the transmission system in the territory of Kosovo and Metohija may be looked upon only in the scope of the transmission system of the Republic of Serbia and as its integral part and the role of KOSTT should also be considered in that context, meaning that it cannot be the transmission system operator in Kosovo and Metohija.

In emphasising in its complaint its position of the transmission system operator, KOSTT is overlooking the fact that it is basing its right on the non-right, using the assets which do not belong to it, which it did not acquire by any legal transaction (construction, purchase), so that it can neither be separate from and independent of the single transmission system of the Republic of Serbia. In view of the fact that in its complaint, KOSTT stated that it is a stock company, it could possibly be only a daughter company of the existing owner of the transmission network in Kosovo and Metohija or the operator of the transmission system of the Republic of Serbia, i.e., EMS.

The mentioned facts corroborate the fact that the Republic of Serbia is heading towards application of the provisions of Directive 2009/72 EC in the scope of the Third Package, which is going to come into force on 3 March 2011. It is stated in it that the first requirement a company must fulfil in order to be a transmission system operator is that it is also the owner of the transmission system, or if it is not the owner, in order to function as an independent transmission system operator, it is necessary for its owner to designate it for the transmission system operation. In the case of KOSTT, the latter is not applicable, since it is neither the owner, nor does it have the owner's (Republic of Serbia) authority for transmission system operation in Kosovo and Metohija.

KOSTT states further that the system operated by it is interconnected with the transmission systems of Albania, Former Yugoslav Republic of Macedonia and Montenegro and that the allocation of capacity on these inter-connectors in the territory of Kosovo and Metohija should be carried out by it, not by EMS, which is the operator of

the transmission system in the Republic of Serbia. However, the question posed here is as follows: If KOSTT is independent, as it is claimed, why are its "boundaries" not rounded off? It is an established fact that the transmission system in Kosovo and Metohija is linked up by internal long-distance power lines with the other part of the Serbian transmission system. KOSTT is actually deliberately avoiding to mention that because any other solution, other than allocation being carried out by EMS, would mean the introduction of an additional boundary on the administrative line between Kosovo and Metohija and the rest of the Republic of Serbia. The precondition for introduction of that additional "boundary" would be for KOSTT to become a functionally fully independent transmission system operator, for which neither legal nor technical conditions exist. Furthermore, the artificial introduction of the "boundary" would result in risen costs and lower supply reliability in the territory of Kosovo and Metohija and elsewhere in the region, because of market fragmentation and introduction of additional barriers to free energy exchange on the regional market.

The current situation is such that there are neither boundaries nor congestions inside the control area of the Republic of Serbia, so that the energy needed for supplying the consumers in Kosovo and Metohija can be obtained on any Serbian boundary without any extra costs and this is treated as a transaction on the internal Serbian market.

Furthermore, it is an established fact that EMS has signed agreements on the allocation of cross-border transmission capacities with all of the eight operators in Serbia's neighbouring countries, including also the transmission system operators from the three countries referred to by KOSTT in its complaint. This goes to show that on the regional and pan-European level, EMS is recognised as the sole transmission system operator who is responsible for the whole procedure of congestion management on the boundaries of the control area of the Republic of Serbia, including also the very allocation of cross-border transmission capacity.

In Item 2 of this Chapter, the position of KOSTT in the international organisations of transmission system operators is described. It is an established fact that it is not a member of the European Network of Transmission System Operators (ENTSO-E) and was not a member of its predecessors, i.e., the Union for the Coordination of Transmission of Electricity (UCTE) and European Transmission System Operators (ETSO). In addition to the fact that the transmission system in Kosovo and Metohija is owned by the Republic of Serbia, this is so also because of the impossibility for KOSTT to meet all of the necessary technical requirements set by the standards of the mentioned international organisations concerning all matters among which the greatest importance is attached to the maintenance of the system operating reliability, regulation in the scope of control area, congestion management, etc. The reason why KOSTT is not a member of any relevant international organisation has nothing to do with any action taken by EMS. That is so because among other things, these institutions have not recognised KOSTT as an independent transmission system operator. All legal and technical duties for work in the Continental Europe synchronous interconnection are laid down in the legally binding UCTE Multilateral Agreement of Transmission System Operators, which was signed by all transmission system operators in synchronous interconnection, including EMS.

The previously mentioned competence of EMS as the operator of the transmission system in the Republic of Serbia relates also to the field of application of the multilateral Agreement on Compensation for Transit of Electricity (Inter TSO Compensation – hereinafter: ITC) in the territory of the Republic of Serbia, where EMS is recognised as the sole contracting party for the transmission system in the mentioned territory, which also includes the territory of Kosovo and Metohija.

As for the claim that since 2004, EMS has not transferred any money to KOSTT from the revenue received by EMS on the basis of compensation for the cost of transit of electricity through the network of the Republic of Serbia, including the network in the territory of Kosovo and Metohija, our position is that that claim has no legal basis, because on the basis of the ITC Agreement, the duties stemming from Regulation 1228/2003 in connection with compensation for the cost of electricity transit are performed in whole Europe uniformly. Like any other agreement, it has the *inter partes* effect, i.e., between parties to agreement, and KOSTT most certainly isn't one. Moreover, the duty to pay, as well as the right to claim refund for expenses, depend on the calculations made in accordance with the methodology provided by the ITC Agreement.

We would like to stress that on the basis of the bilateral Temporary Electricity Exchange Arrangement signed by the Ministry of Energy and Mining of the Republic of Serbia and the Public Utilities Department of UNMIK (hereinafter: UNMIK/PUD), the mutual transit cost compensation has been agreed on. The mutual payments on such grounds were made by the then valid methodology until 1 July 2004, when the first ITC Agreement came into force, introducing a new methodology for accounting the electricity transit costs. For the purpose of performing the duties laid down in the mentioned bilateral arrangement, the competent government agency and TSO drew up the accounts of mutual compensation of transit costs for the period starting from 2004 according to the new methodology using mutually confirmed technical data. Although confirmed by ETSO during its mediation, these accounts were not accepted by the UNMIK/PUD representative, resulting in the stoppage of further payment of mutual compensation for transit costs to date.

In Item 3 of this Chapter, which relates to bilateral arrangements on the relations between EMS and KOSTT, it is said that the relationship between EMS and KOSTT is regulated by three arrangements signed by various institutions and/or companies from UNMIK and Serbia. That is not true. Namely, the Temporary Arrangement on Services was never signed, so that the reference made in the Opening Letter to the proposal draft of that agreement is irrelevant for the probative proceedings. The other two arrangements were signed by the Ministry of Energy and Mining of the Republic of Serbia and UNMIK/PUD, so that the claim made in the Opening Letter to the effect that one of the agreements (Temporary Energy Exchange Arrangement) was signed by UNMIK on behalf of the Kosovo and Metohija electric power company (The Power Company of Kosovo) and EPS, is untrue. Furthermore, the copy of the Temporary Energy Exchange Arrangement presented by KOSTT is not legally relevant because a working version is involved. For the sake of proper establishment of facts, we are enclosing copies of the

both arrangements. In keeping with everything said so far, we maintain that neither EMS nor its legal predecessors have ever signed any agreement with any legal entity in the territory of Kosovo and Metohija, including also KOSTT.

It should be noted that the both of the two enclosed agreements are in the domain of international law, since they were signed by the Ministry of Energy and Mining of the Republic of Serbia and UNMIK/PUD, so that the claim made in the Opening Letter about to whom the agreements relate (EMS and KOSTT) is not corroborated by evidence.

CHAPTER II – PROCEDURE

As for the claims made in this chapter, it is beyond any doubt that attempts have been made at dealing with the issues constituting the subject matter of the complaint and it should be noted that the representatives of state agencies and companies from the Republic of Serbia have always shown readiness for finding a mutually acceptable solution.

The Republic of Serbia took such approach also to the proposal made by ETSO Association, which was based on the technical and economic analyses made by the experts from the mentioned association, but that proposal was not agreed on.

As for the attempted mediation by the Secretariat and its Draft Memorandum of Understanding between EMS and KOSTT, we would like to say that the Secretariat's claim that it had offered a fair and balanced solution in that draft, which avoids at the same time the issue of infrastructure ownership, is not true. Namely, the offered draft was based on the positions taken by KOSTT, without taking into account the legally relevant facts and facts of a technical nature. The Draft Memorandum of Understanding was contrary to the valid ITC methodology and the 2007 ETSO Association proposal. The issue of infrastructure ownership was not avoided in the Draft Memorandum of Understanding, as is claimed in the Opening Letter, but it was based on the KOSTT position completely.

Moreover, neither was the Memorandum based on the two existing agreements between the Ministry of Mining and Energy of the Republic of Serbia and UNMIK/PUD. In view of that, the Memorandum of Understanding was not a good basis for reaching a mutually acceptable solution. The Ministry of Mining and Energy of the Republic of Serbia drew attention to this circumstance in its response to the proposed Draft Memorandum of Understanding and stressed that the only acceptable approach would be for the signatories of the Memorandum of Understanding to be the Ministry of Mining and Energy of the Republic of Serbia and UNMIK. Hence the unfoundedness of the claim made in the Opening Letter that the Ministry of Mining and Energy of the Republic of Serbia had rejected the Memorandum of Understanding.

In addition, the allegation of the Secretariat, which was considered as relevant when deciding on sending the Opening Letter, implying there weren't other proposals for this dispute settlement, is not well-founded. We are still of the opinion that the 2007 ETSO Association proposal makes up good grounds for reaching an acceptable solution.

Furthermore, the Secretariat is referring quite unfoundedly to the talks conducted in Vienna in March 2010, even though there are not notes about such talks, which confirms their informal nature, whereby the Secretariat is overstepping its authorisations.

Chapter III – Relevant Energy Community Laws

As for this Chapter, in which the relevant Energy Community laws are stated, we are of the opinion that in addition to them, it would also be necessary to state the other relevant regulations which the Secretariat had excluded and to which it is referring throughout the Opening Letter (agreements, rules, standards and recommendations of ENTSO-E, ETSO, UCTE). All of these regulations are of importance for these proceedings and are not contrary to the relevant Energy Community laws.

Chapter IV – LEGAL ASSESSMENT

Item 1. Contents

As for the legal assessment included in Sub-item (1) of Item 1 of this Chapter, where the Secretariat excludes from the Energy Community laws a set of rules which was adopted by ENTSO-E and its predecessors UCTE and ETSO, stating that they substantially differ from *acquis communautaire* and that the Energy Community law establishes an autonomous legal order which is subject to the exclusive case-law of the European Union Court of Justice and any decisions of the Ministerial Council, our position is that such an approach of the Secretariat is unfounded.

We are of the opinion that such an approach could relate only to substantive and procedural law, but not also to the evidence that has to be taken into account in any proceedings for the sake of proper establishment of facts. The generally accepted rule of any proceedings in which disputes are being settled is that the body deciding on the meritum of a dispute must consider all pieces of evidence of importance for dealing with the case involved, each one individually and all together.

In our opinion, these issues are preliminary issues and any different approach would be an unprecedented exception.

In view of that, there are no grounds for excluding from legal assessment the UCTE Multilateral Agreement (and its Operation Handbook annexe), which was signed

by all TSO operating within the Continental Europe synchronous area (the former UCTE synchronous zone), since it is a legally binding document setting the technical requirements for operation in the Continental Europe synchronous area and in full conformity with the European Commission directives dealing with the electricity sector.

Moreover, there are no grounds for excluding from legal assessment the issue of ownership of the transmission network and assets in the territory of Kosovo and Metohija, as dealt with under Sub-item (2) of Item 1 of this Chapter, in view of the United Nations Security Council Resolution 1244, which guarantees the sovereignty of the Republic of Serbia in Kosovo and Metohija.

Furthermore, it is not possible to disregard the fact that in the capacity of legal successor to RO Elektroistok – SOUR Elektroprivreda Kosova, EMS assumed all rights and duties to do with both fixed assets and debts of its legal predecessors. It should be noted that through EMS, the Republic of Serbia is servicing all debts of its legal predecessors associated with power transmission in the whole territory of the Republic of Serbia, including Kosovo and Metohija. Based on what has been said here, it can be concluded that KOSTT is not the owner of the transmission system in Kosovo and Metohija and that all of the mentioned facts are most certainly relevant for this case and this claim will be corroborated by the Directive 2009/72 EC Third Package.

As for the Secretariat's statement in Item 1, Sub-item (3) of this Chapter that the legal assessment does not concern contractual relations between EMS and KOSTT, we think that it is a superfluous one in view of that fact that such agreements have never been made between EMS and KOSTT.

Moreover, the Secretariat's statement that the already mentioned bilateral agreements between the Ministry of Mining and Energy and UNMIK/PUD are of relevance to this case only for the establishment of factual situation is incomplete and we are of the opinion that the two concluded agreements are of relevance not only to the establishment of factual situation, but also to the solution of this case.

Item 2. Non-payment of compensation for transit of electricity

In this Item, the Secretariat bases its position on the equation of EU Member States (as referred to in the EU directives and regulations) with Party to Agreement (as referred to in the Treaty establishing the Energy Community). According to the Treaty establishing the Energy Community, the parties are:

- European Union on the one side, and
- Parties to the agreement, on the other:
  - Adhering parties and
  - Interim United Nations Mission in Kosovo under the UN Security Council Resolution 1244.

The aforesaid indisputably shows that according to the UN Security Council Resolution 1244, UN Interim Mission in Kosovo is a separate party to agreement (because it is not a state as is the case with Adhering parties), so that the rights and duties of states cannot apply to it. That is why the Secretariat is wrong in equating the status of the EU member states (as states) with the status of the Interim United Nations Mission in Kosovo, since the rights and duties of the EU member states can be equated only with the rights and duties of Adhering parties (as states). According to the UN Security Council Resolution 1244, the level of the rights and duties of the Interim United National Mission in Kosovo is limited precisely by its status of an interim mission.

In Item 2, Sub-item (1) of this Chapter, the Secretariat does not see any reason not to consider KOSTT a transmission system operator within the meaning of the Energy Community law because it has not been made aware of any circumstance indicating that KOSTT, as a matter of principle, is not operating the transmission network in UNMIK. In connection with that, it is stated that in procedural law, it is unacceptable for somebody who is claiming something not to present concrete proof, but to present unfounded and legally groundless facts instead. Namely, the Secretariat concludes that KOSTT is a transmission system operator because it does not see reasons for not regarding him as one or it has no knowledge of the existence of the circumstance that KOSTT is not operating the transmission system, though without presenting any evidence to that effect. We are of the opinion that the Secretariat should have substantiated its claim that KOSTT is the transmission system operator, taking into account in the first place the requirements a legal entity or individual has to meet in order to become a transmission system operator (system management, maintenance, development, etc.), as well as all agreements and rules it had taken as irrelevant and which are of importance for this case (e.g., rules of operation relating to the functioning of the synchronous ENTSO-E/UCTE interconnection, ownership, agreements between the Ministry of Mining and Energy of the Republic of Serbia and UNMIK/PUD).

This is corroborated by the very definition of the transmission system operator presented in Directive 2003/54, according to which all requirements relating to the business of a transmission system operator must be met cumulatively. In the concrete case, KOSTT is not up to all of the mentioned requirements, so that the assertion of the Energy Community Secretariat is unfounded.

Thus, all positions and conclusions based on the claim made in the Opening Letter that KOSTT is a transmission system operator are without a basis and legally unfounded.

In Item 2, Sub-item (2), it is said that KOSTT claims a substantial amount of costs (approx. € 8.5 million) from the Republic of Serbia for the period from July 2004 to July 2009 on account of withholding ITC payments by EMS. The Secretariat also states that it cannot express itself on the adequacy and legitimacy of these alleged costs which were worked out by KOSTT under the calculation methodology set out in Article 3(6) of Regulation 1228/2003, as well as that Article 3(6) may be approached and implemented in different ways. It is further said that the Republic of Serbia may request a detailed and comprehensible calculation from KOSTT.

In connection with that, we are of the opinion that these assertions are not founded because the Calculation methodology used by KOSTT is not based on the provisions of Regulation 1228/2003. Likewise, it is also not true that Article 3(6) of Regulation 1228/2003 can be approached and implemented in different ways, when the calculation of transit costs is involved. The application of the mentioned provisions between the transmission system operators is always regulated by the annual ITC agreements with a clearly defined and unified methodology for all signatories of that agreement. As for the mentioned amount claimed by KOSTT (approx. € 8.5 million), we find that it is unfounded wholly and that it has no grounds in the methodology applied pursuant to the ITC agreements. KOSTT cannot even make a correct calculation, because the correct application of the ITC methodology makes it necessary for the calculation to cover all relevant technical input data from all transmission system operators which are parties to the multilateral ITC agreement and such data are not available to KOSTT.

It should be noted that the bilateral meetings between the representatives of government agencies and companies from the Republic of Serbia and UNMIK/PUD on this subject began after implementation of the ITC Agreement in South Eastern Europe (1 July 2004) for the purpose of finding a solution for internal calculation in accordance with the ITC methodology. In making its full contribution to finding a solution, EMS prepared all of the necessary input data and methodological explanations and made all of the necessary calculations and presented all of that to the other party. It is an established fact that the input data have been harmonised and that a common position has been taken with regard to calculation methodology, but the key disagreement occurred in connection with the costs to do with ownership of the transmission network in the territory of Kosovo and Metohija.

A solution was not found even in 2007 under the auspices of the ETSO Association, of which we gave a detailed account in Chapter II of this Opening Letter.

In view of everything said so far, the assertion that the Republic of Serbia can request a detailed and comprehensible calculation is illogical.

In Item 2, Sub-item (3) of this Chapter, the Secretariat makes again a reference to informal talks and interprets the positions of the Republic of Serbia unfoundedly and draws wrong conclusions on the basis of that. The positions of the Secretariat are contradictory in this part when it comes to presentation of facts and then conclusions, too. The Temporary Energy Exchange Arrangement provides for compensation for the costs of the flows crossing the territory under UNMIK jurisdiction. It should be noted that the Republic of Serbia proposed on more than one occasion the establishment of an internal bilateral calculation in the scope of the Republic of Serbia control area in accordance with the ITC Methodology.

In the example of the "German ITC Party" referred to by the Secretariat, Internal ITC calculation is made between the areas which are either control areas of individual TSOs in the scope of the ENTSO-E hierarchy or correspond to the territories of other

member states. In the regulatory area of the Republic of Serbia, there isn't a special control area that covers the transmission network in the territory of Kosovo and Metohija, nor is the Province of Kosovo and Metohija a separate state, but a territory governed temporarily by a United Nations mission. Consequently, it is not possible to make any reference in the ITC Agreement to KOSTT, as was concluded by the Secretariat in the German example, so that in the ITC Agreement, reference is made only to EMS as the Serbian ITC party for whole territory and control area of the Republic of Serbia.

In Item 2, Sub-item (4) of this Chapter, where the Secretariat draws the conclusion that by failing to pay KOSTT compensation for the costs resulting from the flow in its network, the Republic of Serbia is in breach of Article 3 of Regulation 1228/2003, we would like it be known that the mentioned conclusion is unfounded and that were are contesting it wholly for reasons set out in detail in Chapter V – Conclusion (Item 1).

Item 3. Allocation of capacity on inter-connectors with third parties

In Item 3, Sub-item (1) of this Chapter, the Secretariat states that in the capacity of transmission system operator, KOSTT is responsible for allocation of transmission capacity on the inter-connectors in the direction of the Former Yugoslav Republic of Macedonia, Montenegro and Albania. This conclusion is erroneous for the reasons stated in the remarks about Chapter I – Facts and remarks about Chapter IV – Legal Assessment (Item 2. - Non-payment for electricity transit (1) KOSTT's status as transmission system operator), where it was explained in detail why there are no legal or technical conditions for KOSTT being regarded as a transmission system operator.

