



Republika e Kosovës
Republika Kosova - Republic of Kosovo

ZYRA E RREGULLATORIT PËR ENERGIJË
REGULATORNI URED ZA ENERGIJU
ENERGY REGULATORY OFFICE



Pristina, 15 February 2018

ERO Code: V_1107_2019

The Board of Energy Regulatory Office

Based on:

- Article 9 paragraph 1 sub-paragraph 1.7, Article 15 paragraph 1 sub-paragraph 1.1 points 1.1., 1.1.2, 1.1.3 and 1.1.4, sub-paragraph 1.3, 1.4, 1.5, 1.7, 1.13, 1.14, 1.15 and 1.16, paragraph 7 sub-paragraphs 7.1, 7.2, 7.4, 7.5 and 7.6 and paragraphs 8, 9, 10, 11, 12, 13, 14 and 15, Article 16, Article 25, Article 26 paragraph 1 sub-paragraph 1.2, Article 39, Article 40 paragraphs 8, 9 and 11, Article 42, Article 43, Article 47 paragraphs 1 and 3, Article 48 paragraph 3, Article 57 of the Law 05/L-084 on Energy Regulator;
- Article 7, Article 10, Article 11, Article 12, Article 13, Article 14, Articles 16, 19, Article 22, Article 21, Article 22, Article 44, Article 45, Article 51, Article 56, Article 57, Article 58, Article 59 and Article 60 of the Law No. 05/L-085 on Electricity;
- Article 10 paragraphs 1,2,3,4,5,7 and 9 and Article 14 of the Law No. 05/L-081 on Energy;
- Article 6, Article 7, Article 8, Article 9, Article 10, Article 12, Article 13, Article 14, Article 16, Article 17, Article 18 and Article 27 of Rule No. 14/2017 on Certification of Transmission System Operators, approved by ERO, on 13.04.2017;
- Article 5, Article 10, Article 11 and Article 12 of the Transmission System Operator License with No. ZRRE/Li_15/17, dated on 13.04.2017, granted to KOSTT J.S.C;
- Request/application for Certification as a Transmission System Operator, submitted by KOSTT J.S.C;
- Preliminary Decision V_1033_2018, dated on 24 September 2018, issued by ERO Board on Certification of KOSTT J.S.C as a Transmission System Operator in the territory of Kosovo; and
- Opinion No. 02/2019 of the Energy Community Secretariat on Certification of KOSTT/TSO, dated on 01.02.2018, issued in line with Article 3 (1) of the Regulation (EC) No. 714/2009, and Article 10 (6) of the Directive 2009/72;

in its session held on 15 February 2019, issued the following:

DECISION



- I. **ON FINAL APPROVAL OF THE CERTIFICATION** OF KOSTT J.S.C as Transmission System Operator of electricity, following the receipt of the Opinion No. 02/2019¹ of the Energy Community Secretariat (ECS).
- II. It is **VERIFIED** that **KOSTT J.S.C** has fulfilled the ownership unbundling criteria and independence in decision-making, from the activity of electricity generation and supply, in line with Energy Community and Kosovo laws.
- III. KOSTT J.S.C is **OBLIGED**, following the approval of the Final Decision, according to enacting clause under item. I of this Decision, no later than three (3) months, to appoint a Compliance Officer, which shall be approved by ERO, as well as compile a Compliance Program, no later than six (6) months following the appointment of the Compliance Officer, according to legal provisions of Article 21 of Electricity Directive No. 2009/72² and Article 21 of the Rule on Certification of TSO³, and shall submit it to ERO for approval.

REASONING

- (1) On 28 April 2017, ERO received the request/application from Transmission System Operator and Market Operator J.S.C (hereinafter "KOSTT J.S.C") requiring the Certification as a Transmission System Operator (hereinafter "TSO"), based on Article 12 of the Law 05/L-085 on Electricity, Article 7 of the Rule on TSO Certification, and in accordance with the ownership unbundling model, as set in Article 9 (6) of Electricity Directive 2009/72/KE.
- (2) The request/application was reviewed by Energy Regulatory Office (hereinafter "ERO") however, due to the lack of the evidence and non-completion of the application, was returned to KOSTT, with instructions regarding the required evidence that shall be submitted in order to consider the request along with the application as completed.
- (3) As a result of meetings and communication between ERO and KOSTT, as well as communications and instructions regarding the completion of KOSTT's application, received by Energy Community Secretariat (hereinafter "ECS"), on 03.05.2018, ERO received the request/application from KOSTT, with required evidence.

¹ Opinion Nr. 02/2019 dated 01 February 2019 on the Certification of KOSTT JSC, of the Energy Community Secretariat.

² Directive Nr. 2009/72 of 13 July 2009 on common rules for the internal market of electricity of the European Parliament and of the Council ..

³ Rule no. 14/2017 dated 13.04.2017 on Certification of Transmission System Operators, issued by the Board of ERO.



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- (4) ERO, on 03.07.2018, notified KOSTT J.S.C on assessment of submitted evidence, and following their evaluation it identified the lack of evidence regarding the statutory changes and ownership issues, which KOSTT was obliged to submit as soon as possible, in order for ERO to consider the application as completed.
- (5) ERO, on 05.07.2018, received the required documents from KOSTT J.S.C, attaching the Annex Statute of the Enterprise along with updated business information, copies of the Possession List Certificates and copies of the plan for ownership issues. From this moment, ERO considered the request/application as completed, which also meant the beginning of the four (4) month deadline on TSO Certification, in line with applicable legislation.
- (6) On 24 September 2018, ERO Board, in the public session, issued the Decision V_1033_2018⁴, upon which it issued the Preliminary Decision on KOSTT Certification as a Transmission System Operator in the Territory of Kosovo.
- (7) On 02.10.2018, ERO informed and submitted to the Energy Community Secretariat the Preliminary Decision on Certification of KOSTT/TSO, issued by ERO Board, in the session held on 24.09.2018, and required from ECS an evaluation and granting of an Opinion regarding the Preliminary Decision, in line with applicable provisions in Kosovo.
- (8) The Energy Community Secretariat (ECS), in line with Article 10 of the Directive 2009/72 and Article 3 of the Regulation (EC) No. 714/2009⁵, is required to review the Preliminary Decision of ERO and provide an Opinion on its compliance with Article 10, paragraph 2 and Article 9 of the Directive 2009/72/EC.
- (9) On 25 January 2019, the Secretariat notified in relation to the Opinion No. 01/2019⁶ on Preliminary Decision from Energy Community Regulatory Board, as required in line with Article 3, paragraph 1 of the Regulation (EC) No. 714/2009.
- (10) On 30 January 2019, ERO received from the Secretariat, the request to present additional required documents on evaluation and compliance with unbundling requirements.
- (11) ERO, on 01 February 2018, received from ECS the Opinion no. 2/2019 of the Energy Community Secretariat on Certification of KOSTT/TSO.

⁴ Preliminary Decision Nr. V_1033_2018 dated 24 October 2018 for Certification of KOSTT J.S.C, issued by the Board of ERO.

⁵ Regulation no. 714/2009 / EC of 13 July 2009 on criteria for access to the network for cross-border electricity services of the European Parliament and of the Council.

⁶ Opinion Nr. 01/2019 of 24 January 2019 on the Preliminary Decision of the Energy Community Regulatory Board as required under Article 3 paragraph 1 of Regulation (EC) 714/2009 of the European Parliament and of the Council.



- (12) ERO, within two (2) months following the receipt of ECS Opinion and taking that into consideration, approves the Final Decision on Certification of Transmission System Operator.

