

UNMIK- PARTY REPORT 2006

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GENERAL

The purpose of this report is to outline the current status of the development of the energy legislation in UNMIK in accordance with the *acquis communautaire* as outlined in the Treaty Establishing the Energy Community (the Treaty). This will be the basis for individualizing the roadmap for UNMIK as a Party to the Treaty, concerning the process of further adoption and the implementation of the relevant legislation as to achieve the objectives of the Energy Community.

1. INSTITUTIONAL BUILDING

1.1. Ministries

- The Ministry of Energy and Mining (<http://www.ks-gov.net/mem>) is responsible for energy policy issues. In the area of vulnerable customers the responsibilities are linked to the competences of Ministry of Labour and Social Welfare (<http://www.ks-gov.net/mpms>).
- The Ministry of Environment and Spatial Planning (<http://www.ks-gov.net/mmph>) is responsible for Environmental affairs.
- The Ministry of Energy and Mining is also responsible for the policy aspects of Renewables and Energy Efficiency.

1.2. Energy Regulator

- The Energy Regulatory Office (ERO; www.ero-ks.org) has been established by a separate law (The Law on Energy Regulator, 2004) as an independent body with competences outlined there. Under this Law, it is authorized to exercise regulation in electricity, natural gas, district heating.

1.3. Competition Authority

- Kosovo Law on Competition 2004/36 defines the Kosovo Competitive Commission appointed by Assembly of Kosovo as Competent Authority for issues on competition. However, particularly for the energy sector, there are strict rules on law level, related to competition, which are in full compliance with the *acquis communautaire*. These are both in the Law on Energy (Chapter 6) and in the Law on the Energy Regulator (Article 16 in Particular).
- On the ground of the Law on Energy Regulator (Article 15.4 (c)), the Energy Regulatory Office is responsible for ensuring the creation and maintenance of competitive market when practicable, and the prevention and sanctioning of any anti-competitive conduct. This responsibility has been also assigned to the Regulatory office pursuant to Article 24 of the Law on Energy. In addition, the Law on Competition stipulates the establishment of Kosovo Competition Commission which has to be responsible authority for enforcing and promoting competition among enterprises and consumer welfare in Kosovo.

2. ENERGY FRAMEWORK

UNMIK as a Party to the Energy Community Treaty has a package of laws, which outline the activities in the energy sector as it currently stands. They have been adopted in 2004. These are:

- The Law on Energy;
- The Law on Electricity;
- The Law on Energy Regulator.
- The Law on energy efficiency and renewables.

In parallel, a detailed Energy Strategy of Kosovo has also been approved in 2005. Energy strategy implementation program has been developed, too. Further, the Energy Regulator has developed recently a major set of rules, related to its activities; some others are under preparation.

The review of the legislative framework on law level shows that the legislation is in compliance with the major principles of the energy *acquis communautaire* as listed in the Treaty Establishing the Energy Community.

However, due to the huge interdependence of the Parties in the regional market from the point of view of the energy sector, the Party requested the support of the Secretariat for the organization of a study, related to the optimization of the energy market in the region in short and medium term.

3. ELECTRICITY SECTOR

3.1. Introduction

The electricity sector relies mostly on coal fired power plants – Kosovo has some of the most favourable reserves of coal in Europe (estimated to reach about 14 billion tons, of which only about three per cent have been used).

The overall installed capacity is about 1550 MW, out of which 35 MW is hydro based. However, the available capacity is much less. Due to this, as well as to other reasons of different nature, there is insufficiency of electricity. This results in a lack of regular power supply and in a necessity to import electricity (650.640 MWh in 2005, compared to about 3 481 MWh production)¹.

3.2. Public service obligations and customer protection

- The public service obligations and customer protection are concretely dealt with in the legislation – both in the Law on Energy (Article 17 in particular) and the Law on the Energy Regulator (Article 51). The latter has explicit powers in this aspect, including via the licenses. Within ERO a Customer Protection Department has been established. Furthermore, ERO has adopted the Rule on Dispute Settlement Procedures.
- Among the other general principles in this respect, particular legal provisions regarding the appointment of a supplier of last resort exist in the legislation (Article 53 of the Law on the Energy Regulator).
- There are no legal provisions in the energy legislation, directly concerning vulnerable customers. However, substantial set of rules, concerning the customers' protection, have been developed to provide adequate protection. The KEK's customers who are

¹ Acc. to the Statistical Office of Kosovo – www.ks-gov.net/esk

registered in the schemes of social welfare are taken into consideration by KEK with regard to electricity bills payment.