In Item 3, Sub-item (2) of this Chapter, the Secretariat draws the conclusion on the basis of its unfounded position that KOSTT is a transmission system operator. The Secretariat also states contradictory facts by asserting that the responsibility for allocation of transmission capacity is designated on the basis of to whom the network belongs and then in the next sentence, it states that this does not apply to network ownership. In connection with that, it should be noted that allocation of transmission capacity is one of the elements of congestion management and that only a transmission system operator who is fully capable of meeting the requirements of the congestion management procedure may also carry out the allocation of transmission capacity in the scope of this procedure.

Furthermore, the Secretariat bases its conclusion on an assumption and states first that it has no information about the purposes for which EMS is actually using the funds from allocation of transmission capacity and then draws an unambiguous conclusion that EMS is not using them in keeping with Regulation 1228/2003. The drawing of conclusions is not based on reliable and correct information on the purposes for which the funds from allocation are used, confirms once more that in the concrete case, the Secretariat is not acting in conformity with the Procedural Act.

- That the partial calculation or calculation covering only the electricity flows inside the network in Kosovo and Metohija, which originate from or end in the rest of the transmission system of the Republic of Serbia, is contrary to the ITC methodology. The calculation must cover the flows in the whole transmission system of the Republic of Serbia, which originate from or end in the systems of all other ITC parties.

In Item (2) of this Chapter, the Secretariat draws the conclusion that the Republic of Serbia is not using the income from allocation of capacity on the inter-connectors with Albania, Former Yugoslav Republic of Macedonia and Montenegro for one of the purposes provided by Article 6(6) of Regulation 1228/2003. The Secretariat has also concluded that the Republic of Serbia is not abiding by the mentioned Regulation because of the actions and non-actions of its state transmission system operator.

The mentioned conclusion is unfounded because EMS is using the income from allocation of cross-border transmission capacity obtained on all boundaries of its control area covering the whole territory of the Republic of Serbia, including the borders with Albania, Montenegro and Former Yugoslav Republic of Macedonia, fully in keeping with Regulation 1228/2003.The total revenues of EMS approved by the Energy Agency of the Republic of Serbia as regulatory body, include the revenue from the transmission tariff, revenue from transit and revenue from allocation of cross-border transmission capacity. Among other things, the following costs are also covered from the total approved revenues:

- Infrastructure costs, which also include the cost of construction of the existing transmission network, including also the part of the transmission network in the territory of Kosovo and Metohija built up to the year 1999;

- Costs to do with the provision of auxiliary services, which among other things, provide for the necessary level of primary, secondary and tertiary reserves and regulation in the control area of the Republic of Serbia, which also includes Kosovo and Metohija. By providing auxiliary services, EMS guarantees for the transmission cross-border capacity on all boundaries of its regulatory area, including the borders with Albania, Montenegro and Former Yugoslav Republic of Macedonia;

- Costs to do with the construction of interconnecting power lines for the purpose of increasing the cross-border transmission capacity, such as the construction of the new 400 kV interconnecting power line between the Republic of Serbia and the Former Yugoslav Republic of Macedonia.

Based on the above mentioned, it can be clearly concluded that the Republic of Serbia is performing fully its duties referred to in the Treaty establishing the Energy Community, so that the Secretariat's assertions about violation of the duties of the Republic of Serbia laid down in that Treaty are unfounded and incorrect.

OPERATOR SISTEMI, TRANSMISIONI DHE TREGU SH.A.
TRANSMISSION, SYSTEM AND MARKET OPERATOR J.S.C.
OPERATOR SISTEMA, PRENOSA I TRŽIŠTA A.D.

Mr. Slavtcho Neykov
Director
Energy Community Secretariat
Am Hof 4, Level 5
1010 Vienna, Austria

22 March 2011

Comments to the Response of Republic of Serbian to the Opening letter issued by ECS in Case ECS-3/08

Dear Mr. Neykov,

In the Opening Letter sent on 17 September 2010 to the Republic of Serbia, the Energy Community Secretariat (hereinafter "ECS") initiated a procedure for settlement of the dispute started by KOSTT against the Republic of Serbia (Case ECS 3/08).

The complaint is submitted based on breach of an Energy Community contracting party (the Republic of Serbia) to comply with Article 9 of the Treaty which refers to Geographical scope of the Treaty in reference to implementation of Article 3 – Inter transmission system operator compensation mechanism and Article 6 – Principles of congestion management of the Regulation 1228/2003/EC.

The complaint relates to the unlawful activities of Republic of Serbia through its transmission system operator (EMS) with regard to Inter TSO compensation and congestion management mechanism.

In the Opening letter the ECS has stated that through the actions taken by Elektromreža Srbije (hereinafter: EMS) public enterprise, the Republic of Serbia is violating the Article 9 of the Treaty read in conjunction with Articles 3 and 6 of Regulation (EC) 1228/1228.

The Republic of Serbia in November 2010 responded to the Opening letter issued by the ECS. KOSTT as the Party to the dispute is providing comments to the response submitted by Republic of Serbia. On some arguments of R. of Serbia that have pure political nature, we are not providing response since we do not wish to enter into political discussions. KOSTT has provided sufficient material evidence to ECS for all the claims against the R. of Serbia, therefore it was not necessary to respond to unproved political arguments.

We in entirety reject comments and claims by the Republic of Serbia, as ungrounded, tendentious and of political nature, which do not coincide with reality. However, for sake of clarification, below we have presented our comments on some of key issues referred to by Republic of Serbia.

1. The R. of Serbia is disputing the position of KOSTT as a party to the dispute since it submitted complaint as a private body "which is not a party to the Treaty".

The R.of Serbia is clearly misinterpreting provisions of the Article 11 para. 2 and Article 19, para. 1 of the Rule of the Procedural Act N" 2008/01/MG-EnC of the Ministerial Council of the Energy Community of 27 June 2008 on the Rules of Procedure for Dispute Settlement under the Treaty (hereinafter "Rules on dispute settlement ") that are clearly giving authority to any private body to submit its complaint against any party signatory of the Treaty Establishing the Energy Community.

2. The R. of Serbia is referring to its Constitution, which considers Kosovo as integral part of its territory, consequently alleging that based on the Serbian Law on Electricity transmission system of Kosovo is considered integral part of the Serbian transmission system.

It is notary fact that Kosovo is an independent state, de facto and de jure, internationally recognized and confirmed by opinion of The Independent Court of Justice issued on 22 July 2010, that has sovereignty and territorial integrity over is geographical territory, and as such its own hierarchy of legislation. Thus, any claim to the contrary, respectively allegation on legitimacy of KOSTT to own, operate and maintain the transmission system of Kosovo is groundless and unrealistic.

3. The R. of Serbia further claims that assets operated by KOSTT belong to Serbia.

The arguments presented by Republic of Serbia do not have any valid legal backing. Transmission assets operated by KOSTT are lawfully owned by KOSTT, and that for two reasons.
Firstly, the Transmission Division named "Elektro Bartja Prishtinë" and its "Office for operation and system development" (Dispatching unit) were established in 1980 as a part of vertically integrated company "Elektro-Ekonomija e Kosovës – EEK" (predecessor of KEK), owner of all electricity-related assets in Kosovo. The Dispatching entity had capacity of "single buyer" on behalf of vertically integrated company within ex-Yugoslavian power market.
In December 1981, the agreement for Joint Operation of all power systems of former Republic of Yugoslavia was signed, by all 8 power industries of former Yugoslavia, including EEK, all attaining equal rights and responsibilities within the JUGEL control-block.
On the other hand, any legal proceeding or act undertaken by Serbia in respect to transmission assets and operation of the power system, which may have occurred in period of 1990 and 1999 is unlawful and illegal, since auotomoy of Kosovo was arbitrarily suspended.

The political decision to abolish the transmission network of Kosovo, issued in 1990 is illegal and unlawful. This is further enforced by the UNMIK Regulation No.1999/24, ON THE LAW APPLICABLE IN KOSOVO, as amended (web site: http://www.unmikonline.org/regulations/1999/reg24-99.htm). The Regulation sets forth that the law applicable in Kosovo shall be: (a) The regulations promulgated by the Special Representative of the Secretary-General and subsidiary instruments issued there under; and (b) the law in force in Kosovo on 22 March 1989. In case of a conflict, the regulations and subsidiary instruments shall take precedence. Article 1.2 of Regulation defines that only in the case if "a court of competent jurisdiction or a body or person required to implement a provision of the law, determines that such issue is not covered in regulations but by another law in force in Kosovo after 22 March 1989 which is not discriminatory and which complies with section 1.3 of the present regulation, the court, body or person shall, as an exception, apply that law.
Based on the law applicable in Kosovo that is internationally recognized and applicable in Kosovo, issued through legally binding UNMIK Regulation, the decision on inclusion of the Transmission system of Kosovo into the Serbian company, issued in 1990 by the R. of Serbia is clearly defined as discriminatory and as such does not produce any legal effect in Kosovo or elsewhere.

Secondly, the Kosovo Trust Agency ("KTA") in 2005 initiated the proces of incorporation of KEK. The legal authority of the KTA is undisputed as it is UNMIK institution pursuant to Section 6.1. (p) of UNMIK Regulation no. 2002/12 as amended by UNMIK Regulation no. 2005/18 and the Administrative Direction no. 2005/6 responsible to transform enterprises into corporations'. The referred legal basis can be downloaded on official web site of UNMIK: http://www.unmikonline.org/regulations/unmikgazette/02english/E2002regs/E2002regs.htm

In accordance with its mandate, KTA has transformed the entity previously known as "Korporata Energjetike e Kosovës"- "KEK" into two HoldCo`s and renamed the entities respectively Kosova Energy Corporation Holding J.S.C. and Transmission System and Market Operator Holding J.S.C. The latter transferred the transmission assets to its subsidiary company the Transmission System and Market Operator J.S.C., subsequently called KOSTT JSC. This transfer was affected based on the KTA decision and signed in December 2005. Pursuant to this Decision KOSTT was given all the requisite power and authority to own its properties, and to conduct its business as presently conducted.
As a result of incorporation process the Transmission System and Market Operator Holding J.S.C remained liable for any possible claims (if any), while KOSTT is released from any liability whatsoever. License issued to KOSTT for transmission system operation was sent to ECS as annex to complaint.

4. The R. of Serbia is questioning KOSTT`s independence due to the fact that KOSTT`s "boundaries" are not rounded off".

As stated above, legitimacy of KOSTT to own, operate and maintain the transmission system is well proven and documented. Furthermore, boundaries of the Republic of Kosovo are clearly defined, including here electrical boundaries. The fact that KOSTT has physical control and operates the power system of Kosovo is sufficient to conclude such. Moreover, KOSTT boundaries in terms of Treaty (Geographic scope of 8th (eighth)) Region) and in terms of temporary agreements signed between UNMIK/Kosovo and R. of Serbia are clearly defined.

5. The R. of Serbia is stating that EMS has signed agreements on the allocation of cross-border transmission capacities with all of the eight operators in Serbia's neighboring countries, including also the transmission system operators from the three countries referred to by KOSTT in its complaint. "On the regional and pan-European level, EMS is recognized as the sole transmission system operator who is responsible for the whole procedure of congestion management on the boundaries of the control area of the Republic of Serbia, including also the very allocation of cross-border transmission capacity."

With regards to the multiparty agreement signed for the allocation of cross –border transmission that is mentioned in the letter of Serbia and their recognition ii Pan –European level is something done by inertion from other countries and ECS Opening letter is stating opposite. Moreover in November 2010 KOSTT has submitted to European Commission the official Request for Commission opinion on multi – party agreement of 16 December 2009 and inclusion of KOSTT in ITC Mechanism based on Regulation (EU) No 774/2010.

Furthermore the European Commission in September 2010 issued the REGULATION (EU) No 774/2010 on laying down Guidelines relating to inter-transmission system operator compensation and a common regulatory approach to transmission. This Regulation sets guideline that were already envisaged in Article 8 of EC Regulation 1228/2003 and therefore such guidelines are presenting a tool to implement the mandatory inter TSO compensation. Article 2.2 of the Regulation EU 774/2010 in its Annex A – Guidelines, requires 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". Article 9 of the Treaty includes the geographical scope of Treaty including the territory of Kosovo. It consequently entitles KOSTT as TSO to participate in ITC Mechanism.

In accordance to Article 3.5 of the Guidelines, the multi-party agreements (including the one signed on 16 December 2009) shall be submitted to the Commission for its opinion as to whether continuation of the multi-party agreement promotes the completion and functioning of the internal market in electricity and cross border trade. The opinion of the Commission shall address in particular: 1. whether the agreement relates only to compensation between transmission system operators for the costs of hosting cross-border flows of electricity and 2. whether the requirements of points 3.2 and 3.4 are respected. (Article 3.5)

KOSTT has requested to be included in ITC Mechanism but in absence of legally binding guidelines this request was not considered and KOSTT did not sign the Multi-party agreement on ITC Mechanism for 2008 and 2009 However KOSTT is entitled to participate in ITC Mechanism (Article 2.2) since it is a 'TSO operating in the territories referred to in Article 9 of the Energy Community Treaty.
From the legal point of view, we believe that existing Multi-party agreement of 16 December 2009 is non –complaint to the Article 2.2 and 3.5 of the Guidelines' for the reasons as it follows:

a. The multi party agreement on ITC Mechanism is not compliant with requirement set forth in Article 2.2. of the Regulation (since KOSTT is not included as a party to the agreement);

b. The aim of multilateral agreement signed on 16 December 2009 is not fulfilled since the transmission system operator from the third country (KOSTT) is NOT treated on an equivalent basis to a transmission system operator in a country participating in the ITC mechanism (Articles 3.2 and 3.4 of the Guidelines).
Attached: Letter sent by KOSTT in September 2010 to ENTSO-E

6. The R. of Serbia is mentioning that KOSTT is not a member of the European Network of Transmission System Operators (ENTSO-E) and was not a member of its predecessors, i.e., the Union for the Coordination of Transmission of Electricity (UCTE) and European Transmission System Operators (ETSO-E).

Not being member of above international associations doesn't give rights to Serbia to use network of another operator unlawfully since such usage is causing additional costs to the customers of Kosovo. Membership is envisaged because of enforcement of cooperation between TSO in order to diminish costs of exchanging power between power utilities by agreeing different mechanisms. As per EC Regulation 838/2010 setting ITC guidelines TSO's that are not members of ENTSO-E may impose its own charges for use of their network by third, as well and charge for losses for accommodated transit.
Attached: Letter sent by KOSTT in September 2010 to ENTSO-E

7. Serbia claims that competence of EMS as the operator of the transmission system in the Republic of Serbia relates also to the field of application of the multilateral Agreement on Compensation for Transit of Electricity (Inter TSO Compensation – hereinafter: ITC) in the territory of the Republic of Serbia, where EMS is recognized as the sole contracting party for the transmission system in the mentioned territory, which also includes the territory of Kosovo.

As stated above, EMS is not authorized to conclude agreements on behalf of KOSTT. Unlawful usage of the rights that belongs to KOSTT and inclusion of the territory of Kosovo in Multilateral Agreement on Compensation for Transit of Electricity is the reason for dispute.

8. Serbia states that as for the claim that since 2004, EMS has not transferred any money to KOSTT from the revenue received by EMS on the basis of compensation for the cost of transit of electricity through the network of the Republic of Serbia, including the network in the territory of Kosovo, the R.of Serbia believes that this claim has no legal basis, because on the basis of the ITC Agreement,

the duties stemming from Regulation 1228/2003 in connection with compensation for the cost of electricity transit are performed in whole Europe uniformly. Moreover, the duty to pay, as well as the right to claim refund for expenses, depend on the calculations made in accordance with the methodology provided by the ITC Agreement.

KOSTT does not dispute the process of calculation of ITC in Europe, but we request that remuneration received by Serbia through ITC mechanism for transmission of electricity through transmission network of Kosovo, and losses caused by such transit should be paid to KOSTT, on bases presented above i.e. KOSTT is sole owner of the assets in Kosovo. Moreover, it is important to emphasize that value of the transmission assets has quderpoled since year 2000, and thereby portion of funds illegally gained by EMS is many times higher, in relation to the unfounded claim on asset base allegedly owned by Serbia.

9. The R. of Serbia is claiming that on the basis of the bilateral Temporary Electricity Exchange Arrangement signed by the Ministry of Energy and Mining of the Republic of Serbia and the Public Utilities Department of UNMIK (hereinafter: UNMIK/PUD), the mutual transit cost compensation has been agreed on. The mutual payments on such grounds were made by the then valid methodology until 1 July 2004, when the first ITC Agreement came into force, introducing a new methodology for accounting the electricity transit costs.

As it is mentioned in the MoM of the meetings between representatives of EMS and KOSTT the methodology and data used for calculation of the transited power through territory of R.of Kosovo is not subject of dispute, but KOSTT cannot accept that in the final calculation EMS keeps revenues from the transited electricity through the network that is owned and operated by KOSTT.

10. The R. of Serbia further states that the both of the two enclosed agreements are in the domain of international law, since they were signed by the Ministry of Energy and Mining of the Republic of Serbia and UNMIK/PUD, so that the claim made in the Opening Letter about to whom the agreements relate (EMS and KOSTT) is not corroborated by evidence.

Temporary Arrangement on Services is not relevant to the dispute that KOSTT initiated. Temporary Technical Agreement and consequently the Temporary Energy Exchange Arrangement signed as it is mentioned above included exchange of letters of appointment between the signatory parties which both appointed respective operators to implement agreements (KEK for Kosovo) and EMS (currently EPS)for Serbia.

KOSTT in the calculation of his claims have used methodology as it is contracted in the "Temporary Energy Exchange Arrangement" signed between Serbia and Kosovo for the past period. There will be no problem to migrate to the methodology that is used in the ITC mechanism in order to settle bilaterally liabilities and claims towards each other. Again we are repeating the fact that methodologies for calculations are representing tools but principles for the rights initially must be solved.

11. The R. of Serbia is pointing out that the ECS considers in its Opening Letter all relevant legislation (agreements, rules, standards and recommendations of ENTSO-E, ETSO, UCTE), since these are not contrary to the relevant Energy Community laws.

All above mentioned agreements, rules, standards mentioned by the R. of Serbia are representing tools for better cooperation in the field of transited electricity and cross-border capacity allocations but it is wrong to consider that any of this tool may be used as argument to replace competence of one TSO (KOSTT) with competence of another TSO (EMS) to whom such responsibly do not belong.

On the other hand the Treaty on establishing the Energy Community is clearly defining the legislation that is included as Acquis communitaire and applicable with regard to the Treaty and its contracting parties.

12. Further in the document R. of Serbia is claiming that KOSTT, as a matter of principle, is not operating the transmission network in UNMIK and that the Secretariat should have substantiated its claim that KOSTT is the transmission system operator, taking into account in the first place the requirements a legal entity or individual has to meet in **order to become a transmission system operator (system management, maintenance, development, etc).**

Statement given by the R.of Serbia that KOSTT is not the TSO is not legally binding since KOSTT is the licensed TSO that operates, maintains an d develops transmission network in Kosovo based on its license presented to ECS, in accordance to development plan approved by the Energy Regulatory Office (attached herewith). The definition of the TSO in accordance to EU Directive 2003/54 is argument against the claim of R. of Serbia. By the definition provided in EU Directive " 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".