KOSTT's unbundling from the activity of electricity generation and supply

- (13) KOSTT's corporatization process began following the approval of the Regulation no. 2002/2, dated on 13 June 2002 of United Nations Mission in Kosovo⁷, when the Kosovo Trust Agency (KTA) was also established. At that time, among others, this Agency was trusted with the management of public enterprises in Kosovo, where KEK was included as well. The KTA's mandate was the undertaking of "any action that the Agency considers necessary in order to maintain and increase the value, sustainability and governance of enterprises". In order to fulfil this mandate, KTA started the huge incorporating process to transform these enterprises in modern corporations which are financially stable, have clearly defined entities, cooperative governance, audited structures and financial reporting (Annex of the Decision).
- (14) On 29 April 2004, Kosovo Assembly approved Law no. 2004/10 on Electricity, which was decreed from the Special Representative of the Secretary-General of the United Nations (SGUN) on 30 June 2004, whereby Article 12 of this Law also determined the establishment of Transmission System Operator (TSO).
- (15) In October 2005, the United Nations Mission in Kosovo (UNMIK) signed the South-East Europe Energy Community Treaty (SEECT) ("the Treaty") which entered into force on 1 July 2006, making as obligatory the unbundling provisions required at that time by energy legislation of Energy Community. In order to implement the requirements of SEECT and energy legislation in Kosovo, the KTA Board of Directors, on 16 November 2005, approved a decision to transform KEK in two separate enterprises: "Kosovo Energy Corporation J.S.C" and "Transmission System Operator and Market Operator Holding J.S.C". By this decision, the energy enterprise under the public ownership which was vertically integrated, was unbundled in two separate enterprises: one to carry out lignite mining and electricity generation, distribution and supply, and- the other to perform electricity transmission system and market operator activities (Annex of this Decision).
- (16) On 22 December 2005, in accordance with UNMIK⁸ Regulation 2001/6, on Business Organizations, the General Assembly of KOSTT Shareholders established KOSTT J.S.C, as a subsidiary enterprise, and at the same date KOSTT Holding J.S.C transferred to KOSTT J.S.C

⁷ Regulation No.2002/12 (UNMIK/RREG/2002/12,dated 13 June 2002

⁸ ⁸ Regulation No.2002/06 (UNMIK/RREG/2002/12,dated 8 February 2001



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100% of real property, required to carry out the functions of electricity transmission and market operator in Kosovo.

- (17) On 23 December 2005, KOSTT J.S.C was registered with business number 7032530 at the Kosovo Business Registration Agency, according to UNMIK's decision on Business Organizations.
- (18) On 4 October 2006, ERO issued the Transmission System Operator License with reference number ZRRE/Li_15/06⁹ to KOSTT J.S.C which was established in accordance with legal criteria stipulated in Law on Electricity in 2004. KOSTT J.S.C has in function also the Market Operator license (hereinafter "MO"), issued by ERO, and exercises its entire activity in accordance with authorizations granted by TSO and MO Licenses. Also, KOSTT J.S.C holds 12.5% of shares of South-East Europe Coordinated Auction Office (SEE CAO), with registration number 5-0635601/008¹⁰, dated on 04.07.2012, which is carried out in accordance with Article 12 of the Regulation no. No. 71/2009 of EU, adopted by the Council of Ministers of Energy Community with Decision No. 2011/02, dated on 06.10.2011.
- (19) Two shareholding companies, KEK Holding J.S.C and KOSTT Holding J.S.C were liquidated on 02.07.2010 and on 20.11.2009, respectively according to Article 39 of Law No. 03/L-087 on Publicly Owned Enterprises, supplemented and amended.
- (20) The requirement for ownership unbundling derives from Directive 2009/72/KE on electricity and Regulation 714/2009, which are mandatory for Kosovo. Provisions of the Directive are transposed in Kosovo laws¹¹.
- (21) KOSTT is 100% under the ownership of the Republic of Kosovo (" the State"), and the transmission activities carried out by KOSTT are legally separated from any other activity of generation, supply or distribution. Even though both activities, transmission in one side and generation activities on the other side are under the state ownership however, they are under the control of separate public authorities within the State (the Government controls the generation activities and the Assembly of Kosovo controls TSO).

Management and Decision-Making

- (22) The Law on Publicly Owned Enterprises sets the legal framework for establishment of Public Enterprises, including the ownership of the Public Enterprise KOSTT J.S.C and its governance

⁹ License No. ZRRE/Li_15/06 for Transmission System Operator (KOSTT)

¹⁰ Coordinated Auction Office in South East Europe (SEE CAO) Podgorica, Montenegro

¹¹ - Law on Energy Regulator No.05/L-084 legal provisions of Article 1 par.2 and Article 39, Law on Electricity No.05/L-085, Article 1 par. 2, Article 11, 12 and 14 of Law on Energy No.05/L-081, Article 1 par.2, " Law is partially in accordance with Directive 2009/72, regarding the common rules for internal electricity market, Regulation no.714/2009/EC, on the criteria for access to the network for cross-border electricity services, and Directive No.2009/28/EC on promoting the consumption of energy from Renewable sources.



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in accordance with international principles and cooperative governance of Publicly Owned Enterprises (Article 1). KOSTT J.S.C still remains a Publicly Owned Enterprise, based on Law on Publicly Owned Enterprises, organized as a shareholding enterprise, whereas the Assembly of the Republic of Kosovo has the exclusive competence on exercising the rights of the shareholder of the publicly owned enterprise KOSTT in the Republic of Kosovo. The rights of the Transmission System Operator shareholder are executed by the Assembly of the Republic of Kosovo, in accordance with Article 13, paragraph 2 of the Law on Electricity. In annual Board meetings, the shareholder is presented by an authorized person of the Assembly of the Republic of Kosovo, appointed by the President of the Assembly of Kosovo.

- (23) KOSTT is directed and managed by the KOSTT J.S.C Board of Directors, which is comprised of 7 members, one being a Chairman of the Board. The Chairman and 5 other members of the Board are appointed by the Assembly of the Republic of Kosovo, whereas the Chief Executive Officer, as a member of the TSO Board of Directors, is appointed by the Board of Directors, in line with criteria and procedures set forth in the Law on Publicly Owned Enterprises. The economic activity of the TSO is managed by the Board of Directors.
- (24) The Board of Directors of the TSO has the authority and competences on: the adoption of comprehensive business strategy plans of the enterprise, internal control, auditing, as well as risk management procedures, meetings of annual and extraordinary assemblies of the shareholders, preparations of the agenda of the shareholders assembly, approval of annual report of the enterprise, annual balance report and annual assessments of profits and losses which are submitted to the shareholder for approval and also has, competences on deciding on all other issues which are related to exclusive competences of the Board of Directors, set forth in the Statute of TSO.
- (25) The meetings of the Board of Directors, according to the statute, are appointed through a written notice on the meeting and are held in the registered office of the Enterprise or elsewhere whenever required by the leaders or two or more directors. The Notice on the session is in accordance with the agenda, which is submitted at least 3 (three) days prior to the session. In the session, the chairman of the Board of Directors, acting reasonably and in accordance with the Law and Statute, shall determine the presence of the quorum, the right of the debate as well as keep the minutes and evaluate and announce the voting results.
- (26) The meetings of the Board of Directors are valid if the majority of directors are present whereas decisions are taken with the affirmative vote of the majority of participating directors in the session. The directors who abstain from the voting and directors who have displayed a conflict of interest shall not be included in counting in relation with the majority. In case the votes result equal, the chairman of the Board of Directors has the crucial vote. If due to the vacancy, the number of directors is lower than the number set in the quorum, the remaining Directors (or the Director) can act only for the purpose of calling the general meeting for filling the vacancies.



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- (27) The Board of Directors reports to the Assembly of the Republic of Kosovo on KOSTT J.S.C activity, in annual basis and whenever required by the Assembly. The Annual Report is submitted by 30 June of the current year regarding the previous year (Article 13 par. 5 Law no. 05/L-085 on Electricity).
- (28) The Managing Director/ Chief Executive Officer, according to the statute represents and manages KOSTT J.S.C and also has other competences and authorizations, set by the statute. The Board of Directors has the rights to delegate other competences and other authorizations for exercising KOSTT J.S.C activity, excluding issues which are exclusively reserved for the Board of Directors or the shareholder, in accordance with the Law, Regulations and the Statute (Article 177 of the Law on Business Organizations).
- (29) The Managing Director/Chief Executive Officer, according to the Statute is obliged to give advice and assist the Board of Directors, regarding the determination of the Strategy of the Enterprise as well as its long-term strategic plans; establish and review the organizational structure of the enterprise; allocation of the decision-making power of the enterprise, as well as interrelated power between the leaders and the employees of the Enterprise; proposes to the Board of Directors the suitable candidates for hiring; submits to the Board of Directors drafts of documents for annual balance and loss and profit statements of the Enterprise, financial and industrial state of the Enterprise, investment or distribution of annual profit or covering the losses; provide to the Audit Commission all required information and assistance; provide to the Internal Audit Officer all required information and assistance.
- (30) The General Assembly of Shareholders is TSO's highest decision-making body. The Decisions of the General Meeting shall be binding to the enterprise, shareholder and other bodies of the enterprise. The General Meeting shall be convened by the Chairperson of the Board of Directors, acting through the Secretary.
- (31) The Notice on the General Meetings of Shareholders is sent to each shareholder at least thirty (30) days in advance, in the addresses listed in the shareholders register, as well as to each member of the Board of Directors, furthermore the notice is also published as required by law.
- (32) The quorum for the General Assembly can be held only if the shareholder is present or has present authorized representatives. The Secretary is obliged to carry out all the required arrangements in order for shareholders to register their shares in General Assemblies.
- (33) By Decision of the shareholders, the Chairman of the Board of Directors or any other person elected by the majority of the present members in the General Assembly can be appointed as a leader of the General Assembly. The leader of the General Assembly, in accordance



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with the Law and Statute of the enterprise, shall state the presence of the quorum, and lead the debate, shall keep the minutes and state the voting results.