- In 2005 the Government has designated substantial financial resources for supporting vulnerable customers. However, this was a result of combined efforts of the Ministry of Energy and Mining, Ministry of finance and Ministry of Labour and Social Welfare.
- In its Tariff Methodology, The Regulator has envisaged the possibility social tariffs to be introduced (See item 3.7.1 of the Tariff Methodology for the Electricity Sector). Further, it has developed the so called Affordability Limit (Item 4.2.6).

As the issues, related to vulnerable customers are paid particular attention by the authorities, the Secretariat was requested to provide assistance for the organization of an Affordability Study for the Party.

3.3. Monitoring of Security of Supply

- Electricity Security of Supply is covered in both the Law on Electricity and the Law on the Energy Regulator as well as in particular rules, adopted by the Regulator. There is a particular set of:
 - institutions (the Energy Inspectorate under the Minister of energy and Mining in accordance with Article 32 of the Law on Electricity and the Regulator.) and
 - detailed mechanisms, which provide for the possibility for efficient monitoring of the security of supply (including via the process of licensing regime and via additional rules – Rules of disconnection, Rules on dispute Settlement etc.).
- In addition, a set of further documents in this relation are being finalized (Electricity Standard Code, Electricity Equipment Code, Metering Code, General Conditions on energy Supply), which are planned to further develop the issue.
- The relevant rules in force are publicly available.

3.4. Technical rules

- Further to the above, The Law on Energy (Article 25) foresees special measures in case of sudden crisis such as force major, breakdowns of energy facilities, a lasting generation shortage, terrorist attacks.
- The government has adopted Rules on restrictive measures on energy supply which establishes clear and non-discriminatory principles on the manner and way the use of energy can be restricted or special obligations can be imposed on energy enterprises for the purpose of protecting costumers, and the safety and security of the system. This Rule has been adopted on 27th of July 2005, and is available on the web-page of MEM www.ks-gov.net/mem.

3.5. Generation

- The generation activity is subjected to authorisation (Article 28 38 of the Law on the Energy Regulator in particular). Tendering new capacity and Licenses are due by the energy regulator in accordance with its Rules. However, due to the ongoing restructuring, currently the licences procedure is still not completed, but is to be finalized before the end of 2006.

3.6. Unbundling provisions and access to accounts

Transmission System Operator

- A separate chapter in the Law on Electricity deals in details with the Transmission System Operator (Chapter 4 – Articles 12-16). Further, the matter is also subject of the Law on the Energy Regulator, especially from the point of view of unbundling (Article 49).
- The law describes the tasks of the TSO. Further, relevant secondary legislation and rulings, concerning its functions are being finalized – this particularly refers to the Transmission Grid Code. Market rules are in place, although not applicable.
- The appointed TSO is a former part of the KEK (the Kosovo Electricity Company). It has recently been separated in accordance with the Decision of the Government on Restructuring/Unbundling of KEK, 28 June 2005, and by the corporatization of KEK and is still in a process of organizing its work from formal point of view. However, the preparations are that it starts working autonomously by 1st July 2006.
- Progress has been made on unbundling of KEK and its incorporation. KEK and a separate transmission entity was incorporated and KEK was therefore transformed into two Joint Stock Companies: KEK JSC and Transko JSC.
- Transco is still in a process of formation from the functional point of view. The work is ongoing and intention is that it starts working autonomously by 1st July 2006. The availability of the relevant legislation and further rulings, related to the operation of the system (currently finalized) will contribute to its proper operation.

The Secretariat was asked to assist the TSO's participation in SETSO.

Distribution System Operators

- The key tasks of the distribution network operator are outlined in the Law on Electricity (Chapter 5 – Articles 17 – 19). The Law on Energy Regulator gives particular authority to the regulator to authorize and control its activity in accordance with the licensing regime (Article 28, 32 etc.).
- Currently KEK performs distribution functions as well.