KOSTT is operating, developing and maintaining the Transmission Network of Kosovo. The R. of Serbia shall be able to proof opposite. KOSTT and ECS would like to see that R.of Serbia present any document that would proof opposite. The fact that EMS does not maintain and operate network of Kosovo but KOSTT is proven by KOSTT. The R. of Serbia needs to present prove to ECS that EMS is maintaining network in Kosovo and not KOSTT. In absence of any proof this argument as all arguments becomes a null and unfounded and another political argument that is not supported by any document to prove the reality. The R. of Serbia shall be able to present any material evidence that the TSO of Serbia (EMS) maintains, develops and operates the transmission network on territory of Kosovo. If absence of such evidence submitted to ECS, this argument will be considered as all other arguments mentioned in the Respond of R. of Serbia as political argument that does not correspond to reality.
Attached: License of KOSTT and Development plan of KOSTT for the period 2010-2019 adopted by ERO.

13. In Item 3, Sub-item (1) of this Chapter, the Secretariat states that in the capacity of transmission system operator, KOSTT is responsible for allocation of transmission capacity on the inter-connectors in the direction of the Former Yugoslav Republic of Macedonia, Montenegro and Albania. It should be noted that allocation of transmission capacity is one of the elements of congestion management and that only a transmission system operator who is fully capable of meeting the requirements of the congestion management procedure may also carry out the allocation of transmission capacity in the scope of this procedure.
R. of Serbia is misinterpreting the right with techniques for implementation. Techniques for implementation are something that parties may agree to solve them on contractual bases.

CONCLUSIONS:
a) KOSTT position regarding the dispute remains unchanged and is expressed clearly in meetings organized by ECS with EMS representative.
b) From 1990 till 1999 EMS (currently EPS) did not invest in transmission infrastructure of Kosovo, therefore there is no legal or any right created by R. of Serbia to claim any revenue for the assets in which it was not invested.

c) KOSTT maintains and upgrades the interconnection and transmission network of Kosovo and is, as a result of high transit flows, exposed to a high level of transmission losses, the associated cost of

which are also paid by KOSTT and ultimately borne by Kosovo costumers. Amounts of transit compensation remunerated to Serbian operator, since July 2004 until December 2008 reach the value of approximately 10 million €. Exact values for of the generated revenues from Kosovo's congested interconnection lines will be calculated base on the data that EMS has in his possession. By the end of December 2010 the value of amount of transit compensation remunerated to Serbian operator is almost doubled comparing to the value paid by December 2008.

d) It is undisputed that EMS, but not KOSTT is participating in the Inter-TSO compensation (ITC) agreement and that EMS is allocating interconnection transmission capacity with the Contracting Parties adjacent to UNMIK. No payment is being made to KOSTT. This participation of EMS in inter TSO compensation without consent of KOSTT is in contradiction with Treaty on establishing the Energy Community.

e) The revenues earned from interconnections between Kosovo and Macedonia, Albania and Montenegro are used to solve congestions of Serbian interconnections with their neighboring TSO that are not bordered with Kosovo. In the regional level signer of TSO still did not agree about possibility of using congestion revenue elsewhere except from the the place where was generated.

f) It is further undisputed that any failure by a public undertaking to comply with the Energy Community acquis is to be imputed to the Contracting Party it belongs to. The Regulation (EC) 1228/2003 and Directive 2003/54/EC are binding on both Serbia and UNMIK/Kosovo as of 1 July 2006 but the R. of Serbia is not acting in compliance.

g) With respect to inter-TSO compensation, the Secretariat referred to Article 3(1) Regulation (EC) 1228/2003 and the conditions established there. The Secretariat confirmed its understanding that KOSTT is a transmission system operator within the meaning of that Article, for which ownership is not a prerequisite.

h) KOSTT is considering that in this stage and after unsuccessful negotiations the ECS shall submit its reasoned request to the Ministerial council in accordance to Article 25 and 28 of the Rules of Procedure for Dispute Settlement under the Treaty.
We suggest that the reasoned request contain a proposal for the decision to be taken by the Ministerial Council.

Sincerely,

Fadil Ismajli
Chief Executive Officer, KOSTT

Cc: Mr. Ali Hamiti, Chairman of the Board of ERO
Mr. Dirk Buschle, Legal Counsel, Energy Community Secretariat

Visar Hoxha - KOSTT

From: Skender Gjonbalaj
Sent: Tuesday, September 28, 2010 8:39 AM
To: Kekkonen Juha
Cc: cecilia.hellner@entsoe.eu; dirk.buschle@energy-community.org; Slavtcho Neykov; Fadil Ismajli; konstantin.staschus@entsoe.eu; Damjan Međimorec
Subject: RE: ITC agreement[Scanned]

Dear Mr. Kekkonen,

I am writing to you in reference to the "European Commission Regulation No. 774/2010, on laying down guidelines relating to inter-transmission system operator compensation and a common regulatory approach to transmission charging" and to inform you about the latest development of the legal case initiated by KOSTT at the Energy Community Secretariat.

As you may be informed KOSTT since his appointment as a Kosovo TSMO has expressed many times willingness to sign ITC agreement to be able to fulfill provisions of EnC Treaty and Regulation (EC) 1228/2003. After several our requests, ENTSO-E revealed that due to voluntary character of ITC mechanism, KOSTT was not able to participate. This came as a result of opposition by EMS, as an incumbent in the ITC agreement of the transmission system operated by KOSTT, which according to us is not in compliance with geographic scope of the Treaty. The ongoing ITC agreement disregarded the rational consideration of Kosovo transmission system, which left KOSTT out of the ITC mechanism. In August 2008, KOSTT launched a formal complaint against Serbia as a Contracting Party of the Energy Community for failure to comply with the Energy Community Law, in particular with the provisions regarding ITC Mechanism and Interconnection Capacity Allocation.

In this respect, there are two elements in which we would like to draw your attention, ITC Guidelines and the preliminary view of the Secretariat regarding "Dispute settlement procedure initiated against Serbia for non-compliance with Regulation (EC) 1228/2003"

We understand that implementation of ITC is no longer voluntary and is also binding for the TSOs from the Energy Community region. We believe that now it is the best moment for KOSTT's inclusion in the ITC agreement. Finally the binding ITC Guidelines have paved the path for this and KOSTT should be enabled to fulfill the legal requirements.

On 17 September 2010, Energy Community Secretariat sent an Opening Letter to the Republic of Serbia in accordance with Article 12 of the Rules of Procedure for Dispute Settlement. From the publication in the Energy community website (http://www.energy-community.org/portal/page/portal/ENC_HOME/NEWS/News_Details?p_new_id=3661, we understand that in the Opening Letter, the Secretariat takes the preliminary view that the Republic of Serbia failed to fulfill its obligations under the Energy Community Treaty on account of practices by the state-owned Serbian transmission system operator Elektromreža Srbije (EMS) imputable to Serbia. The failure refers to provisions concerning ITC and Capacity Allocation. We consider that this is an important driver which ENTSO-E should consider enabling both TSOs (KOSTT and EMS) full compliance with Energy Community Law and the Regulation in force.

We truly believe that ENTSO-E will consider this and assist full inclusion of KOSTT in the ITC Agreement and will inform us about the administrative steps and the data that KOSTT as designated TSMO of the Party to the Energy Community Treaty need to provide to facilitate quicker conclusion of ITC Agreement, in respect to implementation of the Regulation, or any other requirement for data submission to ENTSO- Market Committee.

Please do not hesitate to contact us for any additional information you may wish to acquire. We remain at your entire disposal at all times.

Looking forward to hearing from you.

Your sincerely,

Skender GJONBALAJ
Market Operator Director
KOSTT-Transmission System and Market Operator of Kosova
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Phone: +381 38 501 601 5
Fax: +381 38 500 201
Mobile: +377 44 507 482
Email: Skender.gjonbalaj@kostt.com

From: Kekkonen Juha [mailto:Juha.Kekkonen@fingrid.fi]
Sent: Monday, December 14, 2009 1:07 PM
To: Skender Gjonbalaj
Cc: cecilia.hellner@entsoe.eu; dirk.buschle@energy-community.org; Slavtcho Neykov; Fadil Ismajli; konstantin.staschus@entsoe.eu; gheorghe.indre@transelectrica.ro
Subject: VS: ITC agreement[Scanned]

Dear Mr Gjonbalaj,

Thank you very much for your email of last Friday regarding the ITC Agreement post-2009.

As you are aware the current ITC Agreement comes to an end on 31 December 2009. Moreover, the EC has recently published a proposal for guidelines on inter-TSO compensation in accordance with Regulation 1228/2003. Although these proposed guidelines have been submitted to Comitology, they are not in force and will not be in force for the end of 2009.

Due to the absence of binding guidelines, ENTSO-E anticipates that a voluntary agreement between the concerned TSOs will be needed for (at least) some months in 2010. To that end, the ENTSO-E Market Committee agreed last Friday on a proposed mechanism for 2010 which will be submitted to the ENTSO-E Assembly for final approval in its meeting on 16 December. Bearing in mind the Comitology process, and the prospect of binding guidelines some time in 2010, this agreement is regarded as an interim solution.

As regards the content, I can inform you that the interim Agreement is based on the EC proposal. Enclosed you find an explanatory note which describes the proposed mechanism. This note was sent to the ENTSO-E Assembly today, and it is circulated to you in your capacity as an associate member of RG SEE under the Market Committee.

I am fully aware of the sensitivity related to KOSTT participation in ITC mechanism, which you mention in your email. As you know, there were several attempts by ETSO to find a pragmatic solution to this. Recalling that the proposed post-2009 agreement is an interim solution, and may be replaced by binding guidelines already within some months, I hope that you understand why ENTSO-E has drafted the proposal among current ITC Signatory Parties.

Best regards

Juha Kekkonen
Chairman of the ENTSO-E Market Committee

Lähettäjä: Skender Gjonbalaj [mailto:skender.gjonbalaj@kostt.com]
Lähetetty: 11. joulukuuta 2009 10:49
Vastaanottaja: Kekkonen Juha; juha.kekkonen@entsoe.eu

Kopio: konstatin.staschus@entsoe.eu; cecilia.hellner@entsoe.eu; dirk.buschle@energy-community.org; Slavtcho Neykov; Fadil Ismajli
Aihe: ITC agreement

Dear Mr. Kekkonen

I am writing in reference to the ITC issue, to kindly ask for information whether the new ITC agreement will be signed for post-2009 period, when it will be signed, what mechanism will be used, etc.

As you may be informed, the ongoing ITC agreement disregarded the rational consideration of Kosovo transmission system, which left KOSTT out of the mechanism and arouse a very sensitive legal process against Serbia, dealt by the Secretariat of the Energy Community.

To avoid iterance of such sensitive issue that stroke directly Kosovo customers, KOSTT urges ENTSO-E and other stakeholder to reconsider participation of KOSTT in the new ITC phase in line with the Energy Community Treaty and the associated legal framework. In addition, continuance of the ITC agreement with the same principles may prejudge the resolution of this legal dispute.

Sincerely

Skender GJONBALAJ
Market Operator Director
KOSTT-Transmission System and Market Operator of Kosova
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Energy Regulatory Office
Zyra e Rregullatorit per Energji
Regulatorni Ured za Energiju

ELECTRICITY MARKET OPERATOR LICENSE (WITH CONDITIONS)

GRANTED TO:

"KOSTT-TRANSMISSION SYSTEM AND MARKET OPERATOR" J.S.C

Registration Number:

ERO_Li_16/06

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Annex 2: Description of other activities exercised by the Licensee divided into activities of energy sector and activities of other sectors

PART I TERMS OF THE LICENSE

1. **The Energy Regulatory Office (hereinafter referred to as "ERO"),** in exercise of the powers granted by Articles 15.2 (a) and Article 37 of the Law on the Energy Regulator (hereinafter referred as the "Law"), Article 16.2 of the Law on Energy (Law No. 2004/8), and Article 27 of the Law on Electricity hereby issues to **KOSTT – TRANSMISSION SYSTEM AND MARKET OPERATOR J.S.C** (hereinafter referred to as the "Licensee"), this license to ensure and undertake the economic management of the electricity system **(Market Operator's license),** during the period specified in paragraph 5, subject to the Articles and conditions set out in Part II.

2. The territory covered by this license is the whole territory of Kosovo (hereinafter referred to as the "Territory").

3. The Licensee shall comply with all Articles and conditions stipulated in this license for carrying out the licensed activity, and with the requirements of Article 27 of the Law on Electricity and all relevant legislation and directions of ERO and, in doing so, shall endeavor, at all times, to comply with the following applicable objectives:

    a) the efficient discharge of the obligations imposed upon it by this licence;
    b) promoting effective competition in the generation, trade and supply of electricity, and promoting such competition in the sale and purchase of electricity;
    c) promoting efficiency in the implementation and administration of the Market Rules;
    d) the efficient implementation and management of the balancing and settlement provided by the Market Rules.

4. The Articles and conditions of this license are subject to modification or termination or withdrawal in accordance with their terms and with Articles 35, 36, 37 and 39 of the Rule on Licensing of Energy Activities in Kosovo.

5. This license shall come into force on 04 October 2006 and, unless withdrawn, shall continue in full force and effect until 04 October 2036 with possibility of extension in accordance to the Rule on Licensing of Energy Activities in Kosovo.

Stamped with the common stamp of the Energy Regulatory Authority on _____

Signed by (on behalf of the Board of ERO _____

PART II CONDITIONS OF THE LICENSE

Article 1: Definitions and Interpretation

1. For the purpose of this license, the terms and expressions listed below shall have the following meanings:

*"**Accession Agreement**"* means the document signed by all parties who agree to be bound by the Market Rules as set out in Annex 2 of the Market Rules.

*"**Affiliate**"* means in relation directly or indirectly to the Licensee any Holding Company or Subsidiary of the Licensee or any Subsidiary of a Holding Company of the Licensee, in each case within the meaning of the legislation applicable in Kosovo.

*"**Distribution Code**"* means the set of technical rules issued by Transmission System Operator and approved by ERO, pursuant to Article 15.2 (i) of the Law on Energy Regulator.

*"**Distribution System**"* has a meaning as provided by Article 3 of the Law on Electricity.

*"**Distribution System Operator**"* has a meaning as provided by Article 3 of the Law on Electricity.

*"**Dominant Party**"* has a meaning as provided in the Market Rules.

*"**Electricity enterprise**"* has a meaning as provided in Article 3 of the Law on Electricity.

*"**Financial year** "*is a period from 1 January up to 31 December of the same calendar year.

*"**Generation unit**"* means any plant or apparatus for the production of electricity as prescribed in the Grid Code.

*"**Grid Code**"* is the set of technical rules issued by the Transmission System Operator pursuant to Law on Electricity and approved by ERO pursuant to Article 15.2 (i) of the Law on the Energy Regulator.

*"**Holding company**"* means any company defined as such in accordance to the legislation applicable in Kosovo.

*"**Legislation**"* means Law on Energy (2004/8), Law on Energy Regulator (2004/9), Law on Electricity (2004/10) and other primary legislation, or secondary legislation to be issued in execution of primary legislation regulating energy sector.

*"**Market Operator**"* means a legal person responsible for the organization and administration of trade in electricity and payment settlements among producers, suppliers and customers;

"Market Rules" mean the set of rules approved by ERO governing transactions in electrical energy between the Market Operator and other electricity enterprises, including where appropriate the interaction between these parties and the Transmission System Operator for the purposes of maintaining the physical balance of the market This includes any transitional transaction arrangements that may be approved by ERO.

"Market Rule Framework Agreement"has a meaning as provided in the Market Rules.

"Modification" includes addition, amendment and substitution, and cognate expressions shall be construed accordingly.

"Organized Market" means the organized range of transactions and commercial relations in the trade of electricity where the place, time and method for concluding the transactions and establishing the commercial relations are known publicly and have been previously announced in the Market Rules.

"Settlement" has a meaning as provided in the Market Rules.

"Subsidiary" means any company owned or controlled by another company, defined in accordance to the legislation applicable in Kosovo.

"Transmission System" has a meaning as provided by Article 3 of the Law on Electricity.

"Transmission System Operator" has a meaning as provided by Article 3 of the Law on Electricity.

"Trading Party" has a meaning as provided in the Market Rules.

"Vertically integrated enterprise" means an electricity enterprise which performs at least one of the functions that are required to be licensed under the Law on the Energy Regulator, other than transmission of electricity.

2. Terms used in this License shall have the same meanings as the terms used in the Legislation.

3. In reference to paragraph 2, any modification or re-enactment of the legislation after the date when this license comes into force, shall apply.

4. Unless otherwise specified:

    a) any reference to a numbered Article or to a numbered Annex is respectively a reference to the Article or the Annex bearing that number in this license;
    b) any reference to a numbered paragraph is a reference to the paragraph bearing that number in the Article or Annex, in which the reference occurs.

5. The heading or title of any Part, Article, Annex or paragraph shall not affect the construction thereof.

6. Where an obligation is imposed to the Licensee with a specific deadline for performance, that obligation shall continue to be binding and enforceable after that time limit without prejudice to all rights and administrative measures and fines that may be imposed against the Licensee if such Licensee fails to perform within the time limit.

7. The provisions of paragraph 6 shall apply in any case of document, direction or notice pursuant to this license and directions issued by ERO.

Article 2: Authorization Granted Under this License

1. According to the Market Rules the Licensee is authorized to:

   a) accede to the Market Rules in the capacity of "owner";
   b) maintain a process for all Trading Parties to accede to the Market Rules;
   c) maintain accounts on behalf of Trading Parties and the Transmission and Distribution System Operators;
   d) manage the Settlement process;
   e) invoice and collect money owed to or by (as the case may be) Trading Parties under the terms of the Market Rules;
   f) act as agent of the Transmission System Operator, invoice and collect charges owed to or by (as the case may be) Trading Parties as allowed under the licence granted to the Transmission System Operator by ERO;
   g) act as agent of the Distribution System Operator(s), invoice and collect charges owed by Trading Parties as allowed under the licence granted to the Distribution System Operator(s) by ERO;
   h) manage the process of Modification of the Market Rules;
   i) provide market information in accordance with the provisions of the Market Rules; and
   j) perform all other function assigned to it under the Market Rules.

2. The Licensee shall not assign and/or transfer and shall not purport to assign or transfer any of its rights or obligations under the present license.

Article 3: Separate Accounts for the Market Operation Business

Condition 1:

In accordance with Article 49.2 of the Rule on Licensing of Energy Activities in Kosovo the Licensee shall fully comply with requirement of this Article within twelve (12) months from the date when this license is issued.

1. The Licensee shall prepare annual regulatory accounts in accordance with Regulatory Accounting Guidelines issued by ERO and shall deliver to ERO a copy of the annual accounts so prepared and any annual audited accounts as

soon as reasonably practicable, and in any event no later than (3) three months after the end of the financial year to which the accounts relate.

2. The Licensee shall, in its internal accounting, keep or cause to be kept a separate accounts for the Market Operation business as a whole (separate from the Transmission System Operators business) which, when requested by ERO, must be delivered in the form and at the times specified by ERO. The accounts shall be kept in accordance with such regulatory accounting guidelines as may be issued by ERO from time to time.

3. The Regulatory Accounting Guidelines or directions notified by ERO to the Licensee under paragraph 2 may, inter alia:

    a) specify the form of the regulatory accounting statements/records, including but not limited to, profit and loss accounts, balance sheets, recognized gains and losses statements, cash flow statements and statements of the amounts of any revenues, costs, assets, liabilities, reserves or provisions which have been either charged from or to any other business or determined by allocation or apportionment between the consolidated market operation business and any other business;
    b) specify the nature and content of the regulatory accounting statements/records, including information on specified types of revenue, cost, asset or liability and information on the revenues, costs, assets and liabilities attributable to specified activities;
    c) specify the regulatory accounting principles (including the basis for the allocation of costs).