- (34) The vote of the authorized person shall be valid. A decision announced for voting in the General Assembly is decided by the public counting. The counting starts immediately after the leader of the General Assembly announces it, in order to enable precise pro or against voting regarding each share. In case there is equal voting, the leader of the General Assembly (being a shareholder) shall have the crucial vote.
- (35) During the General Assembly, only decisions regarding the issues which are mentioned in the agenda can be approved, except if the shareholders who represent the whole shares of the enterprise and who have the right to vote and are present as well, agree otherwise. The written decision, signed by all shareholders of the enterprise shall have the same power as other Decisions made in the General Assembly.
- (36) The General Assembly has exclusive competences to: change the statute and the sub-legal acts of the enterprise; decide on any unification, consolidation, separation, distribution, liquidation, transformation to the extent allowed by law- bankruptcy or insolvency of the enterprise; increase or decrease the share capital of the enterprise; decides on the issuance of shares, issuance of debt or insurances converted in shares as well as consolidation or separation of unpaid shares and converting insurance; appoints (with the proposal of auditory commission), removes or replaces external auditors of the enterprise etc.
- (37) The Law on Business Organizations¹² No. 06/L-016 contains general and detailed provisions on general governance of Business Organizations which also includes KOSTT J.S.C whereas through the Statute are appointed the duties and responsibilities of the shareholding enterprise in the aspect of its establishment, whereas by Law 03/L-087¹³ on Publicly Owned Enterprises, supplemented and amended by Law No. 04/L-111 and No. 05/L-006 which specifically sets the rights of shareholders which are exercised by the State/Shareholder, where in the case of KOSTT J.S.C, the main shareholder is the Assembly of the Republic of Kosovo.

State's interest on electricity generation, distribution and supply

- (38) The electricity supply in Kosovo was carried out by a vertically integrated publicly owned enterprise, based in Prishtina, named "Kosovo Electric Corporation" (KEK J.S.C), which was established in line with Yugoslavia laws of that time. The company mined lignite, generated, transmitted and distributed electricity through a common grid. Kosovo's power system was

¹² Law on Business Organizations No. 06/L-016 (Official Gazette of the Republic of Kosovo No. 9/24 May 2018)

¹³ Law on Publicly Owned Enterprises No.03/L-087 (Official Gazette of the Republic of Kosovo/No/13/30 May 2012) Law No.05/L-009 on amendment and supplement of Law No.03/L-087 on publicly owned enterprises, amended and supplemented by Law No.04/L-111 (Official Gazette of the Republic of Kosovo /no.10/07 May 2015 Prishtina)



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integrated as part of the Yugoslavia's ring system. The 400kV, 220kV and 110kV were considered as pre-war transmission system voltages and remain as such to this day (Paragraph 3 of KOSTT's application).

- (39) In June 1999, following the war in Kosovo, Security Council of United Nations Organization (UNO) approved the Resolute 1244¹⁴ (1999) by establishing the temporary United Nations Mission in Kosovo (UNMIK). Upon the falling of former-Yugoslavia, ex- legal system stopped functioning in the entire region. One of the duties of UNMIK at that time was to set the laws which regulate any aspect of the state. At the same time, it was essential that all publicly owned enterprises within Kosovo to be included again under the respective provisions of those laws.
- (40) The Government of the Republic of Kosovo, based on Article 92, paragraph 4, and Article 93 item 4 of the Constitution of the Republic of Kosovo¹⁵, in its session held on 19.09.2008 issued Decision No. 04/36 upon which it obliged the Kosovo Electro Corporation (KEK J.S.C) to continue the unbundling (restructuring) of KEK, in accordance with Kosovo Energy Strategy 2005-2015. The final deadline for KEK unbundling (restructuring) was 31 March 2009, in accordance with policies of the Government of Republic of Kosovo. Whereas, in the session held on 02.10.2008 issued the Decision, upon which was decided that whenever it is convenient, in accordance with the Decision of the Government on establishment of Kosovo Electricity Distribution and Supply Company (KEDS), such company shall be privatized by means of a public tender and the sale of its shares shall be made in accordance with the requirements of Article 9 of Law on Publicly Owned Enterprises.
- (41) The Government of the Republic of Kosovo, on 08.05.2013, concluded KEDS tendering process, where 100% of the shares were sold to "Kosovo Calik Limak Energy" J.S.C This process aimed the improvement and sustainability of the distribution system, security of supply as well as fulfilment of requirements for regional reforms in energy, which are being developed by national governments, in accordance with European Union Directives and Energy Community Treaty.
- (42) The Board of Energy Regulatory Office, in its session held on 02.05.2013, issued Decision No. V-526-2013 which approves the change in control of the licensee for Public Electricity Supplier granted to "KEDS", whereas in paragraph. II of the enacting clause of this Decision determined that the control from the Government of the Republic of Kosovo is given to "Kosovo Calik Limak Energy". Such change in control entered into force upon signing the agreement on purchase of "KEDS" shares, between the Government of the Republic of Kosovo and Kosovo Calik Limak Energy" J.S.C

¹⁴ Resolution 1244/1999 of Security Council of United Nations Organizations (UNO) on establishment of United Nations Mission in Kosovo (UNMIK)

¹⁵ The Constitution of the Republic of Kosovo, ratified on 9 April 2008 and entered into force on 15 June 2008 (Official Gazette of the Republic of Kosovo).



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- (43)The state has withdrawn 100% from its interests in the supply of electricity in 2013 after selling the Kosovo Electricity Distribution and Supply J.S.C (KEDS) to a consortium of private investors, who now hold ownership and operate the enterprise and its branches in accordance with the licenses issued by ERO.
- (44)The Government of the Republic of Kosovo in its 20th meeting, by Decision no. 04/59, dated on 31.07.2018 approved the Legislative Program for 2018, whereby, included in its agenda the amending and supplementing of the Law no. 03/L-087 on Publicly Owned Enterprises, amended and supplemented by Law No. 04/L-111, and pursuant to legal procedures of the Government and the Assembly of the Republic of Kosovo, this draft-law will be adopted, and the Kosovo Energy Distribution and Supply Company (KEDS) will be removed from the list, as this is now a private enterprise.
- (45)The Government of the Republic of Kosovo retains its interest in the generation of electricity and has under its ownership 100% of Kosovo Energy Corporation J.S.C (KEK J.S.C), Generation Division, TPP “Kosova A”, (License No. ZRRE/Li_05/17)_“A „ and TPP “Kosova B” (License ZRRE/Li_05/17_B) and the Enterprise Hidroekonomia “Iber Lepenc” J.S.C, (License No. ZRR/17/17).
- (46)The Government of the Republic of Kosovo, based on Article 5 of the Law on Publicly Owned Enterprises, retains exclusive rights on exercising the rights of the shareholder in public enterprises for electricity generation. The Government of the Republic of Kosovo exercises the rights of a state shareholder in KEK J.S.C and “Ibër Lepenc” J.S.C (electricity generation enterprise) where the competences and duties on executing the decisions of the Government are entitled to the Ministry of Economic Development, which, for this purpose, is entitled to act on behalf of the Republic of Kosovo and in accordance with legal provisions of Law on Business Organizations (Paragraph 69 of KOSTT’s application).
- (47)In order for KOSTT to be certified as a TSO that is independent of electricity generation and supply activity, it was required to prove that the Transmission System Operator (KOSTT J.S.C) and generators “KEK” J.S.C and “Iber Lepenc” J.S.C are controlled – *de jure* and *de facto* – by two separate state public bodies.
- (48)Article 11 of the Law on Electricity determines the unbundling process of KOSTT J.S.C, which owns the transmission system and which must be independent from electricity generation and supply and conducted in accordance with the principles and requirements set forth in the provisions of this law.
- (49)The independence of KOSTT J.S.C shall be considered ensured when the following criteria are fulfilled:



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- person or persons that exercise direct or indirect control over enterprises that perform generation or supply functions do not exercise control or exercise any right, directly or indirectly, over the Transmission System Operator or over the Transmission System;
- person or persons that exercise direct or indirect control over the Transmission System Operator or over a Transmission System do not exercise control or exercise any right, directly or indirectly, over enterprises that perform generation or supply function;
- in cases when the same person or persons [that exercise control over the TSO] is/are a public body(s), the same shall not exercise control over enterprises that are active in the function of production and/or supply of electricity;
- the person or persons that appoint the members of the supervisory board, the administrative board or bodies legally representing the undertaking of a Transmission System Operator are not entitled to directly or indirectly exercise control or exercise any right over an undertaking performing any of the functions of generation or supply of electricity;
- the same person is not entitled to be a member of the Supervisory Board, Administrative Board or other bodies that legally represent enterprises that perform functions of generation or supply of electricity and of bodies of the Transmission System Operator or a Transmission System;

(50) Before July 2016, “KOSTT” J.S.C, “KEK” J.S.C, and “Iber Lepenc” J.S.C were controlled by the Government of the Republic of Kosovo, represented by the Ministry of Economic Development pursuant to the provisions of the Law No. 03/L-087 on Publicly Owned Enterprises, dated 13 June 2008, amended by the Law No. 04/L-111 dated 20 April 2012 and Law No. 05/L-009 dated 7 April 2015, along with the Law on Public Enterprises.

(51) The Law No. 05/L-085 on Electricity entered into force on 1st of August 2016. According to the new Law on Electricity, the State’s rights as sole shareholder of KOSTT, namely the Transmission System Operator, have been transferred from the Ministry of Economic Development to the Assembly of the Republic of Kosovo. Also, the amended law determines KOSTT’s obligation to report on its work before the Assembly on annual basis, and grants the Assembly competences to appoint and also dismiss KOSTT’s Board of Directors in the event of material failure to accomplish its duties.

(52) The new Law on Electricity excludes KOSTT from the application of the provisions of the Law on Publicly-Owned Enterprises, particularly those relating to the competence of appointing the Board of Directors, exercising the rights of shareholders, compensating the Board of Directors and reporting and appointment of the Audit Committee.



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- (53) The Law on Publicly Owned Enterprises (Article 5) continues to be fully implemented for both “KEK” J.S.C and “Iber Lepenc” J.S.C, whereas for KOSTT the Law on Electricity is applied, which in Article 14 sets the legal provisions for appointment of the Board of Directors, exercising the rights of shareholder, compensation of the Board of Directors and reporting and appointment of the Audit Committee, therefore ERO has evaluated that the legal provisions contained in the new Law on Electricity foresee a legal separation of control between State’s interests on transmission and its interests on electricity production and supply operation.
- (54) Kosovo’s constitution and laws do not expressly prohibit giving or receiving instructions between relevant ministries or between Ministries and the President of the Republic of Kosovo, or between the Ministries and the Assembly of the Republic of Kosovo. However, the Constitution is based on the principle of separation of powers (competences) between the legislative – non-executive body (the Assembly), the law enforcement – executive body (the Government) and the President of the Republic of Kosovo. KOSTT stated in its application that the transfer of shareholder rights over KOSTT from MED (Government) to the Assembly of the Republic of Kosovo has provided sufficient safeguards to ensure that control over KOSTT J.S.C is exercised without influence by the public body controlling the State’s interests on generation (production), namely by the Ministry of Economic Development of the Government of the Republic of Kosovo.
- (55) The Assembly of the Republic of Kosovo under Article 65, paragraph 14 and the Regulation on the Rules of Procedure of the Assembly¹⁶ has the legal mandate to appoint the members of the Board of KOSTT, in accordance with Article 14, paragraph 2 of the Law on Electricity.
- (56) The Assembly of the Republic of Kosovo, in accordance with the Regulation of the Assembly of Kosovo, issued on 29 April 2010, and following the review of files through respective functional commissions in energy sector, and following the review from the directorate of the Assembly, in line with Article 14, paragraph 7 of the Law on Electricity, in a parliamentary session , with a majority of votes from present deputies of the Assembly, **appoints the recommended candidates, for each respective position for the KOSTT Board of Directors.**
- (57) Law on Electricity, no. 05/L-085, Article 62 paragraph 9, determines that “Following the entry into force of this law, the current KOSTT J.S.C Board Members, including the Chairman and Audit Commission shall continue to carry out their functions until the completion of their mandate”.
- (58) Currently, the members of the Board of Directors, including therein the Chairman of KOSTT, still have the legal mandate and exercise their rights pursuant to Article 62, paragraph 9 of the Law on Electricity, whereas upon completion of their mandate the appointment procedures shall be conducted in compliance with the legal provisions of Article 14 of this law.

¹⁶ Regulation of the Assembly of Republic of Kosovo, Pristina, 29 April 2010



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- (59)The Law on Electricity, no. 05/L-085 determines that the procedure for appointment of KOSTT's Board of Directors shall be led by the Ministry of Public Administration (MPA), which shall prepare the applicants files and submit them to the Assembly. Candidates for members of KOSTT J.S.C Board of Directors shall be selected pursuant to the procedures (Article 14, paragraph 6), whereby within 60 days prior to the expiration of the mandate of the Board of Directors of KOSTT J.S.C , or following the announcement of a vacant position for other reasons, MAP shall make a public vacancy announcement within a period not shorter than the time limit foreseen by the law. The relevant Parliamentary Commission on energy, upon receiving the applicants' files, shall send to the Assembly at least two (2) candidates for each open position, and based on the Rules of Procedures, the Assembly with a majority of votes from the deputies present and voting shall appoint one of the recommended candidates for each relevant position in the Board, in accordance with paragraph 7 of this Article.
- (60)With the purpose of monitoring the performance of all public enterprises (PE), a dedicated unit was established within the Ministry of Economic Development. The competences and functions of this unit have been determined by Law on Publicly Owned Enterprises and the unit shall report to the Assembly regarding the PEs work, both collectively and individually. The competences of the unit do not go to the extent of giving instructions or exercising control over a PE, including KOSTT, therefore ERO concluded that PE unit is not a body exercising control, directly or indirectly, over KOSTT or any other PE.
- (61)According to Law on Publicly Owned Enterprises, , the managing bodies of a central PE such as KOSTT J.S.C , which legally represent the enterprise, shall be the Board of Directors and the Audit Committee. According to the new Law on Electricity, the members of the Board of Directors of KOSTT and Audit Committee, as emphasised above, can be appointed only by the Assembly of Kosovo whereas, the Members of the Board of Directors and Audit Committees of "KEK" and "Iber Lepenc" are appointed by the Government, represented by the Minister of Economic Development, pursuant to the provisions of Law on Publicly Owned Enterprises.
- (62)With respect to Article 11 paragraph 3 of the Law on Electricity where it is stated that "*Energy enterprises that carry out the functions of generation and supply are not entitled to directly or indirectly exercises any control or right over the Transmission System Operator or vice versa*", KOSTT presented evidence demonstrating that TSO activities are entirely independent in the legal, organizational and ownership aspect from the activities of electricity generation and supply.
- (63)ERO, based on applicable provisions of Kosovo laws and following the evaluation of the evidence in the application, verified that TSO activities are completely independent in the legal, organizational and ownership aspect from the activities of electricity generation and supply.