Access and unbundling of the accounts

- The Energy Regulator is fully entitled to access the accounts of the energy undertakings (Article 50 of the Law on Energy Regulator). The electricity undertakings must submit annually to the Energy Regulator their financial statements and the audit reports. For the purpose of price regulation, the Energy Regulator is entitle to request any accounting, technical or economical information from the companies.
- The electricity companies are requested under the Law on o Energy Regulator to keep separate accounts for energy licensed activity (Article 49).

3.7. Third Party Access (TPA)

- TPA is explicitly regulated in the legislation (Chapter 7 of the Law on Electricity – Articles 25 – 26).
- The law envisages that transmission and distribution companies shall allow producers, suppliers and eligible customers in accordance with rules and regulations,

approved by the Regulator (Article 25.1). Draft rules in this aspect are available on the website of the Regulator.

- The Law also envisages obligations for concrete justification of refusal of access (Article 26).

3.8. Market opening

- At present, the Regulator is preparing the necessary secondary legislation for the market, with assistance from EAR and World Bank:
 - The Rule on Pricing and the Tariff Methodology were approved on 15 December 2005;
 - The Code of Conduct and Ethics was approved on 15 December 2005;
 - The Rule on Dispute Settlement was approved on 17 January 2006;
 - The Rule on Disconnection was approved on 24 February 2006;
 - The Rule on Licensing was approved on 24 February 2006;
 - The Market Model and Rules are currently published on website for public consultation;
 - The Rule on Authorization Procedure for Construction of New Generation Capacities is currently published on website for public consultation;
 - The Tariff Application Guidelines and Tariff Application Tables are currently published on website for public consultation;
 - The Draft Rule on General Condition of Energy Supply is currently published on website for public consultation;
 - The Grid code (in the absence of a fully operational ITSMO).
- These will be completed in 2006.
- The electricity market has opened in March 2006 with all consumers (four) connected at 110kV and over being declared eligible for 2006 by a government decision in accordance with the Law on Electricity.
- A timetable for further market opening will be produced by MEM during 2006, for implementation in stages in future years. Assistance is provided by EAR on this issue.
- It is not possible at present to identify consumers by their electricity consumption, because of inadequate supplies, so an alternative method may be based on the voltage of their supply connection.

The Party has indicated that it might face difficulties in relation to facing the market opening date of 2008 for non-household customers and therefore, may seek some particular assistance in this aspect.

A reference has been made by the Party to the usage of an alternative schedule proposed by the PHLG at the Athens Forum in June 2005:

Consumer group	Market opening by
Large and medium industrial customers	1 January 2008
Small industries	1 January 2010
Water supply companies	1 January 2010
Service sector (shops, restaurants, schools, etc)	1 January 2012
Household customers	1 January 2015

It is considered that, in any case, opening of the market to smaller consumers will take place only when adequate consumer protection legislation is in force.

3.9. Direct lines

- The legislation contains explicit provisions regarding granting the authorisation of direct lines in accordance with Article 22 of the Electricity directive (Article 38 of the Law on the energy Regulator). No separate rulings, related to the authorization procedure about the construction of direct lines, is in place – however, the Law on the Energy Regulator, in accordance with Article 22.2 of the Directive, makes a particular reference to concretely listed criteria for these cases (see Article 38.3 in relation to Article 30.2). Further, the Law obliges the Regulator to present concrete background for refusal of a permit (Article 38.3).

3.10. Cross border trade mechanism

- Cross-border transmission of electricity is particularly dealt with in the Law on Electricity (Article 36 – 37). The activity is also explicitly mentioned as a subject to license (Article 28.2 of the Law on the Energy Regulator).
- However, in practical terms, UNMIK faces problems of operational nature in its relations with neighbouring countries.

The Secretariat was asked to assist for TSO's participation in the CBT mechanism.

4. GAS SECTOR

Unfortunately, the gas sector in the Party is not developed at all. The only existing gas pipe line in the past with FYROM has been destroyed to an extent, which does not allow a justified reconstruction.

However, both the energy Strategy, the Law on Energy and the Law on Energy Regulator envisage rules about the gas sector as well. This is a concrete indication that the development of the gas sector is needed. Additional argument to this is the fact that a request for support in developing the gas legislation has been notified to the Secretariat.

5. COMPETITION

The Law on Energy Regulator is giving the power to the Energy Regulatory Office who shall be responsible for the establishment and enforcement of a regulatory framework for the energy sector in Kosovo, ensuring non-discrimination, effective competition, and the efficient functioning of the energy market.