4. The Licensee shall not, in relation to the regulatory accounting statements in respect of a financial year, change the bases of charge, apportionment or allocation from those applied in respect of the previous financial year, unless ERO has previously issued directions for the purposes of this Article or ERO gives its prior written approval to the change in such bases.

5. The Licensee shall fully comply with any directions issued by ERO for the purposes of this Article.

Article 4: Legal and Management Unbundling Obligations

1. As long as the Licensee is part of a vertically integrated enterprise, it shall comply with the provisions of Article 27 of the Law on Electricity, to ensure it maintains independence from activities not related to Transmission in terms of its legal form, ownership, organization and decision making.

2. The Licensee may not be engaged in electricity generation, public supply, and or supply/trading.

3. In order to ensure the independence of the Licensee:

    a) those persons responsible for the management of the Licensee may not participate in company structures of the vertically integrated enterprise, be

responsible, directly or indirectly, for the day-to-day operation of generation, distribution and supply of electricity;

b) the Licensee shall take appropriate measures to ensure that the professional interests of the persons responsible for the management of the Licensee are taken into account in a manner that ensures that they are capable of acting independently;

c) the Licensee shall prepare and ERO shall approve a Code of Conduct, setting out measures necessary to ensure that any discriminatory behaviour is excluded and that the observance of it is adequately monitored. The Code of Conduct shall include the specific obligations of the Licensees directors and employees to meet this objective, including obligations of non-competition, confidentiality and avoidance of conflicts of interest. The Code of Conduct shall be part of any contract of employment with the Licensee. The Licensee shall submit to ERO every year, by 31 January at the latest, an annual report outlining the measures taken for the purpose of compliance with the Code of Conduct.

Article 5: Prohibition of Subsidies and Cross-subsidies

The Licensee shall ensure that the Market Operation business does not give any cross-subsidy (direct or indirect) to, or receive any subsidy or cross-subsidy (direct or indirect) from, any other business of the Licensee or any Affiliate or related undertaking of the Licensee.

Article 6: Prohibition of Discrimination

1. The Licensee shall not discriminate between the Trading Parties, particularly in favour of its Affiliates or related enterprises, and shall perform its functions with due respect of the principles of transparency, objectivity and independence.

2. A Trading Party having been designated as a Dominant Party by ERO, may be treated differently by the Licensee according to the provisions of the Market Rules.

Article 7: Market Rules

Condition 2

Within a time period not exceeding **three (3) months** from the day of entering into force of the Market Rules, the Licensee is obliged to make arrangements for all relevant Electricity Enterprises licensed in Kosovo, including the Transmission System Operator, the Distribution System Operator *and Electricity Enterprises with Generation Units* to sign the Market Rules Framework Agreement, or any other relevant Agreement by which the Parties agree to be bound by the Market Rules. ERO may issue directions in order to vary the deadline set forth in this Condition as may be specified in those directions.

1. Within 120 days from the issuance of the present license, or such shorter deadline as ERO may determine, the Licensee shall prepare and submit to ERO the draft Market Rules that it proposes to apply.

2. Market Rules are subject to approval by ERO, according to Article 15.2 (j) of the Law on the Energy Regulator. Furthermore, once the Market Rules are approved by ERO, such rules cannot be changed without written agreement of ERO.

3. The Licensee shall be responsible for managing any proposal for modification of the Market Rules, according to the relevant provisions of the Market Rules, and submitt any proposed modifications to ERO for approval following appropriate consultations with affected parties. Where ERO may direct, the Licensee shall undertake the process for modification of the Market Rules in accordance with ERO's direction.

4. The Licensee shall publish the applicable Market Rules on its web-site in a form in which they may be easily downloaded and copied and shall be responsible to provide a copy of the Market Rules to any person on request, subject on payment by such person of an amount not exceeding the Licensee's reasonable costs in making and providing such a copy. The due amount shall be approved by the Licensee from time to time and published on its web-site.

Article 8: Accession to Market Rules

1. The Licensee shall enter into Accession Agreements with all persons wishing to sign such an agreement and become Parties to the Market Rules, and shall give relevant notice to ERO, according to the provisions of the Market Rules.

2. The Licensee is obliged to monitor compliance of the Trading Parties with the terms and conditions of the Accession Agreements, according to the Market Rules.

3. The Licensee may terminate Accession Agreements according to the provisions of the Market Rules.

4. The Licensee shall charge the Trading Parties any amounts applicable for participation in the Market (Market Operator charges), as well as any sums required to provide security to the Market, as specified by the Market Rules.

Article 9: Operational Communications

1. For the purposes of managing the Settlement, the Licensee shall procure and install adequate computer and other equipment and software and shall draft and publish the necessary standards for communication with such software, using appropriate international standards, in accordance with the Market Rules.

2. The Licensee shall ensure that the software used for Settlement is audited by a suitably qualified independent auditing company to determine its consistency with the Market Rules, according to the provisions of the Market Rules.

3. The Licensee shall maintain complete and accurate records of all Settlement Data submitted by the Trading Parties or maintained by the Licensee. The format for the retention of such records shall be determined by the Licensee.

4. For the purposes of this Article:

"***Settlement Data***" means all data required to be supplied either by the Licensee or the Trading Parties to allow Settlement to be carried out under the Market Rules.

Article 10: Capacity Availability

1. The Licensee shall establish, maintain and update a register (the capacity register) in which will be recorded the declared capacity of each Generation Unit, the number of Capacity Availability Certificates (CACs) held by each Trading Party for each Settlement Period, and all transactions with respect to CACs, including CAC transfer proposals and notifications, in accordance with the Market Rules.

2. The Licensee shall cooperate with the Transmission System Operator for the identification of the Generation Units' availability, and shall record the full history of capacity availability notifications submitted by the Trading Parties, as provided for by the Market Rules.

3. The Licensee shall award CACs to Generation Units and Interconnector Traders according to the provisions of the Market Rules.

4. The Licensee shall submit to each Trading Party reports regarding the CAC transfers where relevant to that Party according to the Market Rules.

5. For the purposes of this Article:

"***Capacity Availability Certificate***" has a meaning as provided in the Market Rules.

"Interconnector Trader" has a meaning as provided in the Market Rules;

Article 11: Interconnector Trading and Nomination

1. The Licensee shall establish, maintain and update an Interconnector capacity register, in which it will record information on Interconnector capacity accounts on behalf of any person wishing to hold Interconnector capacity rights and submitting the data required and any proofs regarding the ability to pay for Interconnection capacity rights, in accordance with the Market Rules.

2. The Licensee shall advertise all necessary and appropriate information for carrying out annual and monthly capacity auctions and for the allocation of Interconnector capacity on a daily basis, according to the Market Rules.

3. The Licensee shall be responsible for prescribing the form of the transfer of Interconnector capacity rights from one Trading Party to another, and for accepting and rejecting Interconnector Trade proposals, according to the Market Rules.

4. The Licensee shall submit to the Transmission System Operator on behalf of the Trading Parties the notifications specifying intended MW delivery or off take through any Interconnector over a specified day (Interconnector physical nominations) and is obliged to provide all Trading Parties having acquired Interconnector capacity rights with all necessary information, according to the Market Rules.

5. For the purposes of this Article:

"Interconnector" has a meaning as provided in the Market Rules and Grid Code.

Article 12: System Operation Forecasting

The Licensee shall be responsible for publishing on its web-site and updating at due times all information regarding annual, monthly, and day ahead forecasts of demand and other factors, as provided to it by the Transmission System Operator according to the Market Rules.

Article 13: Settlement and Energy Imbalance Prices

1. The Licensee shall be responsible for the settlement of the bid and offer contracts through the relevant energy accounts, according to the provisions of the Market Rules.

2. The Licensee shall calculate and publish for every Settlement Period the energy imbalance price according to the Market Rules.

3. The Licensee is obliged to calculate the metered energy and non-delivery bid and offer volumes with respect to the relevant energy accounts, according to the Market Rules, and is responsible for the settlement of such accounts.

4. For the settlement of capacity imbalances the Licensee shall calculate and impose capacity penalties according to the provisions of the Market Rules.

5. For the purposes of this Article:

*"**Settlement Period**"* has a meaning as provided in the Market Rules.

Article 14: System Charges

Acting in its capacity of agent for the Transmission System Operator and the Distribution System Operator, the Licensee shall collect from the Trading Parties all system charges applicable, and transfer the amounts due to the Transmission System Operator and the Distribution System Operator.

Article 15: Invoicing and Payments

1. The Licensee shall be responsible for issuing and submitting to the Trading Parties the invoices necessary for the settlement of their accounts, according to the provisions of the Market Rules.

2. In reference to paragraph 1, the Licensee shall establish an invoice Manual specifying the formats of invoices and of supporting data.

Article 16: Restrictions on Use of Certain Information

1. The Licensee shall not disclose directly or indirectly any confidential information to any other business of the Licensee or an Affiliate or related undertaking of the Licensee, unless the Market Rules provide for disclosing or publishing such information.

2. The Licensee may disclose any information other than confidential held and/or obtained by it in the discharge of its functions as Market Operator, as defined as such in the Rule on Confidentiality of Information as adopted by ERO. Except that this restriction shall not prevent the Licensee disclosing any information that ERO may require while carrying out its obligations under the Legislation and under Article 20 of this license.

3. The Licensee shall procure that any document containing confidential information shall be marked as such.

4. The Licensee shall take measures designed to prevent any person who is or ceases to be employed by the Licensee from disclosing confidential information.

5. The Licensee shall take all reasonable steps to ensure that confidential information is not used or disclosed for any purpose other than that for which it was provided, pursuant to the relevant provisions of the Rule on Confidentiality of Information.

6. For the purposes of this Article :

   "confidential information" means any commercial or other kind of information held and/or obtained by the Licensee in the discharge of its duties under the Legislation, that is to be regarded as confidential under the Rule on Confidentiality of Information and under this license.

Article 17: Labour

The Licensee shall comply with all legislation applicable to labour relations and work safety whether in force at the date hereof or in the future.

Article 18: Change in Control of the Licensee

The Licensee shall notify ERO of any intended change in control of the Licensee at least sixty (60) days in advance of such a change. Change in control may not take place unless ERO has approved it.

Article 19: Provision of Information to ERO

1 The Licensee shall submit to ERO, in manner and at such times as ERO may require, such information and such reports as ERO may consider necessary in the light of any Article or condition of this license or for the purpose of performing the functions assigned or transferred to it under Article 29 of the Rule on Licensing of Energy Activities in Kosovo or other applicable Legislation.

2. The information shall be prepared to a level of audit as may be required by ERO from time to time.

3. The power of ERO to call for information under paragraph 1 is without prejudice to the power of ERO to require even information that are considered confidential under or pursuant to any other Article or condition of this license or under or pursuant to the applicable Legislation.

4. If the Licensee requests that certain information shall be considered as confidential it is its obligation to mark such document as confidential and justify to ERO such request.

5. The Licensee shall deliver to ERO quarterly and annual reports about its market operation business and compliance with the license's Articles and conditions in accordance to the Reporting Manual issued by ERO.

6. The Licensee shall submit to ERO details of any change in information submitted with application for this license.

7. In this Article:

"Information" means material in any form and includes without limitation, any books, documents, records, contracts, accounts (statutory or otherwise), estimates, returns or reports of any description and any explanations (oral or written) in relation to such information as may be requested by ERO.

Article 20: Reasons for License Termination, Withdrawal and Modification

1. ERO may terminate this license in accordance to Article 39 of the Rule on Licensing of Energy Activities in Kosovo provided that the obligations of the Licensee shall be carried out by another Licensee or that customers are not at a disadvantage by such termination. Such termination may take place in case of:

    a) expiration of the term of the license;
    b) a request received from the Licensee in respect of its own license;
    c) dissolution of the legal person holding the license;
    d) upon decision of a court declaring the insolvency of the Licensee or court decision to terminate the market operation due to the Licensee's declaration of liquidation;
    e) where the licensed energy activity has not been conducted for more than six (6) months, except where the suspension of activity is at the approval of ERO;
    f) where provisions of Article 44 of the Rule on Licensing of Energy Activities in Kosovo are met.

g) if any amount payable in respect of a fee for this Licence is unpaid thirty (30) days after it has become due and remains unpaid for a period of another thirty (30) days after ERO has given the Licensee notice in writing that the payment is overdue, provided that, no such notice shall be given earlier than the day following the "day" the amount payable was due.

2. ERO may withdraw this license in the cases below as stipulated in Article 44.5 of the Rule on Licensing of Energy Activities in Kosovo, provided that the obligations of the Licensee shall be carried out by another Licensee or that customers are not at a disadvantage by such withdrawal:

   a) the licensee defaults or violates material Articles, conditions, or obligations in the license and such defaults and violations have not been remedied within the deadline given by ERO or seriously damage the quality, safety and reliability of the service that the Licensee was obliged to provide;
   b) license monitoring by ERO finds failure to fulfil administrative requirements and such failure has not been remedied within the deadline provided by ERO;
   c) the Licensee presented materially false information upon which the license grant was based.

3. In accordance with Article 35 of the Rules on Licensing of Energy Activities in Kosovo, ERO may modify this license in the following cases:

   a) at the request of the Licensee;
   b) where required to protect the energy system in Kosovo, in connection with security of supply or security of life and health of citizens or protection of environment;
   c) in order to adhere to new requirements set forth in international agreements and national laws, regulations and other applicable legislation;
   d) as a sanction for violation of license terms and conditions, pursuant to Article 44 of the Rule on Licensing of Energy Activities in Kosovo.

Article 21: Administrative Measures and Fines

1. In case of violation of any provision of the Legislation and of any Article or condition of this license and of any ERO's instruction to the Licensee, ERO shall, have the power, pursuant to Article 56.2 of the Law on Energy Regulator and Rule on Administrative Measures and Fines, either to prevent the Licensee from repeating the illegal action or, if the action has stopped, to issue a regulatory decision requiring that a particular action has to be taken or to impose an administrative fine to the Licensee and/or the member of its Board of Directors and/or its executives.

2. Prior to issuance of a fine, ERO shall issue a notice of license violation to the Licensee and shall provide the Licensee with an opportunity to respond to ERO, in writing, within fourteen (14) days of the notification in order to remedy the violation.

3. A fine shall be imposed on the Licensee in accordance with Article 57 of the Law on Energy Regulator and Rule on Administrative Fines and Measures in the event that the Licensee violates the requirements of that Article insofar as they are applicable to the Licensee.

4. The amount of the fine will be evaluated in accordance to the Rule on Administrative Measures and Fines. In any case, if the fine mentioned in paragraph 3 is imposed on the Licensee, it must not exceed 15% of the Licensee's net revenues for the business conducted under this Licence in the previous financial year

5. If the fine mentioned in paragraph 3 is imposed on a member of the Board of Directors or an executive of the Licensee, it must not exceed 300% of the monthly remuneration received by that person from the Licensee.

6. In cases of repeat violations, the fine imposed may be three (3) times greater than the amount authorized in paragraphs 4 or 5.

7. When imposing a fine, in accordance with this Article, ERO shall take into account the degree of social harm of the action, the prior behaviour of the Licensee or person concerned and the financial standing of the Licensee or person.

8. If a fine imposed by ERO is not paid, ERO shall initiate court proceedings for the collection of the fine as a civil debt.

Article 22: Settlement of Disputes

1. Any dispute arising out or in connection with the licensed activity shall be settled in accordance with the Rule on Dispute Settlement Procedure in the Energy Sector adopted by ERO.

2. Decisions of ERO regarding the modification, withdrawal or termination of the license, as well as those regarding any fines resulting from breaches of the license or of the applicable legislation, may be appealed by the Licensee to the court of competent jurisdiction.

Energy Regulatory Office
Zyra e Rregullatorit per Energji
Regulatorni Ured za Energiju

TRANSMISSION SYSTEM OPERATOR LICENSE (WITH CONDITIONS)

GRANTED TO:

"KOSTT-TRANSMISSION SYSTEM AND MARKET OPERATOR" J.S.C

Registration Number : ERO_Li_15/06

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PART I TERMS OF THE LICENSE

1. The Energy Regulatory Office (hereinafter referred to as "ERO"), in exercise of the powers granted by Articles 15.2 (a), 28.2 (h) and Article 37 of the Law on the Energy Regulator (Law 2004/9), Article 16.2 of the Law on Energy (Law 2004/8), Articles 12-16 of Chapter 4 of the Law on Electricity (Law 2004/10), hereby issues, to **KOSTT – TRANSMISSION SYSTEM AND MARKET OPERATOR J.S.C**, appointed by the Government of Kosovo in accordance to Article 12.1 of the Law on Electricity (hereinafter referred to as the "Licensee") a license to carry out the **transmission of electricity** during the period specified in paragraph 6, subject to the Articles and conditions set out in Part II.

2. The territory covered by this license is, according to the Article 32 para.1 (a) of the Law on the Energy Regulator, the whole territory of Kosovo (hereinafter referred to as the "Territory").

3. The Licensee may not obtain a license for the generation, distribution, supply or trade of electricity, or for the generation of heat in accordance with Article 32.3 of the Law on Energy Regulator.

4. The Licensee shall comply with all Articles and conditions stipulated in this license for carrying out the licensed activity, and with the requirements of all relevant legislation and directions of ERO and, in doing so, shall endeavor, at all times, to comply with the following:

    a) the efficient discharge of the obligations imposed upon it by this licence;
    b) the efficient, economic and co-ordinated operation by the Licensee of the Licensee's transmission system;
    c) promoting effective competition in the generation and supply of electricity, and (so far as consistent therewith) promoting such competition in the sale and purchase of electricity;
    d) promoting efficiency in the implementation and administration of the balancing and settlement arrangements provided by the Market Rules.

5. The Articles and conditions of this license are subject to modification or termination or withdrawal in accordance with their terms and with Articles 35, 36, 37 and 39 of the Rule on Licensing of Energy Activities in Kosovo.

6. This license shall come into force on 04 October 2006 and, unless withdrawn, shall remain valid for a period of thirty (30) years, until 04 October 2036 with possibility of extension in accordance to the Rule on Licensing of Energy Activities in Kosovo.

Stamped with the common stamp of the ERO on _____

Signature (on behalf of the Board of ERO) _____

PART II CONDITIONS OF THE LICENSE

Article 1: Definitions and Interpretation

1. For the purpose of this license, the terms and expressions listed below shall have the following meanings:

"Affiliate" means, in relation directly or indirectly to the Licensee, any Holding Company or Subsidiary of the Licensee, or any Subsidiary of a Holding Company of the Licensee, in each case within the meaning of the legislation applicable in Kosovo.

"Ancillary Services" has the meaning given in Article 3 of Law on Electricity and in the Grid Code.

"Compliance program" means the program required to be prepared by the Licensee and approved by ERO pursuant to Article 12.3(d) of the Law on Electricity;

"Distribution Code" means the set of technical rules issued by Transmission System Operator and approved by ERO, pursuant to Article 15.2 (i) of the Law on Energy Regulator.

"Distribution System" has a meaning as provided by Article 3 of the Law on Electricity.

"Distribution System Operator" has a meaning as provided by Article 3 of the Law on Electricity.

"Development Plan" means any development plan to be prepared by the Licensee pursuant to Article 8 of the Law on Energy.

"Electricity enterprise" has a meaning as provided in Article 3 of the Law on Electricity.

"Financial year" is the period from 1 January up to 31 December of the same calendar year.