Ownership of Transmission System



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- (64) KOSTT J.S.C has presented evidence and supporting documentation proving that the same is under the sole ownership of the Assembly of the Republic of Kosovo and that no other business organization has shares, including therein energy enterprises.
- (65) For the purpose of demonstrating ownership over its assets under Article 12, paragraph 4 of the Rule on Certification of TSO's¹⁷, KOSTT has presented legal documentation (Annex of this Decision) proving the acquisition or transfer to the applicant of assets comprising the Transmission System. It also attached documents proving that the Government of the Republic of Kosovo based on the Law No. 03/L-139¹⁸ on the Expropriation of Immovable Property, amended and supplemented by Law No. 03/L-205) has expropriated some assets in the interest of TSO for KOSTT's needs, and has also attached evidence proving the applicant's ownership.
- (66) Article 26 of the Law No. 05/L-081 on Electricity, with regard to new and existing energy transmission facilities, has legitimized ownership rights, whereby KOSTT J.S.C enjoys relevant ownership, use and access rights in accordance with Law No. 03/L-154 on Property and Other Real Rights¹⁹. Also, energy transmission lines can pass through, over, in, or under a property only if the relevant energy enterprise has a servitude, or respective property rights, or if the servitude or the right of use is granted or acquired by the relevant energy enterprise in accordance with this law and other bylaws.
- (67) Article 25, paragraph 1 of the same law, explicitly grants to KOSTT J.S.C rights over properties which are currently in use or possession of KOSTT J.S.C , and also grants the right to use, operate and own energy facilities placed in a property regarding which KOSTT J.S.C has not ensured or has not been formally granted a servitude, the right of use or property rights, and such energy facilities are in use or possession by KOSTT J.S.C , in this case KOSTT J.S.C shall have all servitudes, rights of use and other property rights towards the property in question.
- (68) Article 25, paragraph 2 stipulates that properties on which energy facilities are placed shall be given in use for a duration of 99 years starting from the date of entry into force of this law, whereby KOSTT J.S.C shall have the right of possession and use of respective property for all purposes, not otherwise prohibited under legislation in Kosovo, evict any illegal user from the property, be compensated for damages inflicted by an illegal user to same extent as owners of immovable properties, in accordance with the applicable law, and shall also be entitled to sell, transfer or freely dispose of the right of use and all of its aspects.

¹⁷ Rule on Certification of Transmission System Operators (Rule No.14/2017, dated on 13.04.2017, approved by ERO Board

¹⁸ Law No.03/L-139 on Expropriation of Immovable Property (Official Gazette of the Republic of Kosovo/ Pristina YEAR IV/No.52/ 08May 2009 and Law No.03/L-205 on amendment and modification of Law No.03/L-139 on Expropriation of Immovable Property (Official Gazette of the Republic of Kosovo/Pristina/YEAR V. NO.91 / 10 December 2010

¹⁹ Law No.03/L-154 on Property and Other Real Rights (Official Gazette of the Republic of Kosovo/Pristina/YEAR V. No 91 / 10 December 2010



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(69) Article 27, paragraph 7 of the Law on Energy grants to KOSTT J.S.C the rights so that ownership rights established by this article, as well as the ownership rights over assets granted during the process of incorporation of an energy enterprise that was licensed in 2006 to operate Kosovo's electricity transmission system, shall, immediately upon the request of the concerned energy enterprise, be registered in such energy enterprise's name in the concerned Immovable Property Rights Register by the concerned Municipal Cadastral Office. Such registration shall be made without regard as to whether there is or is not a contract with respect thereto between the energy enterprise and the registered owner of the property in Kosovo, if any. During the registration under this paragraph, KOSTT J.S.C should include a notice in the immovable property registry describing the rights and limitations related to the expropriation and compensation procedures in accordance with the Law on Expropriation of Immovable Property of private owners.

(70) Article 28 of this law grants to KOSTT J.S.C the right of access to properties, whereby KOSTT J.S.C shall be entitled to construct new facilities, or expand existing transmission facilities for which is required the right of servitude, right of use or other property rights in public or private land, existing metering devices or any other equipment, in or under public or private property, pursuant to the provisions of the Law on Expropriation of Immovable Property.

(71) Through the list of assets (Annex of this Decision), KOSTT J.S.C has proven ownership, right of use over public or private land, right of servitude, and possession over transmission facilities through ownership certificates, decisions of the Government of Kosovo for expropriation of immovable property in KOSTT J.S.C public interests, and other legal rights on the ownership of respective assets and facilities.

(72) *The list of immovable properties, including energy facilities under KOSTT ownership, documented with ownership certificates and in the possession list, is part of the application. This includes: SS Decan, Cadastral Unit P-70505085-00218-2 Lluka e Epërme, Decan; SS Drenas Cadastral Unit P-70315066-914-0 Cikatovë e Vjetër, Glllogovc; SS Ferizaj 1 Cadastral Unit P-72217006-00721-0 Bibaj, Ferizaj; SS Ferizaj 2 Cadastral Unit P-72217082-1991-0 Sojeve, Ferizaj; SS Gjakova 1 Cadastral Unit P-70705028-04388-20, P-70705028-04388-29 and P-70705028-04388-2, outside the city of Gjakova; SS Gjakova 2 Cadastral Unit P-70705070-00121-0 Zadi Sadik Ages Gjakove; SS Gjilan 1 Cadastral Unit P-70403013-01931-0 and P – 70403013-01937-0 Gjilan, Gjilan; SS Gjilani 5 Cadastral Unit P -72403034-04015-3, P-72403034-04015-5 Koretishte and P-70403016-00107-6 Livoc i Epërm Gjilan; SS Istog Cadastral Unit P-70806044-00751-4 and P-70806044-894-0 Dubravë, Istog; SS Kamenica Cadastral Unit P – 71107003-02173-0 Berivojce, Kamenica; SS Klina Cadastral Unit Nr. 898, Nr. 897, Nr. 899-2 dhe Nr. 899-1 Klinavc, Klina; SS Lipjan Cadastral Unit P-71409044-00847-0 and P-71409044-01325-3 Lipjan, Lipjan; SS Palaj P-72614072-00810-4 and P-72614072-00812-4 Caravodice, Obliq; SS Peja 1 Cadastral Unit P-71611071-04310-7; P-71611071-04310-8, P-71611071-04310-9 and P-70611071-04861-2 Peje, Peja; SS Peja 3 Cadastral Unit P-70806003-00054-1 Bellopoje, Istog; SS Podujevë Cadastral Unit No.2896-1;2896-2;2896-3;2896-4;2896-5;2896-6;2896-7;2896-8;2896-9;2896-10;2896-11 and 2896-12 Podujeva; SS Prishtina 1 Cadastral Unit P-71914059-01559-6, P-71914059-01559-*



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2 and P-71914059-01567-2 Prishtë, Prishtinë; SS Prishtinë 7 Cadastral Unit P-71914075-00551-0 Cagllavica, Prishtinë; SS Prishtinë 4 Cadastral Unit P-71914075-00553-0 Cagllavica and P-71914050-00930-2 Matican, Prishtinë; SS Prishtinë 5 Cadastral Unit No. 00220/18 Prishtinë; SS Prizren 1 Cadastral Unit P- 71813068-05299-2 Prizren, Prizreni; SS Prizreni 2 Cadastral Unit P-70806003-0002-0 Grazhdanik, Prizren; SS Prizreni 3 Cadastral Unit P-71813068-06975-0 and P-71813068-06955-2 Prizren,; SS Rahovec Cadastral Unit P-71510057-07511-1 and P-71510057-07511-3 Rahovec, Rahovec; SS Skenderaj Cadastral Unit P-72015025-01101-0 Klina e Poashtme, Skenderaj; SS Suhareka Cadastral Unit P-72116046-02785-2 Suhareke, Suhareka; SS Vitija Cadastral Unit P- 70101002-00085-5 and P- 70101002-00082-4 Beguncë, Vitija; SS Vushtrri Cadastral Unit P – 70202016-02594-7, P – 70202016-02593-7, P – 70202016-4103-2, P – 70202016-4104-2 and P – 70202016-4103-4 Vushtrri, Vushtrri, SS Vushtrria 2 Cadastral Unit Nr. 4930-0 Vushtrri, Vushtrria; SS Vallaq Cadastral Unit No. 558, 559, 560, 1093, 1094, 1095, 1098 and 1185 ZK Zitkovac (according to the Possession List no. 135 dated 12.05.1983); SS Kosova A Cadastral Unit P- 72614037-01028-1, P- 72614037-01028-10, P- 72614037-01028-11, P- 72614037-01028-12, P- 72614037-01028-13, P- 72614037-01028-14, P- 72614037-01028-15, P- 72614037-01028-16, P- 72614037-01028-2, P- 72614037-01028-3, P- 72614037-01028-4, P- 72614037-01028-5, P- 72614037-01028-6, P- 72614037-01028-7, P- 72614037-01028-8, P- 72614037-01028-9, P-72614055-1893-1, P-72614055-1893-10, P-72614055-1893-11, P- 72614055-1893-12, P-72614055-1893-13, P-72614055-1893-14, P-72614055-1893-2, P- 72614055-1893-3, P-72614055-1893-4, P-72614055-1893-5, P-72614055-1893-6, P-72614055-1893-7, P-72614055-1893-8 and P-72614055-1893-9 ZK Krushevc, Obiliq and SS Kosova B Cadastral Unit P-72614055-01889-0, P-72614055-01890-0, P-72614055-1891-2, P-72614055-01892-1, P-72614055-01892-10, P-72614055-01892-11, P-72614055-01892-12, P-72614055-01892-13, P-72614055-01892-2, P-72614055-01892-3, P-72614055-01892-4, P-72614055-01892-5, P-72614055-01892-6, P-72614055-01892-7 P-72614055-01892-8 and P-72614055-01892-9 AZ Obiliq, Municipality of Obiliq.