And the Energy Regulatory Office shall also be responsible in particular for creation and maintenance of competitive markets when practicable, and the prevention and punishment of any predatory or anti-competitive conduct.

See also item 2.3.

6. ENVIRONMENT

The Energy Strategy and the energy legislation pay particular focus to the environment. Further to the principle approach, indicated in all acts, protection of the environment is a particular criterion for granting licenses (Article 30.2 of the Law on the Energy Regulator).

However, the Party considers further concrete steps as to implement the directives, listed in the environmental acquis in the Treaty, and in particular Council directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment and Directive 79/409/EEC on the conservation of wild birds, whose implementation is due one year after the Treaty comes into force. Certainly, as the development of the energy legislation is very advanced and as there is a particular focus on the environmental issues on strategic level, this will hardly cause any particular problems to be fulfilled in due time.

7. ENERGY EFFICIENCY AND RENEWABLE ENERGY SOURCES

General

The Energy Strategy and all major energy laws make particular reference to energy efficiency and renewables (see Chapter 6 of the Energy Strategy; Chapter 3 – Articles 9 – 14 of the Law on energy and Article 10 of the Law on Electricity in particular). Energy efficiency and protection of environment are specific criteria for granting licenses (Article 30.2 of the Law on Energy Regulator).

Energy Efficiency

Further to the legislative framework, the legislation envisages concrete mechanisms for cooperation between the relevant institutions as to promote energy efficiency. This refers both to the cooperation between state institutions (e.g. between the Ministry of Energy and Mining and the Regulator in the process of preparing secondary legislation, but also cooperation with non-governmental organizations – see Article 10 of the Law on Energy).

Renewable Energy

The promotion of power generation from RES, and the Regulation for certification of Origin of Electric Power Generated by Renewable Energy Sources is in details dealt with in the Law on Energy and the Law on Electricity.

The Energy Act states that the Ministry of Energy and Mining shall each year establish indicative targets for the consumption of electricity or heat generated from RES or cogeneration.

The Energy Regulator is the institution responsible of issuing the certificates for origin of electricity produced from renewable energy sources. However, currently there is no tariff determined for renewable energy and no certificates of origin have yet been issued.

The Law on Energy has a separate provision, obliging a priority dispatch of electricity produced on the ground of RES (Article 11).

8. CONCLUSIONS

On the ground of the analyzed information, the following major conclusions related to UNMIK as a Party to the Treaty Establishing the Energy Community could be outlined:

- The Party has a well developed energy framework, including an Energy Strategy and a set of major legal acts, which are in compliance with the principles of the energy acquis as identified by the Treaty. However, as the process of restructuring the electricity sector is still going on, certainly there might be space for updating and improvement.
- Further, due to reasons, which are not subject of this report, there is shortage of domestic capacities for production of electricity. Recently, the Government has assigned a high priority to developments in the energy sector and its sustained development, as this sector in Kosovo is considered being one of the major drivers of the sustainable economic and social development of the country in the future.
- Thus, when following the process of reforms, the realities should be also taken into concrete consideration.
- Unfortunately, the Party has no gas sector developed.
- Anyhow, the established appropriate legislative and institutional framework in the energy sector, combined with the will for reforms, will certainly bring to further positive results. This is being concretely demonstrated by the active process of the ongoing restructuring of the electricity sector, which has gone through tremendous changes for the last two years – adoption of an Energy Strategy and legislation in line with the acquis, establishment of the Regulator, legal unbundling of KEK (the process is not completed, but is aimed for completion before the end of 2006), development of market rules by the Regulator, related to the energy sector (still ongoing).

Requests and proposals

Particular requests and proposals, made by the Party, are related to the following:

1. Support for an interconnection project 400 kV with Albania;
2. Support, by funding, of energy sector related social programme and of the social action plan in the future in the framework of Energy Treaty;
3. Support to the development of an Affordability Study for the Party;
4. Support to the institutionalisation of a sub-regional and regional cooperation in the area of energy planning and meeting of electricity demands;
5. Assistance for development of a gas related legislation;
6. TSO's participation in SETSO and CBT mechanism;
7. Development of a study related to the optimization of the energy market in the region.