"Forecast statement" means the long-term and annual energy balances for electricity to be proposed by the Licensee after consultation with ERO, to the Ministry of Energy and Mining, pursuant to Article 6 of the Law on Energy and in accordance with the Grid Code.

"Grid Code" is the set of technical rules issued by the Transmission System Operator pursuant to Law on Electricity and approved by ERO pursuant to Article 15.2 (i) of the Law on the Energy Regulator.

"Holding company" means any company defined as such in accordance to the legislation applicable in Kosovo.

"Legislation" means Law on Energy (2004/8), Law on Energy Regulator (2004/9), Law on Electricity (2004/10) and other primary legislation, or secondary legislation to be issued in execution of primary legislation, regulating energy sector.

"Market Operator" means a legal person responsible for the organization and administration of trade in electricity and payment settlements among generators, suppliers and customers;

"Market Rules" mean the rules approved by ERO governing transactions in electrical energy between the Market Operator and other electricity enterprises , including where appropriate the interaction between these parties and the Transmission System Operator for the purposes of maintaining the physical balance of the market. This includes any transitional transaction arrangements that may be approved by ERO.

"Metering Code" means the set of technical rules issued by Transmission System Operator pursuant to Law on Electricity approved by ERO, pursuant to Article 15.2 (i) of the Law on Energy Regulator.

"Metering Equipment" means the equipment and installations in a Metering System as specified in the Metering Code that is sufficient to provide the Metering data required under the Market Rules.

"Metering System" means a registered aggregation of meters treated as a single reading for Settlement as prescribed in Metering Code.

"Modification" includes addition, amendment and substitution, and cognate expressions shall be construed accordingly.

"Operating Security Standards" means the document to be prepared by the Licensee in accordance with Article 16 of the license.

"Power Purchase Agreement" means an agreement referred to in Article 21.3 of the Law on Electricity.

"Subsidiary" means any company owned or controlled by another company, defined in accordance to the legislation applicable in Kosovo.

"Supplier" means a legal person licensed under the provisions of the Law on the Energy Regulator to carry out the supply of electricity as defined under Article 20 of the Law on Electricity.

"Transmission System" has the meaning as provided by Article 3 of the Law on Electricity.

"Transmission System Operator" has the meaning as provided by Article 3 of the Law on Electricity.

"Transmission System Security and Planning Standards" means the document that shall be prepared by the Licensee in accordance to Article 15 of this license.

2. Terms used in this license shall have the same meanings as the terms used in the Legislation.

3. In reference to paragraph 2 any modification or re-enactment of the legislation after the date when this License comes into force, shall apply.

4. Unless otherwise specified:

    a) any reference to a numbered Article or to a numbered Annex is respectively a reference to the Article or the Annex bearing that number in this license;

b) any reference to a numbered paragraph is a reference to the paragraph bearing that number in the Article or Annex in which the reference occurs.

5. The heading or title of any Part, Article, Annex or paragraph shall not affect the construction thereof.

6. Where an obligation is imposed to the Licensee with a specific deadline for performance, that obligation shall continue to be binding and enforceable after that time limit without prejudice to all rights and administrative measures and fines that may be imposed against the Licensee if such Licensee fails to perform within the time limit.

7. The provisions of Paragraph 6 shall apply in any case of document, direction or notice pursuant to this license and directions issued by ERO.

Article 2: Separate Accounts for the Licensed Businesses

Condition 1

In accordance with Article 49.2 of the Rule on Licensing of Energy Activities in Kosovo the Licensee shall fully comply with requirement of this Article within twelve (12) months from the date when this license is issued.

1. The Licensee shall prepare annual regulatory accounts in accordance with Regulatory Accounting Guidelines issued by ERO and shall deliver to ERO a copy of the annual audited accounts so prepared as soon as reasonably practicable, and in any event no later than three (3) months after the end of the financial year to which the accounts relate.

2. The Licensee shall, in its internal accounting, keep a separate account for the Transmission System Operator's business as a whole (separate from the Market Operator's business) which when requested by ERO, must be delivered in the form and at the times specified by ERO. The accounts shall be kept in accordance with such Regulatory Accounting Guidelines as may be issued by ERO from time to time.

3. The Regulatory Accounting Guidelines or directions notified by ERO to the Licensee under paragraph 2 may, inter alia:

   a) specify the form of the regulatory accounting statements/records, including but not limited to, profit and loss accounts, balance sheets, recognized gains and losses statements, cash flow statements and statements of the amounts of any revenues, costs, assets, liabilities, reserves or provisions which have been either charged from or to any other business or determined by allocation or apportionment between the consolidated Transmission System Operator's business and any other business.
   b) specify the nature and content of the regulatory accounting statements/records, including information on specified types of revenue, cost, asset or liability and information on the revenues, costs, assets and liabilities attributable to specified activities.
   c) specify the regulatory accounting principles (including the basis for the allocation of costs).

4. The Licensee shall not, in relation to the regulatory accounting statements in respect of a financial year, change the bases of charge, apportionment or allocation from those applied in respect of the previous financial year, unless ERO has previously issued directions for the purposes of this Article or ERO gives its prior written approval to the change in such bases.

5. The Licensee shall fully comply with provisions of the Article 12.3 of the Law on Electricity and take all necessary measures to comply with those requirements in order to ensure its independence.

6. The Licensee shall comply with any directions issued by ERO for the purposes of this Article.

Article 3: Prohibition of Subsidies and Cross-subsidies

The Licensee shall ensure that business licensed by this license does not give any subsidy or cross-subsidy (direct or indirect) to, nor receive any subsidy or cross-subsidy (direct or indirect) from, any other business of the Licensee and/or any Affiliate or related enterprise of the Licensee and/or any other person.

Article 4: Compliance with Distribution Code, the Grid Code and the Metering Code

Condition 2:

In accordance with Article 49.2 of the Rule on Licensing of Energy Activities in Kosovo, following consultation with the Licensee, Generators, and the Distribution System Operator, ERO may provide the Licensee with a direction with specific time schedule of implementation of this Article. Such time schedule may apply to such parts in the Codes and to such extent, as specified in such schedule.

1. The Licensee shall comply with the provisions of the Distribution Code, the Grid Code and the Metering Code insofar as applicable to it.

Article 5: Operation of the Transmission System

1. The Licensee shall perform the efficient, economic and coordinated operation on the Transmission System.

2. The provisions of Article 11 of Law on Energy, Rule on Principles of Calculation of Tariffs in the Electricity Sector and Tariff methodology for the Electricity Sector as adopted by ERO, Articles 13, 14, 25, 26, 30 and 31 of Law on Electricity and the Grid and Distribution Code, shall apply to the Licensee.

3. The Licensee bears the obligation to offer terms for connection to and use of its system in accordance to the Rule on General Condition of Energy Supply and for any dispute arising out of the connection to and use of the Transmission System, to apply the Rule on Dispute Settlement Procedures in the Energy Sector adopted by ERO.

4. The Licensee shall ensure the non-discriminatory access between system users or classes of system users, particularly in favor of any subsidiary or shareholder and provide to system

users the information they need for efficient access to the system, in accordance with Article 18.1 of the Law on Electricity.

5. In setting its tariffs and charges for connection to and use of the transmission system, the Licensee shall provide appropriate and non-discriminatory pricing signals and ensure that such tariffs and charges

   a) encourage competition in the power sector and facilitate new entrants into the market; and
   b) are in accordance to the Tariff Methodology for the Electricity Sector

6. The Licensee shall provide appropriate and fair signal that facilitate free entrance into the market

7. The Licensee shall publish and make available on the Licensee's web-site the statement of charges for connection to and use of the Transmission System approved by ERO under Article 18 of the Law on Energy, Article 15 of the Law on Electricity and Articles 45 to 48 of the Law on Energy Regulator.

Article 6: Development Plan

1. The Licensee shall prepare, issue and make publicly available, in accordance with Article 8 of the Law on Energy and Article 24.2 of the Rule on Licensing of Energy Activities in Kosovo, the development plan of the Transmission System for the following three (3) years. The development plan has to identify opportunities and restrictions for using and connecting into the system. Prior to publication such plan shall be submitted to ERO for approval.

2. The Licensee shall revise the development plan annually to ensure that the information set out in the development plan remains accurate in all material respects and shall submit it to ERO for approval.

Article 7: Infrastructure Commitment

1. The Licensee shall comply with the infrastructure commitment arising out of the Strategy Implementation Program adopted by the Government, where funds are made available for this purpose (either through the price control or from the Government or other sources), as well as the infrastructure commitments specified in Article 13.1 of the Law on Electricity.

2. The Licensee shall report annually to ERO on the activities to be performed by it in relation to the infrastructure commitment.

Article 8: Energy Balance

1. After consultation with ERO, the Licensee shall propose to the Ministry of Energy and Mining the long-term and annual energy balances for electricity in accordance to the Article 6 of the Law on Energy within the deadline set forth in Rule on Energy Balance.

2. The Licensee shall publish and make available the proposals on the energy balance on the Licensee's web site, except for any information the disclosure of which would place the Licensee in breach of Article 19 of this license.

Article 9: Availability and Maintenance of Data

1. The Licensee shall ensure that actual and potential users of the Transmission system have non-discriminatory access to the information they need for efficient access to the system, in accordance with Article 13.1 (f) of the Law on Electricity.

2. The Licensee shall take all reasonable steps to secure and implement all obligations arising out or in connection with the applicable Legislation, the present license and the agreements where it is a party.

3. With reference to paragraph 1, the Licensee shall deliver to ERO a quarterly report about its Transmission System operation business and compliance with the License conditions.

4. The Licensee has the responsibility of maintaining and publishing the records of the information on border capacities, on interconnections as well as on the rights and obligations regarding hardware and software necessary for load flow calculation, congestion management, power plan dispatch, ancillary and balancing market and other related information.

5. ERO may require the Licensee to collect and keep information, data and document in accordance with Article 31 of the Rule on Licensing of Energy Activities in Kosovo.

Article 10: Interconnectors

1. In accordance with Article 13.1 (a) of the Law on Electricity and the Market Rules, the Licensee shall, no later than six (6) months after this license has come into force, prepare a procedure for the allocation and use of Interconnections with other systems to be submitted to ERO for approval. When Regional Rules for allocation of transmission capacities becomes binding then the Licensee, not later then six (6) months from the date these rules come into force, shall prepare relevant procedures and submit to ERO for approve.

2. The Licensee shall explore and develop opportunities to interconnect the Transmission System with other systems, prepare every two (2) years on the basis of regional needs the list of the new transmission capacities and interconnection power lines required to meet the needs of Kosovo, and shall comply with any direction of ERO and any relevant provision of the Legislation.

3. The Licensee shall as soon as practicable after the commissioning of each interconnector, and in any event not later than such date as the ERO shall specify, prepare a statement for the approval of ERO showing:

    a) the total amount of the capacity of each or all relevant interconnector which the Licensee anticipates will be available for the transfer of electricity from the territory of the Licensee to the other Transmission Operators out of the territory on the daily basis;

b) the amount of the capacity of each interconnector proposed to be reserved by the Licensee and/or any other system operator for such purposes as system security;
c) any matters as ERO may specify prior to approval of the statement.

4. The licencee shall review on a regular basis the capacities identified in the statement referred to in paragraph 3 and in case of modification shall immediatley submit a revised statement to ERO for approval.

5. The statement referred to in paragraph 3 shall be published on the Licensee's web-site.
6. For the purposes of this Article:

"Regional Rules" means the binding rules for alocation of transmission capacities pursuant to international agreements.

Article 11: System Operation

1. The Licensee shall issue direct instructions for the dispatch of all available generation units of each relevant generator in the territory following the scheduling and written notification provided by the generators and suppliers, and thereafter the Licensee shall perform the balancing mechanism (demand and supply) in accordance with the Market Rules.

2. The Licensee shall undertake operational planning and issue direct instructions for the dispatch of such generation units taking into account written notifications referred to in paragraph 1 and the following factors:

a) forecast demands;
b) technical constraints from time to time imposed on the total system or any part or parts thereof;
c) the dynamic operating characteristics of generation units and interconnector transfers;
d) forecast exports and imports of electricity across any interconnector;
e) transmission losses;
f) transmission system outages for maintenance, repair, extension or reinforcement
g) the Operating Security Standards referred to in Article 16 of this license;
h) the balancing mechanism according to the Market Rules;
i) allocation of transmission capacities in a non-discriminatory way;
j) electricity delivered to the transmission system from generation units not subject to central dispatch; and
k) other matters provided for in the Grid Code.

3. When dispatching generation the Licensee shall give priority to generation produced by renewable energy sources as permitted under the Grid Code and in accordance with Article 11 of the Law on Energy.

4. The Licensee shall provide to ERO such information as ERO shall request concerning the system operation or any aspect of its operation.

5. In this Article:

"Interconnector transfer" means the flow of energy across an interconnector as prescribed in Grid Code.

Article 12: Economic Purchasing of Assets, Services, and Ancillary Services

1. The Licensee shall contract for or arrange for the provision of such assets and services, and such quantities and types of ancillary services, as may be necessary and appropriate to enable the Licensee to discharge its obligations under the legislation relevant to procurement that is applicable in Kosovo and under the Grid Code.

2. In contracting or arranging for the provision of assets, services, and ancillary services pursuant to paragraph 1, without prejudice to the infrastructure commitment, the Licensee shall purchase or otherwise acquire such assets, services, and ancillary services from the most economical sources available.

3 In considering the most economical sources available, the Licensee shall have regard to the quantity, nature, and diversity and reliability of the assets, services and Ancillary Services available at that time for purchase or other acquisition, and to its requirements to enable it to discharge its obligations under the Legislation, the Grid Code and this license.

Article 13: Registration and Disposal of Relevant Assets

1. The Licensee shall prepare and maintain a register of all relevant assets and shall provide ERO with such a register annually not later than on 30 January of coming year.

2. The Licensee shall not dispose of, or relinquish operational control over, any relevant asset if the disposal or relinquishment of control would affect its ability to discharge its obligations or if the asset has replacement value of more than Euro 100,000.00.

3. In case where the Licensee requests to dispose of certain assets owned or used by it, or of other resources used to perform the licensed activity, the Licensee will be obliged to notify ERO in writing. The Licensee may only realize the disposal of any assets following ERO's written approval.

4. The disposition set forth in paragraph 3 applies to the outsourcing of assets or other resources used to perform the licensed activity.

5. In this Article:

*"**Disposal**"* means any sale, assignment, gift, lease, license, loan, transfer, mortgage, charge, restriction on use (whether physical or legal), or the grant or any other encumbrance or the permitting of any encumbrance, or any other disposition to any other business of the Licensee and/or to a third party, and "dispose" shall be construed accordingly.

"Relevant asset" means:

a) any Transmission System equipment used by the Licensee in the discharge of its functions under this license, or

b) any legal or beneficial interest in land and/or premises upon which any of the foregoing is situated and/or used by the Licensee in the discharge of its functions under this license, or
c) any relevant intellectual property right.

Article 14: Transmission System Security and Planning Standards

1. The Licensee shall, no later than twelve (12) months after this licence has come into force, establish Transmission System Security and Planning Standards and submit to ERO for approval. ERO may approve extension to this deadline in response to a justified request by the Licensee.

2. The Licensee shall be responsible for operating, ensuring the maintenance of and, if necessary, developing the Transmission System in accordance with the Transmission System Security and Planning standards.

3. The Licensee shall periodically review the Transmission System Security and Planning Standards and their implementation. Following any such review, the Licensee shall send to ERO for review and approval:

    a) a report of the outcome of such review; and
    b) amendment which it is proposed to make to the Transmission System Security and Planning Standards ,

4. ERO may issue directions requiring the Licensee to revise the Transmission System Security and Planning Standards in such manner as may be specified in such directions, and the Licensee shall comply with such directions.

5. The Licensee shall publish and make the Transmission System Security and Planning Standards available on its web-site.

Article 15: Operating Security Standards

1. The Licensee shall, no later than twelve (12) months after this licence has come into force, establish Operating Security Standards for ensuring day to day operating security of the Transmission System, and submit them to ERO for approval. ERO may approve extension to this deadline in response to a justified request by the Licensee.

2. The Licensee shall be responsible for operating the Transmission System in accordance with the Operating Security Standards.

3. The Licensee shall periodically review the Operating Security Standards and their implementation. Following any such review, the Licensee shall send to ERO:

    a) a report of the outcome of such review; and
    b) amendment which it is proposed to make to the Operating Security Standards (having regard to the outcome of the review).

4. ERO may issue directions requiring the Licensee to revise the Operating Security Standards in such manner as may be specified in such directions, and the Licensee shall comply with such directions.

5. The Licensee shall publish the Operating Security Standards available on its web-site.

Article 16: Overall and Minimum Standards of Performance of the Transmission Operation Business

1. The Licensee shall conduct the transmission operation business in the manner appropriate to achieve the overall and minimum standards of performance proposed by it and approved by ERO from time to time.

2 Within twelve (12) months after this license comes into force, the Licensee shall prepare and submit to ERO for approval a proposal for standards of performance, which shall:

   a) identify the standards of overall performance to which it shall be obliged to adhere;
   b) state the minimum standards of performance and service quality in relation to specific matters to which it shall be obliged to adhere from time to time; and
   c) specify the financial compensation that will be payable to customers in the event that the minimum standards of performance referred to in sub-paragraph b) and pursuant to accession agreement are not complied with.

3. At all time KOSTT will act as reasonable and prudent operator in line with industry best practices.

4. The Licensee shall implement the approved standards and shall propose to ERO for its approval, procedures for monitoring compliance with the same. The Licensee shall comply with the approved procedures.

5. The Licensee shall review and, if appropriate, propose amendments to the approved standards and/or procedures developed in accordance with this Article as directed by ERO.

6. The Licensee shall provide to ERO not later than on 30 April each year a report on the performance of the business against the performance standards. The report will include such information and analysis as ERO may require from time to time for the purposes of establishing whether or not the Licensee's overall performance meets, the performance standards established pursuant to this Article.

7. The Licensee shall also by 30 April each year publish in such a manner as ERO may direct, statistics, identifying the extent to which its performance meets, or fails to meet, the performance standards established pursuant to this Article.

8. The Licensee in discharging its functions shall take into account the target of being objective and non-discriminatory according to Article 13.1 of the Law on Electricity.

Article 17: Access to Land and/or Premises

1. The Licensee shall, no later than three (3) months after this license is issued, prepare and submit to ERO for its approval a Code of Practice setting out the principles and

procedures that the Licensee will follow in respect of any person acting on behalf of the Licensee who requires access to land and/or premises in connection with the licensed business.

2. The Code of Practice shall include procedures to ensure that persons requiring access on land and/or premises on behalf of the Licensee:

    a) possess the skills necessary to perform the required duties; and
    b) can be identified by public; and
    c) are appropriate persons to visit and enter land or premises.

3. The Licensee shall periodically review the Code of Practice and any revision of such Code of Practice shall be subject to the approval of ERO.

4. The Licensee shall ensure that it complies with such a Code or any amendment to such a code as approved by ERO.

Article 18: Restriction on Use of Certain Information

1. The Licensee may disclose any information other than the confidential information held and/or obtained by it in the discharge of its functions as Transmission System Operator, as defined in Rule on Confidentiality of Information as adopted by ERO, except that this restriction shall not prevent the Licensee disclosing to ERO any information that ERO may require to carry out its obligations under the Legislation and under Article 29 of this license.

2. The Licensee shall procure that any document containing confidential information shall be marked as such.

3. The Licensee shall take measures designed to prevent any person who is or ceases to be employed by the Licensee from disclosing confidential information.