(73)As evidence of having acquired the right of long-term use, KOSTT J.S.C has also presented: Decision No. 01 Nr. 16-631- dated 29.01.2016 on allocation for long-term use of immovable municipal property, namely cadastral parcel P -72116046-02785-2, in a place called Shirok, Municipality of Suhareka, Ruling No. 778/2014 of the Municipality of Vushtrria, on right of long-term use (99 years) of cadastral parcels 1/1 from the parcel P-70202016-02594-3, P-70202016-02593-7 and parcel no. 4103-2, 4104-2, 4103-4 CZ Vushtrri; Final Decision no. 04/90 dated 05.09.2012 on expropriation for public interest of cadastral parcels CA Konjuh Lipjan and Livagje: Municipality of Graçanica, which affect the construction of the 110 kV line, placement of pillars and facilities for expansion of energy network, and Decision on expropriation for the purpose of establishing the servitude in the benefit of KOSTT; Final Decision No. 14/25 dated 29.04.2015 on expropriation in public interest of properties for establishing the right of servitude over immovable properties affected by the construction of the energy line 400 kV Kosovo-Albania, Segment III – 45 km, Cadastral Zone Pastaseel, Polluzhe, Dobridol Zatriq, in the Municipality of Rahovec, CA Gramaqel, Municipality of Deçan, CA Junik, Municipality of Junik, CA Dabiqevc, Meqe, Bec, Kodrali, Novoselle e Eperme, Batush Molliq, and Brovin, Municipality of Gjakova; Final Decision No. 05/106 dated 10.08.2016 on expropriation and establishment of



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a servitude for public interest for immovable property of owners and possessor affected by the construction of the double line 110 kV, Substations Peja 3 and Peja 1, and rehabilitation of existing line 110 kV, Substation Peja 2 and substation Decan, CA Ozrim, Vitimirica, Treboviq, Peja, Municipality of Peja, CA Bellopoje Veriq, Llukovce i Thate, Gjurakovc, Prekalle, Dobrush, Kiashice, Bujace, Municipality of Istog, all included in the cadastral lists containing properties expropriated in public interests by a relevant decision of the Government of Kosovo.

Duties of the TSO

- (74) In order to be certified as a TSO, KOSTT J.S.C had to demonstrate that it has conducted all duties of a TSO under Article 12 of the Directive 2009/72/EC, which was fully transposed in Kosovo's laws, as presented in the annex of KOSTT J.S.C submission to ERO (Annex of this Decision). This means that KOSTT J.S.C must show responsibility toward ensuring the system's long-term ability to satisfy reasonable requests through planning investments. The Decisions related to operation, maintenance and development of the network should be made by the transmission system operators and KOSTT J.S.C must have sufficient sources available to independently carry out its duties under Article 12 of the Directive. Compliance with ownership unbundling whereby KOSTT J.S.C is also responsible, inter alia, for granting and managing third parties access in a non-discriminatory manner for system users, collection of access tariffs, congestion tariffs and payments according to the inter-TSO compensation mechanism.
- (75) With regard to financial independence and ability to make necessary investments in Kosovo's transmission system, ERO has verified that legal and regulatory framework does not only allow for an adequacy of revenues, but also has successfully realized considerable capital investments since its establishment in 2006. The approved Development Plan 2017-2026 of KOSTT J.S.C confirms that current and planned projects are financed from soft-loans obtained from "Kreditanstalt für Wiederaufbau" (KfW) and European Bank for Reconstruction and Development (EBRD) which are guaranteed by Law on Ratification of Loan Agreement, approved by the Assembly of the Republic of Kosovo, which charges to the State common responsibilities with KOSTT in paying the loans, whereby KOSTT J.S.C is a direct beneficiary; as well as from KOSTT J.S.C funds. These projects shall improve and strengthen the system's performance in accordance with the Grid Code and Operation Manual of ENTSO-E. Whereas ERO has noted that KOSTT has not realized full compensation of capital supplements according to the 2012 Multi-Year Tariff (MYT), and since then has established more stringent regulatory controls to ensure the realization of allowed capital investments in the network. ERO has full statutory competences to implement the violation of compliance by KOSTT J.S.C.
- (76) The duties of KOSTT J.S.C are determined under Article 16 of the Law on Electricity and TSO license issued by ERO. ERO has verified that KOSTT J.S.C does not sub-contract the realization of any of the duties (determined under Article 16) against a third party and has sufficient human, technical, and financial resources within the organization to fully fulfil its



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responsibilities based on its statute and license as a TSO. ERO is satisfied that KOSTT J.S.C is able to perform all of its duties with resources available within the organization.

- (77) KOSTT J.S.C has the required staff to effectively carry out all its obligations, both from the aspect of the enterprise established in accordance with Law on Business Organizations, as well as from the business aspect regulated by ERO. ERO, upon reviewing multi-year tariffs, reviews the number of employees of each separate business, and shares basic and supporting functions of the corporate entity for each licensed business, to ensure that the business has adequate human resources. ERO does not approve or refuse the staff costs separately, therefore KOSTT has independence in hiring employees and set the level of their salaries, Number of employers and Qualification Structure according to KOSTT J.S.C Departments (paragraph 164 of the Application).
- (78) KOSTT J.S.C has in its availability all other technical sources, required to fully and effectively carry out its duties, such as general information technology systems, including the servers and the internet, as well as system control technology including the purchase of system control functions. KOSTT has an operational trainings structure, including an IT simulation room for system operation staff. By using these facilities, KOSTT J.S.C carries out dispatching trainings in full accordance with ENTSO-E requirements. TSO dispatchers also benefit from the training through an exchange program with other neighbour dispatching countries. Other non-specialized training forms may be taken from the market based on estimated needs (Paragraph 165 of KOSTT J.S.C Application).
- (79) KOSTT J.S.C organizational structures is comprised by the Board of Directors comprised of 7 members and the Chairman of the Board, Chief Executive Officer, appointed based on the legal provisions under Article 14 of the Law on Electricity, and the Secretary of the Enterprise, Audit Commission, Financial Officer, Directors of the MO, TSO, Finances and Treasury, Procurement, Project Management, Legal and Regulatory Issues, IT and Human Resources (Organogram annexed to this Decision).
- (80) ERO has verified that KOSTT J.S.C is conducting all duties provided under Article 16 and the license. KOSTT has also shown that for reasons beyond its control is unable to carry out the allocation of its interconnection transmission capacities. KOSTT's current readiness to perform this task, after becoming a control zone, was proven by fulfilling all technical tests requested by ENTSO-E, as is shown in KOSTT's recent report dated 15 April 2015, as determined in Annex of this Decision. During the last two years, KOSTT has informed ERO of its efforts to solve the dispute with EMS of Serbia, whose actions have blocked the entry into force of the Connection Agreement between KOSTT and ENTSO-E.



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(81)ERO points out that the dispute with EMS remains unsolved, despite the stance of the Ministerial Council in its favour, stated in the Decision²⁰ D/2016/02/MC-EnC in October 2016, issued after the complaint submitted by KOSTT J.S.C in August 2008. ERO recognizes that efforts for solving the issues are continuing at political level between governing bodies of the Energy Community, European Union, ENTSO-E and the parties, namely respective governments of Kosovo and Serbia. With the purpose of monitoring the licensee's endeavours to fulfil this task, ERO has included a new condition in the TSO licence that was modified for KOSTT J.S.C on 13th of April 2017, according to which KOSTT must inform ERO on quarterly basis on whether KOSTT has been able to fulfil such condition. ERO is satisfied by the fact that there is no technical, financial, human or legal obstacle for KOSTT as a TSO to fully carry-out its duty for allocation of interconnection transmission capacities. Therefore, ERO believes that it is unreasonable and inappropriate to deny KOSTT J.S.C of certification solely because the full realization of duties provided under Article 12 of the Law on Electricity is blocked by the illegal actions of a third party outside the territory of Kosovo.