4. The Licensee shall take all reasonable steps to ensure that confidential information is not used or disclosed for any purpose other than that for which it was provided pursuant to the relevant provisions of the Rule on Confidentiality of Information.

5. In this Article:

"confidential information" means any commercial or other kind of information held and/or obtained by the Licensee in the discharge of its duties under the Legislation, that is to be regarded as confidential under the Rule on Confidentiality of Information and under this license.

Article 19: Provision of Information to other System Operators and the Distribution System Operator

1. In order to ensure the secure and efficient operation, coordinated development and interoperability of the interconnected systems the Licensee shall submit to the Distribution System Operator and to other interconnected System operators, any necessary

information in such manner and at such times as may be reasonably required by the Distribution System Operator and other System operators.

2. For the purposes of this Article, in case of any dispute between the Licensee and any other party, the Licensee shall apply the Rule on Dispute Settlement Procedure in the Energy Sector.

Article 20: Code of Conduct of the Transmission System Operator

1. The Licensee shall prepare a Code of Conduct, and submit it for approval by ERO within six (6) months from the date of issuance of this license.

2. The Code of Conduct shall apply to all staff members of the Licensee.

3. The Code of Conduct of the Transmission System Operator shall cover obligations of confidentiality, conflicts of interest, and other related obligations.

4. The Licensee shall publish the Code of Conduct on its web site.

Article 21: Market Rules

Condition 3:

ERO may issue directions to the Licensee relieving it of its obligation under this Article in respect of such parts of the Market Rules and to such extent as may be specified in those directions.

1. The Licensee shall comply with the Market Rules insofar as applicable to it.

Article 22: Health and Safety

1. The Licensee shall take all reasonable steps to protect persons and property from injury and damage that may be caused by the Licensee when carrying out the Transmission System Operator business.

2. The Licensee shall ensure that an independent expert whose appointment is approved by ERO undertakes a technical and safety audit of the Transmission System on an annual basis.

3. The Licensee shall provide to ERO the results of such audits within three (3) months of their completion.

Article 23: Labour

The Licensee shall comply with all legislation applicable to labour relations and work safety whether in force at the date hereof or in the future.

Article 24: Insurance obligation

Condition 4:

The Licensee shall comply with requirement set forth in Paragraph 1 within twelve (12) months from the date of issuance of this license.

1. The Licensee shall conclude and keep in force insurance contracts relating to the transmission assets and equipment used for transmission. Such contracts shall be annually submitted to ERO for review.

Article 25: Change in Control of the Licensee

The Licensee shall notify ERO of any intended change in control of the Licensee at least sixty (60) days in advance of such a change. Change in control may not take place unless ERO has approved it.

Article 26: Public Service Obligation

The Licensee shall comply with any public service obligation imposed by ERO pursuant to Article 51 of Law on Energy Regulator.

Article 27: Provision of Information to ERO

1. The Licensee shall submit to ERO, in manner and at such times as ERO may require, such information and such reports as ERO may consider necessary in the light of any Article or condition of this License or for the purpose of performing the functions assigned or transferred to it under Article 29 of the Rule on Licensing of Energy Activities in Kosovo or other applicable Legislation.

2. The information shall be prepared to a level of audit as may be required by ERO from time to time.

3. The power of ERO to require information under paragraph 1 is without prejudice to the power of ERO to require even information that are considered confidential under or pursuant to any other Article or Condition of this license or under or pursuant to the applicable Legislation.

4. If the Licensee requests that certain information shall be considered as confidential it is its obligation to mark such information as confidential and justify to ERO such request.

5. The Licensee shall deliver to ERO a quarterly and annual reports informing about its transmission system operation business and compliance with the Licensee's conditions in accordance to the Reporting Manual issued by ERO.

6. The Licensee shall submit to ERO details of any change in information submitted with application for this license.

7. The Licensee shall submit to ERO the annual report on the status of main equipment and calculations of continuity of supply including but not limited to:

    a) incremental and decremental prices;
    b) constraint payments;

c) demand forecasts;
d) consumption details;
e) system Demand profiles.

8. In this Article:

"Information" means material in any form and includes, without limitation, any books, documents, records, contracts, accounts (statutory or otherwise), estimates, returns or reports of any description and any explanations (oral or written) in relation to such information as may be requested by ERO.

Article 28: Reasons for License Termination, Withdrawal and Modification

1. ERO may terminate this license in accordance to Article 39 of the Rule on Licensing of Energy Activities in Kosova provided that the obligations of the Licensee shall be carried out by another Licensee or that customers are not at a disadvantage by such termination. Such termination may take place in case of:

    a) expiration of the term of the licence;
    b) a request received from the licensed electricity enterprise in respect of its own license;
    c) dissolution of the legal person holding the license;
    d) destruction of the energy facility;
    e) upon decision of a court declaring the insolvency of the Licensee or court decision to terminate the energy activity due to the Licensee's declaration of liquidation;
    f) where the licensed energy activity has not been conducted for more than six months, except where the suspension of activity is at the approval of the ERO;
    g) where provisions of Article 44 of the Rule on Licensing of Energy Activities in Kosovo are met;
    h) if any amount payable in respect of a fee for this Licence is unpaid thirty (30) days after it has become due and remains unpaid for a period of another thirty (30) days after ERO has given the Licensee notice in writing that the payment is overdue, provided that, no such notice shall be given earlier than the day following the "day" the amount payable was due.

2. ERO may withdraw this license in the following cases, stipulated in Article 44.5 of the Rule on Licensing of Energy Activities in Kosovo, provided that the obligations of the Licensee shall be carried out by another Licensee or that customers are not disadvantage by such withdrawal:

    a) the Licensee defaults or violates material Articles, conditions, or obligations in the license and such defaults and violations have not been remedied within the deadline given by ERO or seriously damage the quality, safety and reliability of the service that the Licensee was obliged to provide;
    b) license monitoring by ERO finds failure to fulfil administrative requirements and such failure has not been remedied within the deadline provided by ERO;
    c) the Licensee presented materially false information upon which the license grant was based.

3. In accordance with Article 35 of the Rule on Licensing of Energy Activities in Kosovo,

ERO may modify this license in the following cases:

a) at the request of the Licensee
b) where required to protect the energy system in Kosovo, in connection with security of supply, security of life and health of citizens or protection of environment;
c) in order to adhere to new requirements set forth in international agreements and national laws, regulations and other applicable legislation;
d) as a sanction for violation of license terms and conditions, pursuant to Article 44 of the Rule on Licensing of Energy Activities in Kosovo.

Article 29: Administrative Measures and Fines

1. In case of violation of any provision of the Legislation, of any Article or condition of this licence and of any ERO's instruction to the Licensee, ERO shall have the power, pursuant to Article 56.2 of the Law on Energy Regulator and Rule on Administrative Measures and Fines, either to prevent the Licensee from repeating the illegal action or, if the action has stopped, to issue a regulatory decision requiring that a particular action has to be taken or to impose an administrative fine to the Licensee and/or the members of its Board of Directors and/or its executives.

2. Prior to issuance of a fine, ERO shall issue a notice of license violation to the Licensee and shall provide the Licensee with an opportunity to respond to ERO, in writing, within fourteen (14) days of the notification, and to remedy the violation.

3. A fine shall be imposed on the Licensee in accordance to Article 57 of the Law on Energy Regulator and Rule on Administrative Fines and Measures, in the event that the Licensee violates the requirements of that Article insofar as they are applicable to the Licensee.

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4. The amount of the fine will be evaluated in accordance to the Rule on Administrative Fines and Measures. In any case, if the fine mentioned in paragraph 3 is imposed on the Licensee, it must not exceed 15% of the Licensee's gross revenues from the business conducted under this Licence in the previous financial year.

5. If the fine mentioned in paragraph 3 is imposed on a member of Board of Directors or an executive of the Licensee, it must not exceed 300% of the monthly remuneration received by that person from the Licensee.

6. In the case of repeat violations, the fine imposed may be three times greater than the amount authorized in paragraph 4 or 5.

7. When imposing a fine, in accordance to this Article, ERO shall take into account the degree of social harm of the action, the prior behavior of the Licensee or person concerned, and the financial standing of the Licensee or person.

8. If a fine imposed by ERO is not paid, ERO shall initiate court proceedings for the collection of the fine as a civil debt.

Article 30: Settlement of Disputes

1. Any dispute arising out or in connection with the licensed activity shall be settled in accordance with the Rule on Dispute Settlement Procedure in the Energy Sector adopted by ERO.

2. Decisions of ERO regarding the modification, withdrawal or termination of the license, as well as those regarding any fines resulting from breaches of the license or of the applicable legislation, may be appealed by the Licensee to the court of competent jurisdiction.

Energy Community

Energy Community Secretariat (ECS)
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Email: contact@energy-community.org
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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

Bank Raiffeisenlandesbank Bankcode 32000 Account Number 15.102.825 BIC/SWIFT RLNWATWW IBAN AT953200000015102825

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

Slavtcho Neykov
Director

Dirk Buschle
Legal Counsel

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инфраструктуру и
енергетику
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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

Energy Community

Energy Community Secretariat (ECS)
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Vienna, 3 August 2012
ECS-3/08O03-08-2012

Ref: Case ECS-3/08

YOUR EXCELLENCY,

I am addressing you today with regard to pending Case ECS-3/08. The case concerns several issues related to the operation of the electricity network located on the territory of Kosovo[1], and the revenues gained from that operation. In October 2011, the Secretariat sent a Reasoned Opinion in the case to Serbia. In its reply to that Reasoned Opinion, State Secretary Mrakic, on behalf of the Republic of Serbia, stated that "the Republic of Serbia is fully devoted to finding a swift and practicable solution aimed at settling the present dispute." The Secretariat is further aware of the fact that the Republic of Serbia approached UNMIK for the conclusion of a bilateral agreement, however without outcome. We are also ware that the issues concerned have not been solved in the Commission-sponsored dialogue in Brussels.

In order to take a significant and hopefully decisive step towards settling Case ECS-3/08, the Secretariat considers renewed efforts needed. It proposes a meeting between the two companies involved, EMS and KOSTT, as well as representatives of your Ministry to be held in Vienna in September 2012 – our concrete proposal is for 4th September 2012 (reserve option 3rd September). The Secretariat offers to mediate negotiations for a bilateral agreement between the two companies. The basis for such negotiations should be the Memorandum of Understanding sent by the Secretariat to both parties earlier in the process, unless another mutually acceptable draft is presented.

EXCELLENCY,

With this renewed effort for a constructive dialogue and the achievement of a pragmatic solutions, the Secretariat hopes to be able to close this protracted case rather than following the formal procedure and the next step envisaged there under.

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.

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Please, also note that the Secretariat shall prepare information for the Ministerial Council meeting on 18.10.2012 for all open cases; in addition, we understand that the topic shall be raised also by other participants. Therefore, our understanding is that finding an agreement before that shall be strongly appreciated by all constituents.

We are confident to have your support and cooperation in this process. Your reply by the end of August 2012 will be highly appreciated.

Please be assured, your Excellency, of my highest consideration.

Yours sincerely,

Slavtcho Neykov
Director

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06-00-8/2012-01

Belgrade, 09.08.2012.

Energy Community
Vienna, Austria
Attn.: Mr. Slavtcho Neykov, **director**

Ref: Answer to your letter from 03.08.2012. ECS-3/08

Dear Mr. Neykov,

I am addressing you with regard to your letter from 03.08.2012.

We are looking forward to cooperate with you, and we agree with all of your proposals, but because of the important State issues we have to ask you to postpone subject meeting for the end of September 2012 and notify us about that.

Regarding the Security of Supply Group meeting which will be held on 17.10.2012. in Budva, Republic of Montenegro, we are confirming our presence.

We will provide you with details by the 1st of September 2012.

Yours sincerely,

Ministry of energy, Development and
Environmental protection

Ph. D Zorana Mihajlović

Energy Community

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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.*

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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

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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

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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

EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR ENERGY AND TRANSPORT

Deputy Director-General for Energy

Brussels, 29 JUIL. 2009
TREN/C2/OS/cs D(2009) 59902

Mr Graeme Steele
Chairman of the Board
ENTSO-E
Boulevard Saint-Michel 15
1040 Brussels

Dear Mr Steele

I wish to thank you for the very constructive meeting held on 7 July between ENTSO-E, KOSTT and the Commission services. Your and Mr Staschus' personal attendance and attention to the matter was particularly appreciated.

As you know, KOSTT is the transmission system operator of one of the Contracting Parties of the Energy Community and has therefore the obligation to comply with EU electricity legislation, in particular Regulation no 1228/2003. This includes all provisions related to the cooperation among transmission system operators and related to cross-border electricity flows.

In this perspective, the Commission attaches great importance to the full inclusion of KOSTT in all regional and European cooperation initiatives and structures put in place by the transmission system operators. The creation of ENTSO-E, against the background of the new responsibilities defined in the Third Package, is in our view the right moment to ensure a comprehensive participation of all transmission system operators of the Energy Community including KOSTT.

In the coming months, KOSTT will prepare an application in order to become full member of ENTSO-E in conformity with the criteria for membership defined in the ENTSO-E Articles of Association. We do rely on your support for ensuring an objective and swift examination of the KOSTT application and to inform the Commission of any specific difficulty in that process.

Yours sincerely,

p.o. Fabrizio Barbaso
Heinz H[illegible]ECHT
Directeur

Commission européenne, B-1049 Bruxelles / Europese Commissie, B-1049 Brussel - Belgium. Telephone: (32-2) 299 11 11.
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Cc: Mr Pierre Mirel, Director, DG ELARG
Mr Konstantin Staschus, Secretary-General, ENTSO-E
Mr Fadil Ismaili, Managing Director, KOSTT

European Network of
Transmission System Operators
for Electricity

entsoe

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Mr Skender Gjonbalaj
Market Operator Director
KOSTT – Transmission System and Market Operator of Kosovo
Ilaz Kodra pm,
10000, Pristina,
Kosovo

16 November 2010

Object: Your letter regarding participation in the ITC agreement

Dear Mr Gjonbalaj ,

I am pleased to respond to your email to Juha Kekkonen, Chairman of ENTSO-E Market Committee of 28 September regarding the Inter Transmission System Operator Compensation (ITC) Agreement and the legal case initiated by KOSTT at the Energy Community Secretariat. I would like to thank you for bringing this issue to our attention.

ENTSO-E notes that on 17 September 2010, the Energy Community Secretariat sent an Opening Letter to the Republic of Serbia in accordance with Article 12 of the Rules of Procedure for Dispute Settlement. We understand that the case was initiated by a complaint from KOSTT. We also understand that in the Opening Letter, the Secretariat takes the preliminary view that the Republic of Serbia failed to fulfill its obligations under the Energy Community Treaty on account of practices by EMS.

We understand that the Energy Community Secretariat is in the process of assessing the situation for compliance with Energy Community law, in particular with Regulation (EC) 1228/2003 on conditions for access to the network for cross-border exchanges in electricity. ENTSO-E notes that, in the Energy Community Secretariat's preliminary assessment, the lack of compensation 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.

ENTSO-E understands that the Opening Letter outlines a preliminary procedure, the purpose of which is to give the Republic of Serbia the possibility to react to the allegation of non-compliance with Energy Community law, and to enable the Energy Community Secretariat to establish the full factual and legal background of the case. However, since the Energy Community Treaty governs the participation of non-EU countries in Southeastern Europe in the Internal Energy Market, the outcome of this case also affects how transits over the transmission system operated by KOSTT would be treated in future ITC calculations and payments under the new ITC regulations.

ENTSO-E is committed to creating an efficiently functioning, transparent and competitive Internal Electricity Market. ENTSO-E is also tasked with ensuring that an ITC agreement is in place and, on behalf of members, ensuring that the agreement operates effectively. In light of the uncertainty created by the ongoing investigation by the Energy Community Secretariat, which you highlight in your letter, we consider it would be inappropriate for ENTSO-E to take action before the facts of the case are fully established and the Energy Community Secretariat has reached a view. We also note that there is a pressing need to put in place an ITC agreement for 2011 and, from a pragmatic perspective, do not consider that it would be possible to undertake the necessary actions and verifications required to include an additional party without delaying the conclusion of the agreement.

However, ENTSO-E notes that in a number of locations, including Germany and Austria, responsibility for the administration of the ITC agreement within a control zone which contains multiple TSOs is undertaken by a single ITC party. A series of bilateral agreements then specify the detailed agreements which exist between the TSOs within this control zone. While we will continue to monitor the Energy Community Secretariat's investigation closely and progress any issues which result from the final decision, ENTSO-E would strongly support attempts by KOSTT and EMS, who am also writing to on the subject, to put in place appropriate bilateral arrangements to allow this issue to be resolved to both parties' mutual satisfaction in an expedient manner, especially before the background of the recent UN and EU declarations following the ICJ ruling.

I remain at your disposal should you wish to discuss this matter further.

Yours sincerely

Konstantin Staschus
Secretary-General
ENTSO-E

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Arrangements regarding energy

1. Both parties confirm their commitment to meeting all their obligations under the Energy Community Treaty, and to apply the EU energy *acquis*. These arrangements are fully compatible with both.

2. KOSTT and EMS will sign a bilateral operational agreement within 3 months, establishing and regulating relations between the two Transmission System Operators. In addition, the former Temporary Energy Exchange Agreement and Temporary Technical Agreement will be repealed.

   KOSTT will be recognised as the Transmission System Operator for the territory of Kosovo for the purpose of participation in all relevant mechanisms (ITC, Congestion Management, etc.).

   EMS will support KOSTT to become a member of ENTSO-E.

3. The energy regulatory authorities of both parties will open direct channels of communication to discuss subjects of mutual interest.

   The regulatory authorities of both sides shall, upon application, without delay, and in line with the requirements of the existing licensing framework in their jurisdiction, issue licences covering trade (import, export, transit) and supply to KEK , KEDS and EPS, respectively.

4. Both parties will accelerate the process of market opening by July 1st 2014, in accordance with the timetable fixed by the Energy Community Treaty, therefore allowing a new electricity company to supply customers to be established. Both parties also agree that such a company will be established under the Kosovan legal and regulatory framework.

5. This new company will supply electricity and may provide distribution services (such as billing, collection, maintenance and physical connection of new customers) to customers in the four northern Serb majority municipalities, and will be able to buy and sell power on the open market. This new company, in order to operate as per point 4 will sign agreements with KOSTT in order to participate in the Kosovo power market and to become balance responsible party.

   Immediately after the establishment of this new company, it will enter into discussions on all other issues of mutual interest with KEDS and KOSTT, including to ensure third party access.

   The employees of JP Elektrokosmet will either be incorporated into this new company or might be offered employment with KEDS.

I. D.

CVS

KOSTT will reconnect the 110 kV lines to Valac/q. The current operators at the Valac/q substation will respect instructions from the Kosovo dispatch centre.

6. Both parties agree to try to find a common settlement solution as regards KOSTT's claims and EMS claims. KOSTT considers that these claims are for unpaid transit and interconnection allocation revenue and EMS's claims for secondary regulation. EMS considers that these claims are for services for secondary and tertiary regulation. Should it not be possible to reach a common settlement within 6 months, both parties agree to submit these claims to international arbitration.

7. An implementation group will be formed in order to draft a full Action Plan for the implementation of the future Agreement. The full implementation process will commence upon receipt of written acceptance of Action plan.