ERO's Authority on Implementation of Regulations on Dispute Settlement

(82)According to Article 17 of the Law on Energy Regulator, ERO has legal authority to act on dispute settlement. Its Decisions on the disputes (operator-customer, operator-operator) are obligatory; in the administrative aspect both parties are entitled to initiate an administrative dispute at the competent court on administrative matters in Pristina. In 2012, ERO decided on the dispute between KEK and KOSTT J.S.C , which was related to whether the Transmission System Operator KOSTT was entitled to bill KEK regarding the utilization of the system on the basis of the actual amounts transmitted in the country, of the forecast amounts, utilized upon setting of the regulated prices. ERO decided in KOSTT J.S.C favour, stating that the regulatory framework allows the "implementation" of forecast volumes when the actual ones are notified through KREV factor (Paragraph 166 of the Application). Also, by Article 57 of the Law on Energy Regulator, ERO has the authority to impose fines on any physical or legal body when the violations are proved.

FINDINGS AND RECOMMENDATIONS OF THE ENERGY COMMUNITY SECRETARIAT (ECS)

The Opinion 2/19 of ECS, issued in line with Article 3 (1) of the Regulation No. 714/2009 and Article 10 (6) of the Directive 2009/72/EC, carried out an evaluation of the Preliminary Decision on Certification of KOSTT,. The findings/recommendations are as follows:

²⁰ Decision of Ministerial Council of Energy Community (D/2016/02/MC-EnC- regarding the failure from the Republic of Serbia to remain in accordance with Energy Community Treaty, in the case ECS-3/8



General Evaluation of ECS regarding the Preliminary Decision of ERO

Energy Community Secretariat provided an Opinion with evaluations on the Preliminary Decision of ERO Board on Certification of KOSTT, where it evaluated the unbundling provisions, set to separate control over transmission system operator in one hand and generation and supply activities as competitive activities on the other hand, with the purpose of eliminating possible conflicts of interest between transmission and other activities exercises by vertically integrated companies. This objective is fulfilled through the implementation of ownership unbundling model, in accordance with Article 9 of the Electricity Directive, which Kosovo transposed in the Law on Electricity of 2016.

It also evaluated that in a market environment dominating in many contracting parties, including Kosovo, where the energy activities are mainly carried out by public enterprises and/or characterized by dominating position in respective markets, the separation of control and prevention of conflicts of interest are of a special importance. Regarding these cases, when the State is engaged in more than one activity related to energy and therefore it shall be considered as a vertically integrated enterprise, within the context of the European Law on Energy, where Article 9 (6) of the Law on Electricity provided an ownership unbundling variant, an alternative of restructuring and privatization.

Unlike other cases of ownership unbundling under Article 9 (1) of the Electricity Directive, in the situations described in Article 9 (6), the link of control within the vertically integrated enterprise has not been completely interrupted. Continued exercise of public ownership as well as constitutional and political ties make these situations different from other cases of ownership unbundling and affect the evaluation. Pursuant to Article 9 (6), as transposed in Article 11, paragraph 4 of the Law on Electricity, the full accomplishment of the objective of Article 9 (1) of the Electricity Directive should be provided proactively by the national regulatory authority.

2. ECS, when assessing the compliance of the Preliminary Decision with the unbundling model, set in the Electricity Directive has taken into account the following aspects such as:

- a) The enterprise to be certified shall be the owner of the transmission assets, as required by Article 9 (1) (a) of the Electricity Directive;
- (b) The enterprise to be certified shall carry out the functions and duties of a transmission system operator as required by Article 9 (1) (a) of the Electricity Directive; and
- c) The control and exercise of the rights in the enterprise to be certified shall be separated from the control and exercise of rights in the enterprises involved in the generation or supply of electricity and natural gas as required by Article 9 (1) -), (7) and (12) of the Electricity Directive.

Regarding point (a) **the ownership of electricity transmission system**, the Secretariat, referring to Article 9 (1) (a) of Directive 2009/72 / EC, Article 26 and in particular Article 27 of the Law on Energy (Law No. 05 / L-081) concludes that in the present case, the legal framework of Kosovo (the Contracting



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Party) provides a clear and meaningful legal basis, so it can be considered that the requirements of Article 9 (1) (a) of Directive 2009/72 / EC are fulfilled.

The Secretariat has evaluated that Articles 26-27 of Law no. 05 / L-081 on Energy define the rights of KOSTT on new and existing electricity transmission facilities.²¹ Article 27 (4) of the Law on Energy stipulates that *"The property rights established by this article, as well as the property rights over assets granted during the process of incorporation of an energy enterprise that was licensed in 2006 to operate Kosovo's electricity distribution or transmission system, shall, immediately upon the request of the concerned energy enterprise, be registered in such energy enterprise's name in the concerned Immovable Property Rights Register by the concerned Municipal Cadastral Office."* Article 27 (2) of the Law on Energy gives KOSTT the right of servitude 99 years for the property in which the energy facilities are located. Transmission assets are calculated according to the KOSTT Balance Report.

With respect to point **b) The undertaking that applies performs the functions and duties of a transmission system operator**, the Secretariat has agreed with the findings of ERO that KOSTT meets the criteria regarding the required physical, human, technical and financial resources for the effective exercise of duties / responsibilities of the transmission system operator.

As for point **c) the division of control between the transmission activity and generation / supply activities**, the Secretariat agreed with the ERO's evaluation that:

(1) KOSTT J.S.C is not involved in generation or supply activities, while related to

(2) the separation and independence of public bodies (entities), the Secretariat invites ERO as follows:

- Monitor the process of appointment of KOSTT J.S.C Board of Directors so that the same person is not appointed on the Board of the TSO and on the Generator's Board as required by Article 9 (1) (d) of Directive 2009/72 / EC.

ERO shall notify and request from the Parliamentary Commission on Economic Development that the announcement requirements and the selection process of the members of the TSO Board of Directors (KOSTT) will be carried out in accordance with the provisions of Article 11 (Unbundling) of the Law on Electricity, especially paragraph 2.4 of this Article, which stipulates: *"In cases when the person referred to in sub-paragraphs 2.1,2.2,2.3 of this Article, is a public body, the same cannot exercise control over enterprises that are active in generation and/or supply of electricity"*. ERO shall monitor such situations and in cases when it identifies any violations of provisions of Article 11 of Law on Electricity, shall undertake the required measures in order to avoid that.

To evaluate how and to whom KOSTT pays dividends, since in the past the Government of Kosovo has been a shareholder of KOSTT, and now the Assembly of Kosovo is a shareholder of KOSTT:

²¹ Article 26 of the Law on Energy Nr. 05 / L-081 (Official Gazette No. 24/13 July 2016, Pristina).



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According to Articles 150 and 151 of the Law on Business Organizations Nr. 06/L-016²², dividends are required by shareholders and are declared by the Board of Directors of the enterprise. In the case of Public Enterprises, the entity exercising the rights of the shareholder may request from the Board of Directors to declare the dividend. Currently, the Government of Kosovo exercises the rights of the shareholder for KEK and Ujman, and by evaluating the financial situation of the enterprises, by Decision, may request the declaration of dividend from the Boards of Directors of these two companies. The dividend payment is made in the Kosovo Budget (State Budget).

In the case of KOSTT, the Assembly of Kosovo is the only body (institution) that, by decision, and through its representative (shareholder), may request the declaration of the dividend. Consequently, the Board of Directors will evaluate the request and declare the dividend, and make the payment in the Kosovo Budget.

The way of defining and using the Kosovo Budget is regulated by the Law on Budget, approved by the Assembly of Kosovo.

- To better elaborate the competencies of the Government, the Ministry of Finance and the Ministry of Economic Development in relation to KOSTT and include them in the Final Decision in order to eliminate any eventual conflict of interest regarding the confidential information that KOSTT J.S.C can share with any public entity / institution.

The Law on Electricity, in Article 13/7 stipulates: "In order to monitor the implementation of energy sector policies, the Government **must be kept informed by the Board of Directors.**" According to this, it is at the discretion of the Board of Directors of KOSTT J.S.C to evaluate whether and to what extent is an information relevant to the Ministry of Economic Development, to decide on the development of sector policies.

If the Government has a decisive role in KOSTT J.S.C infrastructure projects

Any borrowing/loans from KOSTT J.S.C, in relation to the Government as the main borrower or guarantor participating in KOSTT-related Loan Agreements for infrastructure projects, **shall be first approved by ERO in accordance with the Transmission Network Development Plan.** Therefore, in case KOSTT J.S.C addresses an International Financial Institution for financing any project where the Government/State is a guarantor, that project should be first evaluated and approved by ERO and included in the Transmission Network Development Plan and to be allowed the return of the investment through the tariff process. Upon approval of such project, KOSTT J.S.C addresses the Government to initiate the Financial Agreement, which should then be **ratified by the Assembly of the Republic of Kosovo as an International Financial Agreement.**

²² Law on Business Organizations no. 06 / L-016 (Official Gazette No. 9/24 May 2018, Pristina)



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KOSTT J.S.C borrowings / loans are not conditioned only by what was said above, because for example when the 30-million-euro loan agreement between KOSTT and the EBRD was signed, there was no need for state guarantees.

- Investigate concrete cases and assess the impact of the Ministry of Finance, which controls the generation activity, whether it has approved or refused any decision of KOSTT or the Assembly of Kosovo (as a shareholder) regarding any significant event. If ERO considers it necessary, to condition KOSTT Certification with changes to the legal framework.

The Law on Public Financial Management and Accountability (Law No..03 / L-048)²³ in Article 56 refers to the Autonomous Public Enterprises, the definition of which is given below. KOSTT is an Autonomous Public Enterprise and is only obliged to **notify** the Ministry of Finance about the intention to seek loans/ funds, but **not its approval**.

“Autonomous Public Undertaking” means (i) any designated entity and (ii) any other public undertaking that operates with substantial autonomy. For the purpose of this Article “substantial autonomy” is considered when the undertaking is not subject to direct management of any public authority, however, if the management of the public undertaking is only under the supervision of the public authority, then such supervision is not considered as a direct management of the public undertaking from the public authority.

Also, the Law on Public Financial Management and Accountability in Article 56 does not stipulate that any significant event should be approved by the Ministry, but only stipulates that KOSTT notifies the Ministry. This can be proven in the concrete case when KOSTT has only notified the Ministry of the Borrowing / Loans from the EBRD. The ECS’s misconception regarding this may have arisen as a result of the translation of the Certification Application or the Preliminary Decision on Certification.

Article 56 “Notice on Important Events”

If an autonomous public undertaking proposes to undertake any of the following actions, the autonomous public undertaking must first provide the Minister with a written report containing detailed information on the proposed action:

a) Establishment or participation in the establishment of a legal person, company, partnership, trust, joint venture without legal personality, or any commercial or non-commercial company or association;

b) to seek, expose or modify the character or extent of any interest held by an organization or association referred to in (a);

²³ Law on Public Finances Management and Accountability no. 03 / L-048 (Official Gazette Year III, No. 27/03 June 2008, Pristina), Amending the Law with the Laws Nr. 03 / L-221, Nr. 04 / L-116, Nr. 04 / L-194, Nr. 05 / L-063 and Nr. 05 / L-007 (Official Gazette No. 13/21 April 2016, Pristina).



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- c) the acquisition or arrangement of any operating or significant assets;
- d) extinguishing, expanding or modifying activities,
- e) Exercising ownership interests against any of the organizations or associations referred to in point (a) above to encourage such an organization to undertake the actions specified under points (a) to (d) above; and
- f) engagement in any borrowing or lending activity.

-Assessment of the competences of the Ministry of Economic Development provided under Article 30 of the Law on Publicly Owned Enterprises, related to the right of veto (approval) of KOSTT J.S.C Development Plans. If ERO considers it necessary, it shall condition KOSTT Certification until such a right is eliminated.

Article 30 of the Law on Publicly Owned Enterprises does not apply when it comes to Articles 14/15 of the Law on Electricity, which stipulates: *"Provisions of the Law on Publicly-owned Enterprises, regarding the competence to appoint a Board of Directors, exercise of rights of the shareholder, the compensation of the Board of Directors and the reporting, and the appointment of the Audit Committee shall not apply to the Transmission System Operator."*

KOSTT J.S.C has already informed the Ministry that after the entry into force of the Law on Electricity, it has no obligation to report, so it will stop reporting.

KOSTT J.S.C Development and Investments Plans are approved by ERO in accordance with the Law on Electricity, Article 16/1/12²⁴, which stipulates: *"developing within the year preceding the five (5) year period, the five (5) year transmission network development plan. This plan should be approved by the Regulator before being published by the Transmission System Operator and shall be harmonized with the Ten (10) Year Transmission Network Development Plan, Spatial Planning Documentation and Distribution System Operator Plan "while Article 16/1/13 stipulates: " developing and publishing, within the year preceding the first year of the Investment Plan, one (1) year Investment Plan, previously adopted by the Regulatory Plan harmonized with the ten (10) year and five (5) year transmission network development plan and spatial planning documentation."*

-To evaluate and clarify the relations between the three institutions/public bodies (Government, Ministry of Economic Development and Ministry of Finance) mentioned in the above points, and it is required by ERO to carry out the Compatibility Assessment in the Final Decision. If ERO considers it necessary, it shall condition KOSTT Certification with the transfer of all responsibilities from those public institutions to the Kosovo Assembly, and if this process requires change of legislation, provide reasonable time for such changes.

²⁴ Law on Electricity No.05/I-085 (Official Gazette 26/21 July 2016, Pristina)



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Taking into account the above justifications, ERO sees no reason to further substantiate this issue. ERO remains committed to monitor the relations during the upcoming period between KOSTT / Ministry of Economic Development / Ministry of Finance and in case of eventual identification of any of the ECS remarks, take appropriate actions for their elimination.

3. Governance (management) of KOSTT J.S.C to enable full independence for decision-making in daily basis, therefore, the Secretariat invites ERO:

-To further evaluate and include in the Final Decision the independence of KOSTT J.S.C during the operation on daily basis and in particular the de facto implementation of the legal provisions referring to KOSTT J.S.C, since these legal provisions have been issued before the ownership unbundling of KOSTT. ERO shall verify whether these legal provisions (rules) are in line with property unbundling requirements.

- The Secretariat invites ERO to request from KOSTT J.S.C to implement a Compliance Program and to appoint a Compliance Officer.

The Energy Community Secretariat in its Opinion has considered it useful to require KOSTT/TSO to implement a Compliance Program and to appoint a Compliance Officer.

Regarding the Secretariat's request / recommendation as set out in Article 21 of the Directive and Article 21 of the Rule on Certification of TSO, the certified KOSTT J.S.C is obliged to compile the Compliance Program and appoint the Compliance Officer as in point II. of the enacting clause of this Decision, and submit it for approval to ERO.

In conclusion, the Energy Community Secretariat has supported the Certification of KOSTT J.S.C, in accordance with Preliminary Decision V_1033_2018 of 24 October 2018, subject to the remarks that have been addressed above in this decision.

ERO Board, after evaluating and analyzing the evidence related to KOSTT Certification and the ECS Opinion, considers that all obligations deriving from Directive 2009/72 / EC and Kosovo Laws have been fulfilled, and based on these, has decided as in the enacting clause of this Decision.

IV. The Decision is issued and published in official languages of the Republic of Kosovo.

V. The decision shall enter into force on the date of approval by ERO Board and shall be published on the official website of ERO along with the ECS Opinion.

Legal advice: The party dissatisfied with this decision can initiate an administrative dispute at the Competent Court, within thirty (30) days from the date of receipt of this Decision or from the date of its publication in the ERO's website, whichever occurs last.



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Attached *to* *this* *Decision:*
ECS Opinion 2/19, issued in accordance with Article 3 (1) of the Regulation (EC) No. 714/2009 and Article 10 (6) of the Directive 2009/72/EC- Certification of KOSTT J.S.C

ERO Board:

Arsim Janova, Acting- Chairman

Besim Sejfiqaj, Member

Selman Hoti, Member

Izet Rushiti, Member

This Preliminary Decision is sent to:

- KOSTT J.S.C
- Authorized representative of the Assembly of Kosovo
- Energy Community Secretariat, Vienna, and
- ERO's archive.