I. D.

FRAMEWORK AGREEMENT ON COOPERATION IN TRANSMISSION SYSTEM OPERATION

BETWEEN

JP ELEKTROMREŽA SRBIJE

a publicly owned company incorporated under the laws of Serbia with business registration number 20054182 and registered at Kneza Miloša 11, 11000 Belgrade

and

OPERATOR SISTEMI, TRANSMISIONI DHE TREGU TË KOSOVËS – KOSTT

a publicly owned company incorporated under Kosovo Law with business registration number 70325350 and registered at Iljaz KODRA p.n. 10000, Pristina

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FRAMEWORK AGREEMENT

relating to the cooperation and coordination on the interconnected Transmission Systems of EMS and KOSTT

TABLE OF CONTENT

1 INTRODUCTION

1.1 JP Elektromreža Srbije (EMS) and Operator Sistemi, Transmisioni dhe Tregu të Kosovës– KOSTT (KOSTT) are licensed Transmission System Operators (TSO) and Electricity Market Operators (each a Party and together the Parties). EMS and KOSTT are responsible – amongst other activities - for the planning, operation, maintenance and development of their respective electricity transmission systems, to include the efficient, economic and coordinated operation of cross-border flows and the balancing of their respective systems.

1.2 The Parties wish, by this Agreement, to take a first step in fulfilling their obligations under the "Arrangements regarding energy" concluded on 8 September 2013. Further, they acknowledge the relevance and the binding obligations of the Treaty establishing the Energy Community.

1.3 KOSTT and EMS transmission systems are interconnected through several tie-lines. As such, KOSTT and EMS wish to establish coordinated interconnected operation to maintain reliability for both of their power systems, consistent with the rules and principles promulgated by ENTSO-E (as defined below) and Energy Community *acquis*. Under the terms established between KOSTT and EMS by way of this Agreement, KOSTT assumes the responsibility for the its area within the Synchronous Area Continental Europe, and as part of the Control Block comprising the transmission systems of the Parties and the neighbouring CGES and MEPSO, subject to agreement of the TSOs of the other areas of the Control Block.

1.4 ENTSO-E's Regional Group Continental Europe (ENTSO-E RG CE) coordinates the operational activities of transmission system operators in Continental European countries. Its common objective is the security of operation of the interconnected power system. Close cooperation of member companies is required to make the best possible use of benefits offered by interconnected operation. Moreover, the strong meshing of the synchronously operated power system requires a common understanding of technical and organizational processes and procedures in terms of network and system operation management. In pursuance of its mandate, ENTSO-E maintains an ENTSO-E RG CE Operation Handbook (ENTSO-E Operation Handbook), which comprises an up-to-date collection of operation principles and rules for TSOs in continental Europe. Every TSO in the ENTSO-E RG CE interconnected network has to follow the technical standards and procedures that are comprised in the ENTSO-E Operation Handbook.

1.5 The Parties mutually agree to follow and adhere to the standards and procedures that are comprised in the ENTSO-E Operation Handbook. The Transmission System Operation Agreement, which the Parties will develop under this framework agreement, shall make operational the provisions of the ENTSO-E Operation Handbook – as may be altered or amended from time to time. The parties agree to exchange all necessary data in order to ensure operational security within the Parties' areas.

1.6 Further, each Party agrees to comply with, and implement the Inter TSO Compensation (ITC) Mechanism for their respective Area, which constitutes an obligation under EU Regulation No 838/2010, as incorporated in the Energy Community *acquis*, and be independently represented in this ITC Mechanism. The Parties support the request of KOSTT to become a signatory to the ITC Agreement and will facilitate the application and operation of the ITC Agreement by the respective other Party.

2 SUBJECT MATTER OF THE FRAMEWORK AGREEMENT

2.1 The objective of this Agreement is to set out the principles of mutual cooperation and coordination between the Parties to be further defined by an Inter-TSO agreement between the Parties, including annexes, and separate agreements on ITC and Congestion Management which shall complete the efforts to ensure the reliable operation of the interconnected Transmission Systems in accordance with the standards published by ENTSO-E and its Regional Group Continental Europe (RG CE) and applicable Energy Community *aqcuis* requirements.

2.2 The Parties agree to continuously improve their cooperation in all areas of system operation with the aim to establish a Control Area operated by KOSTT in accordance with ENTSO-E's Operation Handbook. EMS will support KOSTT's membership in ENTSO-E.

2.3 The Parties agree to commonly develop and sign a bilateral Inter-TSO Agreement on Transmission System Operation, including annexes, and separate agreements on ITC and Congestion Management in accordance with the standards set forth by the ENTSO-E Operational Handbook (Inter-TSO Agreement), until 25 February 2014.

2.4 The bilateral Inter-TSO Agreement pursuant to Article 2.3 shall contain all necessary provisions, in order to

a. fulfil the Parties' obligations in accordance with Point 2 of the "Arrangements regarding energy" concluded on 8 September 2013, where the Parties to this agreement are licensed Transmission System Operators;
b. ensure the secure operation of the Parties' respective Areas;
c. take into account the interconnected operation of both Control Areas in line with Articles 2.2 and 2.3 in the Synchronous Area Continental Europe and the Control Block comprising transmission systems of the Parties and the neighbouring CGES and MEPSO, subject to agreement of the TSOs of the other areas of the Control Block; and
d. cover, as a minimum, all of the following topics in detail and in compliance with the Operation Handbook:
    i) Definitions;
    ii) Interconnected operations between KOSTT and EMS;
    iii) Arrangements for Load Frequency Control, technical reserves and corresponding control performances, including arrangements for the provision of ancillary services to be performed by EMS, and an appropriate financial compensation in this regard;
    iv) Rules for Scheduling and Accounting;
    v) Operational Security, including Operating Instructions and Security Limits;
    vi) Coordination of the operation of their respective Transmission Systems and operating criteria and standards, including Coordinated Operational Planning;
    vii) The provision of mutual assistance in an Emergency and during system restoration;
    viii) Communication Infrastructure;
    ix) Data Exchange; and
    x) Operational Training.

2.5 Both Parties agree that their respective Areas are interconnected for purposes of Congestion Management in the form of Capacity Allocation and the settlement of the ITC mechanism from the signature of this agreement, and for purposes of coordinated operation, scheduling, accounting and settlement from the implementation of the Inter-TSO Agreement.

The respective areas are defined by the following Interconnectors:

a. Overhead Transmission Line (400 kV) between the Substations Kosova B and Nis 2
b. Overhead Transmission Line (220 kV) between the Substations Podujeva and Krusevac
c. Overhead Transmission Line (110 kV) between the Substations Berivojce and Bujanovac
d. Overhead Transmission Line (110 kV) between the Substations Valac and Novi Pazar

Until KOSTT becomes party of the ITC mechanism and solely responsible for Congestion Management in the form of Capacity Allocation, the Parties will settle both revenues received and costs accrued for transit compensation and congestion revenues from the capacity allocation of interconnectors with OST, MEPSO and CGES, in line with the separate agreements on ITC and Congestion Management, as of 25 February 2014.

2.6 For purposes of Secondary and Tertiary Control and Reserves, EMS shall offer the required services for both Parties' Areas against market-based compensation, from the implementation date of the Inter-TSO Agreement until the end of the initial validity period stipulated in Article 2.7.

2.7 Both Parties agree that the Inter-TSO Agreement to be concluded pursuant to Article 2.2 and Article 2.3, shall be completed by Annexes and contain

a. an implementation date determining its entry into force, which shall be no later than 1 June 2014;
b. an initial validity period, ending at an agreed date, after which the Parties shall be obliged to conclude an amendment, extending the Inter-TSO Agreement;
c. an agreement on the financial compensation for the services provided in accordance with Article 2.6, as well as any other potential services; and
d. the EIC Codes identifying both Parties' Areas for purposes of scheduling, in line with requirements of ENTSO-E's Operation Handbook Policy 2.

2.8 The Parties support the issuance of an Area (10Y) EIC Code for the Area of KOSTT, in accordance with the requirements of ENTSO-E's Central Issuing Office's Energy Identification Code Management Scheme until 25 February 2014.

3 GENERAL TERMS, CONDITIONS AND FINAL CLAUSES

3.1 **Commencement Date, Term and Validity of this Agreement:** This Framework Agreement shall enter into force on the date of its signature and shall remain in force until it is changed or terminated in accordance with Article 3.2 or 3.4. This Framework Agreement shall not have any effect on potential claims resulting from the relations between the Parties predating the entry into of this Agreement.

3.2 **Amendment:** This Agreement may be only amended and supplemented on the basis of a supplemental agreement between the Parties, mutually agreed in writing.

3.3 **Language:** This Agreement and all correspondence and communications to be given and all other documentation to be prepared and supplied under this Agreement shall be in the English language. If any part of this Agreement is prepared in a language other than English, and inconsistency occurs, the English version of this Agreement shall prevail.

3.4 **Termination**: This Framework Agreement may be terminated at any time by mutual agreement in writing. In the event that the Agreement is terminated, the Parties shall conclude a new agreement to fulfil their respective ENTSO-E obligations.

3.5 **Guarantors of the Agreement:** The Energy Community Secretariat and the European Commission act as guarantors of this Agreement and its implementation.

In witness whereof, the authorized representatives of the Parties sign this Agreement on the date written below. This Agreement is signed in four original copies. Each party receives two original copies.

On behalf of JP ELEKTROMREŽA SRBIJE

Signed: .....
Name:
Position:

Belgrade, ...

On behalf of OPERATOR SISTEMI, TRANSMISIONI DHE TREGU TË KOSOVËS – KOSTT

Signed: .....
Name:
Position:

Pristina, ...

Inter-TSO Agreement

on

Network and System Operation Management

between

JP ELEKTROMREŽA SRBIJE

Kneza Miloša 11, 11000 Beograd

- hereinafter referred to as "EMS" -

and

OPERATORI SISTEMI, TRANSMISIONI DHE TREGU – KOSTT j.s.c.
Iljaz Kodra p.n. 10000, Prishtina

- hereinafter referred to as "KOSTT" -

commonly hereinafter referred to as “Parties”

concerning

System operation between EMS and KOSTT

Contents

1. Purpose

1.1 JP Elektromreža Srbije (EMS) and Operator Sistemi, Transmisioni dhe Tregu të Kosovës– KOSTT (KOSTT) (each a Party and together the Parties) are licensed Transmission System Operators (TSO) and Electricity Market Operators. EMS and KOSTT are each responsible – amongst other activities - for the planning, operation, maintenance and development of their respective electricity transmission systems, to include the efficient, economic and coordinated operation of cross-border flows and the balancing of their respective systems.

1.2 The Parties concluded a Framework Agreement, signed by EMS and by KOSTT, the provisions of which are binding on the Parties. The purpose of the present agreement and its annexes is to fulfil the obligations arise from item 2 of the Framework Agreement. Separate agreements on ITC and Congestion Management will be signed in accordance with the Framework Agreement.

1.3 The goal of the present agreement is to stipulate the rules and routines applying to the cooperation between the EMS and KOSTT in order to ensure the secure operation of the interconnected transmission network. The earliest as of 1 January 2015, KOSTT and EMS will operate transmission systems under their responsibilities as two separate Control Areas, subject to KOSTT's commitment to comply with the applicable standards of ENTSO-E's Operation Handbook and any other requirements ENTSO-E may set.

1.4 ENTSO-E's Regional Group Continental Europe (ENTSO-E RG CE) coordinates the operational activities of transmission system operators in Continental European countries. Its common objective is the security of operation of the interconnected power system. Close cooperation of member companies is required to make the best possible use of benefits offered by interconnected operation. Moreover, the strong meshing of the synchronously operated power system requires a common understanding of technical and organizational processes and procedures in terms of network and system operation management. In pursuance of its mandate, ENTSO-E maintains an ENTSO-E RG CE Operation Handbook (ENTSO-E Operation Handbook), which comprises an up-to-date collection of operation principles and rules for TSOs in continental Europe. Every TSO in the ENTSO-E RG CE interconnected network has to follow the technical standards and procedures that are comprised in the ENTSO-E Operation Handbook.

1.5 The Parties mutually agree to follow and adhere to the standards and procedures that are comprised in the ENTSO-E Operation Handbook. This Transmission System Operation Agreement shall make operational the provisions of the ENTSO-E Operation Handbook – as may be altered or amended from time to time. The parties agree to exchange all necessary data in order to ensure operational security within the Parties' areas.

Particular requirements, standards, guidelines, approaches and measures are described in the Regional Group Continental Europe's "Operation Handbook" regarding the following issues:

- Load-Frequency Control and Performance

- Scheduling and Accounting

- Operational Security

- Coordinated Operational Planning

- Emergency Procedures

- Communication Infrastructure

- Data exchange

- Operational Training

Based upon these “Operation Handbook“ provisions, the parties conclude the following agreement on network and system operation management. Thus, the basis is laid between the contracting parties for a high degree of mutual understanding enabling all tasks of network and system operation management to be performed and the security of system operation to be maintained.

2. Cooperation and Exchange of Information

The Parties agree to cooperate in good faith and to mutually exchange all necessary data in order to ensure operational security within the Parties' areas in all matters covered by this agreement and its annexes.

3. Definitions

As a matter of principle, the terms used in this Agreement are defined in accordance with the current versions of ENTSO-E's "Operation Handbook".

The terms used by and for this agreement are defined in **Annex 1**.

4. Load-Frequency Control

The Parties are responsible for providing and activating primary, secondary and tertiary reserve according to the standards of the "Operation Handbook", thus performing Load-Frequency control.

In order to fulfil these standards, the Parties hereby agree on:

- Demarcation of KOSTT and EMS areas
- Obligations for Primary, Secondary, Tertiary and Time Control.

Demarcation of areas

The borders/boundaries between EMS and KOSTT areas follow Item 2.5 of the Framework Agreement and are represented in **Annex 2**.

Primary, Secondary, tertiary and time control

Primary, secondary, tertiary and time control of EMS and KOSTT are described in **Annex 3**.

5. Scheduling and Accounting

Scheduling

Exchange of energy between the areas of EMS and KOSTT is defined in **Annex 4** and includes:

- process, format, time frame and resolution of schedule messages
- acceptance and confirmation of schedule messages
- identification of market participants which have right to work
- change of accepted schedule messages
- operation in case of mismatch

and other relevant issues regarding the exchange of energy.

Accounting

In order to perform the Accounting and Settlement processes, the Parties shall exchange Meter Data and agreed Accounting Data in compliance with **Annex 5**.

6. Operational Security

External contingency list

External contingency lists of the Parties are represented in **Annex 6**.

External observability area

External observability areas of the Parties are represented in **Annex 7**.

Operational limits

Operational limits (current, overload duration...) of network elements comprised by External observability areas are represented in **Annex 8**.

N-1 Security

Procedures to be carried out applied by the Parties regarding network security calculations, both for non-real time (DACF, D2CF...) and real time calculations are represented in **Annex 9**.

Synchronising equipment settings

Synchronising equipment settings on tie-lines of the Parties are represented in **Annex 10**.

Protection settings

Protection settings on tie-lines of the Parties are represented in **Annex 11**.

Voltage control and reactive power management

Permitted voltage ranges as well as allowed reactive power flows on the tie-lines are represented in **Annex 12**.

Short circuits

Each Party shall provide data for short circuit calculations on specific request of the other Party.

Stability

Each Party shall provide data for stability calculations on specific request of the other Party.

Transmission network development

The Parties inform each other as soon as possible about the endeavours in the development of their respective transmission networks.

They will especially provide information to each other as soon as possible about the commissioning and decommissioning of important network elements or about the extension of existing elements which may affect the network security of the other contracting party.

7. Coordinated Operational Planning

Relevant network elements

The set of network elements which influence the interconnected operation while being out of operation is agreed, as per **Annex 13**.

Outage planning coordination

Outage planning coordination is described in **Annex 14.**

Switching and Permits for work

Switching and other manipulations necessary to execute planned outages and accompanied permits for work are described in **Annex 15.**

Capacity assessment

Procedure for capacity assessment is agreed among Parties, as per **Annex 16.**

8. Emergency Operation

Awareness of system states

Awareness of system states is provided via European Awareness System (EAS).

During an interim period, upon request of the KOSTT dispatcher, EMS shall give all necessary information in order to clarify its system state.

After an interim period, upon request of one Party dispatcher, the other Party shall give all necessary information in order to clarify its system state.

Underfrequency plan

The important extracts from underfrequency plans of the Parties are presented in **Annex 17**.

System restoration

Common bilateral principles, to be applied in case of system restoration are presented in **Annex 18**.

Frequency management at major deviations

Common bilateral principles, to be applied in case of major frequency deviation, are presented in **Annex 19**.

Resynchronisation

Common bilateral principles, to be applied in case of system resynchronosation, are presented in **Annex 20**.

9. Communication

Communication infrastructure

Data on communication infrastructure and settings relevant to each of the Parties, to allow for the enforcement of the Agreement, are provided in **Annex 21.**

Real time data exchange

Real time data to be exchanged for the purpose of transmission system operation are defined in **Annex 22**.

Official language

The official language used for communication is English.

Means of verbal and written communication

The Parties use their business telephone lines for verbal communication.

The Parties agree that telephone conversations between EMS and KOSTT control centres are recorded and may be used to clarify the facts within the scope of the legal provisions in force.

For written communication e-mail, fax and postal shipments are used.

Authorized personnel

Contact data of authorized personnel for all activities covered by this Agreement are provided in **Annex 23.**

10. Operational Training

Inter TSO training organised by the Parties is to be exercised as per **Annex 24**.

11. Annexes

The attached Annexes as listed below form integral parts of the present Agreement:

- Annex 1 Definitions
- Annex 2 Area borders/boundaries
- Annex 3 Primary, Secondary, Tertiary and Time Control
- Annex 4 Scheduling
- Annex 5 Accounting
- Annex 6 External contingency lists
- Annex 7 External observability area
- Annex 8 Operational limits
- Annex 9 N-1 security
- Annex 10 Synchronizing equipment settings
- Annex 11 Protection settings
- Annex 12 Voltage control and reactive power management
- Annex 13 Relevant network elements
- Annex 14 Outage planning coordination
- Annex 15 Switching and Permits for work
- Annex 16 Capacity assessment procedure
- Annex 17 Underfrequency plan
- Annex 18 System restoration
- Annex 19 Frequency management at major deviations
- Annex 20 Resynchronisation
- Annex 21 Communication infrastructure
- Annex 22 Real time data exchange
- Annex 23 Authorised personnel

- Annex 24 Operational training.

12. General Terms, Conditions and Final Clauses

Adjustment of the Agreement

The factual frame of this Agreement complies with the technical rules acknowledged at the time of signing this agreement. Should any of the provisions of this Agreement turn out to be inexpedient in operation, the Parties will get in contact to adjust the provisions concerned to the operational requirements.

Any amendment and supplement to this Agreement must be made in writing and it shall only take effect when it is signed by both Parties.

The Parties agree on following procedure in order to amend an annex:

- Each Party (person responsible for administration of the Agreement, as per Annex 23) names a person responsible for an annex amendment
- If the responsible persons have reached an agreement on an annex amendment, the persons responsible for administration of the Agreement sign the amended annex.

The Parties will keep the adequacy and well-functioning of this agreement under constant review. Not later than 1 January 2015, both Parties agree to review and update this agreement and relevant annexes, and inform the Secretariat of the Energy Community on that update.

Data confidentiality

In accordance with the legal provisions effective and according to the ENTSO-E rules, the Parties undertake to duly use all commercially sensitive competitive information coming to their knowledge within the scope of exercise of the provisions of the present agreement confidentially and not to pass it on to third parties.

The parties own sister companies working in these areas are also considered to be third parties.

The Parties undertake all necessary precautionary measures to prevent misuse, unauthorized access to or disclosure of confidential data from this Agreement.

Data that are to be treated confidentially comprise commercially sensitive data and any information identified as such or information that is to be considered confidential due to its nature.

The use of confidential data for another purpose than the discharge of obligations resulting from this agreement on network and system operation management is excluded. Passing-on of these data to third parties is excluded.

The Parties may agree upon the data to be passed to third parties in a separate agreement.

The abovementioned restrictions imposed shall not apply to the disclosure of any information: (a) was in the public domain prior to its delivery to such receiving Party or after such delivery if it becomes part of the public domain without breach of any confidentiality obligations by the receiving

Party under this Agreement; or (b) is required to be disclosed by applicable Law or judicial or administrative or arbitral process or by any public sector entity; provided that for any such disclosure, the disclosing Party may give the other Party prompt written notice, where possible; or (c) is provided to professional advisors and consultants, agents, auditors, financiers, insurers, banks or representatives of a Party as is reasonable under the circumstances, provided that the Party receiving such Confidential Information shall require such persons to undertake in writing to keep confidential and shall use its best efforts to ensure compliance with such undertaking.

Severability Clause

Should any of the provisions of this agreement and/or its Annexes be void and/or become invalid, validity of the remaining provisions shall not be affected. In such case, the Parties undertake to replace the void provision(s) by a provision coming close to the purpose of this Agreement in economic, technical and legal terms.

Term of the Agreement

This Agreement comes into effect as from 15 September 2014 and remains in force until a relevant change in circumstances, as identified under *Adjustment of the Amendment* or *Termination* occurs.

Without prejudice to the foregoing, the Annexes may prescribe a staggered timeframe for commencement and duration of arrangements foreseen therein.

Arbitration clause

The Parties shall use their best efforts to settle amicably any dispute, controversy or claim arising out of or in connection with this Agreement, or the breach, termination, invalidity or interpretation of, this Agreement. Should this attempt fail the Parties agree to settle the dispute under the Rules of Arbitration and Conciliation of the International Arbitral Centre of the Austrian Federal Economic Chamber in Vienna (Vienna Rules).

The number of arbitrators shall be three. Each Party nominates one arbitrator, the third one is nominated by those two arbitrators. The seat of the arbitration shall be in Vienna. The arbitral proceedings shall be conducted in English. The decision of any such arbitral tribunal shall – to the fullest extent permitted under the Applicable Law - be final and binding on the Parties, and not be subject to any appeal.

Force Majeure

Should a Party be prevented from meeting its performance obligations due to force majeure, such as war, terrorist activities, acts of nature, directions of public authorities, or other circumstances which are outside the control of the Party or which cannot be averted at reasonable technical and economical expenditure, its performance obligations shall be suspended until these circumstances and their effects are eliminated. In such a case, the other Party cannot claim compensation. The

Party concerned will undertake appropriate efforts to resume the discharge of its performance obligations under this Agreement as soon as possible. For the time of suspension of its obligations, the other Party is discharged from its obligation of quid pro quo.

Contractual language

This Agreement and all correspondence and communications to be given and all other documentation to be prepared and supplied under this Agreement shall be in the English.

Applicable law

This Agreement shall be interpreted and construed according to, and governed by, the laws of Austria.

Liability

Neither Party shall be liable to any other Party in contract, tort, warranty, strict liability or any other legal theory for any punitive damages, exemplary damages or indirect, consequential or incidental damages, including loss of profits, loss of use and losses for business interruption.

No Waiver

The failure of a Party to insist, on any occasion, upon strict performance of any provision of this Agreement will not be considered a waiver of any right held by such Party. Any waiver on any specific occasion by either Party shall not be deemed a continuing waiver of such right, nor shall it be deemed a waiver of any other right under this Agreement.

Entire Agreement

This Agreement, including all attachments attached hereto, is the entire agreement between the Parties with respect to the subject matter hereof, and supersedes all prior or contemporaneous understandings or agreements, oral or written, with respect to the subject matter of this Agreement, except for the Framework Agreement between EMS and KOSTT.

Furthermore, with entering into force of this Agreement the Temporary Technical Agreement and Temporary Energy Exchange Agreement will be rendered ineffective.

Termination

This Agreement and/or any Annex may be terminated at any time by mutual agreement in writing. The Agreement may also be terminated by either Party with prior written notice of at 180 days to the other Party of its intention to terminate. In the event that the Agreement is terminated, the Parties

shall conclude a new agreement to fulfil their respective ENTSO-E obligations. Separately, and in addition, any Annex may also be terminated by either Party with prior written notice of 60 days to the other Party of its intention to terminate.

This Agreement is signed in four original copies. Each Party receives two original copies.

Belgrade, ...	Prishtina, ...
.....	.....
Nikola Petrović	Naim Bejtullahu
General Manager	CEO of KOSTT
For and on behalf of EMS	For and on behalf of KOSTT

FINAL DRAFT

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

BETWEEN:

ON THE ONE HAND:

* 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.

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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 Naţională de Transport al Energiei Electrice Transelectrica S.A., a company incorporated under the laws of Romania in the form of a "societate pe acţiuni" (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 2, rue Thomas Edison, L-2089 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 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 ZRt., a company incorporated under the laws of Hungary in the form of a joint stock company, with registered office at Anikó u. 4., H-1031 Budapest, Hungary;
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 fYROM, registered at Trade Register of Skopje, having the Unique Registration Code (Fiscal Code) 4030004529600, with registered office at

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bb, 11 Orce Nikolov 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 Kriegsbergstraβe 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;

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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.

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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.

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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

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	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

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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.

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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.

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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

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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

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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

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(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.

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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;

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SIGNATORY PAGE

1. Austrian Power Grid AG:

Signature: ……
Name: Ulrike BAUMGARTNER-GABITZER
Title: CEO
Date and place:

Signature: ……
Name: Gerhard CHRISTINER
Title: Member of the Board
Date and place:

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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:

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3. Nezavisni Operator Sistema u Bosni i Hercegovini:

Signature: ……
Name: Josip DOLIĆ
Title: CEO
Date and place:

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SIGNATORY PAGE

4. ELIA System Operator NV/SA:

Signature: ……
Name: Frank VANDENBERGHE
Title: Chief Officer Costumers, Market& System
Date and place:

Signature: ……
Name: Chris PEETERS
Title: CEO
Date and place:

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5. ELEKTROENERGIEN SISTEMEN OPERATOR" (ESO) EAD:

Signature: ……
Name: Ivan YOTOV
Title: Executive Director
Date and place:

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

SIGNATORY PAGE

6. Swissgrid AG:

Signature: ……
Name: Pierre-Alain GRAF
Title: CEO
Date and place:

Signature: ……
Name: Thomas TILLWICKS
Title: Senior Adviser
Date and place:

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SIGNATORY PAGE

7. ČEPS, a.s.:

Signature: ……
Name: VladimírTOŠOVSKÝ
Title: Chairman of the Board
Date and place:

Signature: ……
Name: Miroslav VRBA
Title: Vice-Chairman of the Board
Date and place:

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8. TransnetBW GmbH:

Signature: ……
Name: Rainer JOSWIG
Title: Managing Director
Date and place:

Signature: ……
Name: Dr. Rainer PFLAUM
Title: Managing Director
Date and place:

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9. TenneT TSO GmbH:

Signature: ……
Name: Urban KEUSSEN
Title: CEO
Date and place:

Signature: ……
Name: Dr. Peter HOFFMANN
Title:
Date and place:

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10. Amprion GmbH:

Signature: …….
Name: Joachim VANZETTA
Title: Director System Operation
Date and place:

Signature: …….
Name: Dr. Frank REYER
Title: Senior Manager Grid Operation and System Control
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11. 50Hertz Transmission GmbH:

Signature: …….
Name: Boris SCHUCHT
Title: CEO
Date and place:

Signature: …….
Name: Dirk BIERMANN
Title: CMO Chief Markets and System Operations Officer
Date and place:

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12. Energinet.dk:

Signature: …….
Name: Peder ANDREASEN
Title: CEO and President
Date and place:

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

Signature: …….
Name: José FOLGADO
Title: President and CEO
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14. RTE – Réseau de transport d'électicité:

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

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15. Independent Power Transmission Operator S.A.:

Signature: …….
Name: Yiannis BLANAS
Title: CEO
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16. Croatian Transmission System Operator Ltd.:

Signature: …….
Name: Miroslav MESIĆ
Title: President of the Management Board
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17. Mavir ZRt.:

Signature: …….
Name: Gabor SÓTONYI
Title: CEO
Date and place:

Signature: …….
Name: Kamilla CSOMAI
Title: Deputy CEO for Market Operation and Finance
Date and place:

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

Signature: …….
Name: Matteo DEL FANTE
Title: CEO
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19. CREOS Luxembourg S.A:

Signature: …….
Name: Carlo BARTOCCI
Title: Head of Dispatching Department
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20. CGES AD:

Signature: …….
Name: Ivan BULATOVIĆ
Title: Executive Director
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21. MEPSO - Operator na elektroprenosniot sistem na Makedonija, AD:

Signature: …….
Name: Sinisa SPASOV
Title: General Director
Date and place:

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

Signature: …….
Name: Dr.Eng.Engjëll Zeqo
Title: Administrator
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23. TenneT TSO B.V.:

Signature: …….
Name: Ben VOORHORST
Title: Managing Director
Date and place:

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24. PSE S.A.:

Signature: …….
Name: Henryk Majchrzak
Title: President of the Management Board
Date and place: Konstancin-Jeziorna

Signature: …….
Name: Piotr Rak
Title: Member of the Management Board
Date and place: Konstancin-Jeziorna

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

Signature: …….
Name: João Faria Conceição
Title: Member of the Board
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26. Compania Naţională de Transport al Energiei Electrice "Transelectrica" S.A.:

Signature: …….
Name: Ion-Toni TEAU
Title: Directorate President
Date and place:

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27. EMS - Javno Preduzeće Elektromreža Srbije:

Signature: …….
Name: Nikola PETROVIĆ
Title: General Manager
Date and place:

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28. ELES, d.o.o

Signature: …….
Name: Aleksander MERVAR
Title: CEO
Date and place:

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29. . Slovenská elektrizačná prenosová sústava, a.s

Signature: …….
Name: Miroslav STEJSKAL
Title: Chairman of the Board of Directors
Date and place:

Signature: …….
Name: Michal POKORNÝ
Title: Vice-Chairman of the Board of Directors
Date and place:

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

Signature: …….
Name: Kemal Yıldır
Title: CEO
Date and place: Chairman of the Board and General Manager

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31. Operator Sistemi Transmisioni Dhe Tregu sh.a — "KOSTT"

Signature: …….
Name: Naim Bejtullahu
Title: Chief Executive Officer
Date and place:

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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

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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*Δf) 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,

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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

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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)

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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

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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)

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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

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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)

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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

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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.

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ANNEX II
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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 Republic 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.

Final Deadlines in Bilateral Energy Relations

Conclusions of the Chairman

1) Negotiations between EMS and KOSTT on the Interim Agreements on ITC and Congestion Management should be continued under EnCS mediation, taking due account of the EMS-KOSTT Framework Agreement. Both parties shall submit to the EnCS and the other party their offers for compensation in form of a % of the overall income from congestion management between 25/02/2014 and the respective end date of compensation, and a % or methodology for the ITC compensations and contributions between 25/02/2014 and the respective end date of compensation, until 15/12/2015. A meeting should take place in Vienna after the submission of settlement proposals by each TSO. Finalisation of all interim agreements between EMS/KOSTT until 30/04/2016.

2) Entry into force of Multiyear ITC agreement on 01/01/2016, incorporating KOSTT, after adoption by relevant ENTSO-E bodies in December, without any further condition. EMS will support this incorporation.

3) A Serbian supply company is to be registered in Kosovo*, achieved with
    a. an application for company registration, based on the documents agreed in the EU facilitated Dialogue (business registration application documents developed by RS side, forwarded by the Office on Kosovo to the facilitator, submitted by the facilitator on 12/10/2015 to KS side, approved by the head of delegation of the EU Dialogue on Kosovan side, on 15/10/2015) and forwarded by the Secretariat to both sides, by ElektroSever (EPS subsidiary), until 11/12/2015; and
    b. a confirmation of the company registration until 15/12/2015, by the Kosovan Business Registration Office

4) ElektroSever shall apply for supply license until 18/12/2015; ERO shall issue the operational supply license until 06/01/2016, with a clear statement about the operationalisation of the license as 06/01/2016; EPS is expected to informally submit the set of documents for application for a supply license to ERO until 01/12/2015; in the understanding of ENTSO-E, the EU Dialogue facilitator and the Secretariat, the issuance of the supply license by ERO determines the operationalisation of said license. The issuance of licenses for the supply of end customers is also an obligation under the EnC Treaty and the Secretariat is ready to enforce this requirement though its infringement and conflict resolution procedures.

5) ElektroSever, KEDS and KOSTT shall informally agree on the conclusion of all agreement necessary for taking up supply operation before the end of the year. KOSTT and KEDS shall conclude all necessary agreements with ElektroSever necessary for ElektroSever supplying customers, within one week upon receiving a request for doing so from ElektroSever. ElektroSever shall apply for finalising the necessary agreements with KOSTT and KEDS by 11/01/2016. The Secretariat ensures that the principles of third party access are respected in these procedures.

6) Entry into force of ENTSO-E - KOSTT Connection Agreement on 07/01/2016, after formal notification from the Secretariat to ENTSO-E, and operationalisation of the Connection Agreement in the form of establishing a KOSTT Control Block on 08/02/2016. The implementation of the Connection Agreement after its entry into force shall not be conditioned by further elements.

7) KEDS committed to submit to EPS a draft agreement about the distribution services provided by ElektroSever to KEDS in the future, until 13/12/2015.

Vienna, 26 November 2015

Explanatory E-Mail, dated 2 May 2016, sent by the Secretariat to the members of the Regional Group Continental Europe of ENTSO-E

Dear ENTSO-E RG CE Plenary members,

As agreed with Konstantin Staschus, we turn to you to suggest a way out of the deadlock in the Connection Agreement between ENTSO-E and KOSTT of Kosovo*.

As you are well aware of, this Agreement was signed between 1 October 2015 and 10 December 2015 by all members of the Synchronous Area Continental Europe, but never entered into force on account of its clause in Article 16 requiring the issuance and making operative of a license for a Serbian supplier on the territory of Kosovo*. To our knowledge, this was the first time that the effectiveness of an operational agreement was made dependent on the fulfillment of an essentially political condition, at least one not related to transmission system operation subject to Third Package unbundling. As we have informed the ENTSO-E Secretariat previously, the condition for the entry into force of said agreement has not been fulfilled and all attempts to facilitate its fulfillment have failed. I will not go into the reasons for this, as they in themselves are disputed between both sides. At the same time, we understand that the Connection Agreement between ENTSO-E and KOSTT was finalized exclusively for the purpose of promoting operational security by applying the standards of the Operation Handbook in all of the interconnected Synchronous Area Continental Europe.

As a consequence, breaking the deadlock and to allow your organization fulfilling its operational responsibility requires to interpret or to amend the existing Agreement in manner recognizing that the condition in Article 16 cannot be fulfilled. This may require removing that condition from the Connection Agreement and putting it up for voting again or to reinterpret it again. I am well aware that this is not what we had all hoped for but having been dealing with this process for years now we do not see viable alternatives.

I am also aware that you may have been led to believe that including a political condition in an operational agreement was necessary to implement the so-called arrangements agreed between the Prime Ministers of Serbia and Kosovo* in the framework of a political dialogue taking place in Brussels under the auspices of the European Commission. You may have heard the argument that taking the political condition related to supply in North Kosovo out of the Connection Agreement would amount to a breach of the agreements made in the context of that dialogue. Such argumentation is wrong. When we heard about it we asked the facilitator of the Brussels dialogue on energy, Mr Nicholas Cendrowicz from the European Commission (DG NEAR) for his clarification which you may find below. Accordingly, there is nothing on the political level which would prevent you, the members of ENTSO-E and especially the Regional Group Continental Europe, from assuming your responsibility for maintaining operational security in the interconnected European grid by proper interpreting or drafting and voting once again on an identical Connection Agreement without the non-implementable condition. The Energy Community Secretariat remains at your disposal.

Yours sincerely

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From: Nicholas.Cendrowicz@ec.europa.eu [mailto:Nicholas.Cendrowicz@ec.europa.eu]
Sent: Do 07.04.2016 16:03
Subject: Kosovo-Serbia Dialogue: clarification of the energy agreement responsibilities

As the EU facilitator of the energy dialogue between Kosovo and Serbia, I would like to clarify the relation between the different elements of the various agreements that have been signed by Prime Ministers, and the responsibilities of the parties involved. I am doing so in response to a number of misrepresentations of those responsibilities that I have read recently.

The 'Arrangements regarding energy', signed by the two Prime Ministers in September 2013, as well as the 'Conclusions of the EU facilitator' of August 2015 envisage that Kosovo will allow EPS to establish a supply company in Kosovo and that the supply license will be operational when KOSTT becomes a member of the ENTSO-E.

They also envisage that Serbia, and EMS will support KOSTT's application to sign an interconnection agreement with ENTSO-E, including in the appeal process. However, both commitments exist independently of each other. There is no obligation stemming from the afore-mentioned agreements that the interconnection agreement with ENTSO-E must be conditioned on the granting of a supply license.

On the contrary, this conditionality was imposed by Serbia on ENTSO-E. Serbia cannot claim that its commitments under the Dialogue oblige it to block the connection agreement in the absence of its supply company being licensed. I would like to state that, as the EU facilitator, I would be satisfied that Serbia lifts this conditionality and would consider that, by doing so, Serbia is fulfilling its obligations under the Dialogue.

Serbia and EMS are obliged under the afore-mentioned agreements to help and support removing such a condition from the interconnection agreement since it currently makes the interconnection agreement impossible to implement. Moreover, nothing in the afore-mentioned agreements and certainly not a non-existing obligation to condition the entry into effect of the interconnection agreement between KOSTT and ENTSO-E on the granting of a supply license for Northern Kosovo can be interpreted as justifying breaches by Serbia of the Energy Community Treaty. In this respect, I refer

to open case ECS-3/08 but also to the obligation of EMS to be unbundled from EPS, the supplier to become the parent company of ElektroSever for North Kosovo.

Furthermore I would like to clarify that the afore-mentioned agreements state the following:

In the September 2013 agreement:

4. *Both parties will accelerate the process of market opening by July 1st 2014, in accordance with the timetable fixed by the Energy Community Treaty, therefore allowing a new electricity company to supply customers to be established. Both parties also agree that such a company will be established under the Kosovan legal and regulatory framework.*

In the August 2015 Conclusions of the EU facilitator

5. *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.

Through both of these clauses, Serbia accepted that it has a responsibility to establish its company in accordance with Kosovan legal and regulatory framework. The model for establishing a Serbian company in Kosovo in accordance with Kosovan legal and regulatory framework was successfully applied when Serbia Telecom established a company in Kosovo and I would invite Serbia to apply this model to establish both the supply and trading companies.

All the attempts to establish these companies in Kosovo so far have respected neither the agreed model nor the advice of the EU facilitator. I am happy to provide that advice further to help Serbia to respect this responsibility.

I would, finally, like to thank the Energy Community Secretariat for its continued support in the Kosovo-Serbia Dialogue process. As the facilitator, I share the EnC Secretariat's desire to be able to close the open case ECS-3/08 and therefore to help Serbia meet its obligations as a future EU Member State. The Secretariat has been an invaluable partner in this process and I reject any suggestion that the Secretariat is creating an obstacle to Serbia implementing its Dialogue obligations.

Yours sincerely,

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