



Energy Community Regulatory Board

## **“Vulnerable Household Customers”**

### **An ECRB Contribution to a Common Understanding**

25 November 2009



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## 1 INTRODUCTION

### 1.1 Background and Scope

For the development of fair and non-discriminatory conditions on liberalized electricity and gas markets it is crucial for small customers to be well represented and that consumer rights are properly defined and defended. Considering and protecting the interests of customers – and in particular household customers – therefore is one of the key challenges for liberalised markets.

Customer protection consequently is one of the focal points of the Energy Community Regulatory Board (ECRB)<sup>1</sup> Customer Working Group (CWG). The objective of the present discussion paper is to provide input to the considerations of a common understanding of vulnerable household customers. Work is based on and mandated by the related request of the 14th Energy Community Electricity Forum (“Athens Forum”) inviting the ECRB “to identify a common understanding of *vulnerable customers* for presentation to the next Forum”<sup>2</sup>.

### 1.2 Methodology

The present paper is based on data collected for preparation of the ECRB Report on the Implementation of the Best Practice Guidelines on the Protection of Vulnerable Household Customers<sup>3</sup>. In addition the assessments make use of best practise approaches and discussions on both European level<sup>4</sup> and in the United States<sup>5</sup> and online publications<sup>6</sup>.

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<sup>1</sup> The ECRB has been established based on Art 58 et seqq of the Treaty establishing the Energy Community. For details on the Treaty, the Energy Community and the work of the ECRB see [www.energy-community.org](http://www.energy-community.org)

<sup>2</sup> 14th Athens Forum, 12-13 May 2009 (Athens), conclusion 15.

<sup>3</sup> Ref: R08-GA-08-08 (2 Dec 2008), [www.energy-community.org](http://www.energy-community.org).

<sup>4</sup> ERGEG, Status review of the definitions of vulnerable customer, default supplier and supplier of last resort, Ref. E09-CEM-26-04 (9 September 2009).

<sup>5</sup> NARUC, Support Programs for Low-Income Customers in the U.S. Energy Sector, financed by USAID and NARUC (version Sept 2009).

<sup>6</sup> E.g. CER/05/248 (December 2005); Energy Retailers Association of Australia, Vulnerable Customers – Position Paper (June 2005); Eurogas, Position Paper on the Protection of Vulnerable Customers, April 2007 ([www.eurogas.org/uploaded/2007-Apr.](http://www.eurogas.org/uploaded/2007-Apr.)).



## 2 VULNERABLE HOUSEHOLD CUSTOMERS - A SYSTEMIC APPROACH

### 2.1 Legal framework

The second Gas and Electricity Directives<sup>7</sup> define consumer protection as part of their legislative requirements<sup>8</sup> and identify a need for the regulatory system to adequately reflect these obligations<sup>9</sup>. Special protection need is thereby declared for so-called “vulnerable customers”<sup>10</sup>. A definition of this term is, however, not provided and was not binding on Member States .

The third legislative package for the internal gas and electricity market (“third package”)<sup>11</sup> will additionally strengthen the rights of the customers. Articles 3 (7) new Electricity Directive and 3 (3) new Gas Directive require that “*Member States shall define a concept of vulnerable customers which **may** refer to energy poverty and, inter alia, to the prohibition of disconnection of such customers in critical times*”<sup>12</sup>. The term “vulnerable customer” itself, however, remains undefined also in the third package as it was deemed appropriate that definition needs to reflect national characteristics. It has to be noted that the third package is not yet applicable in the Energy Community Contracting Parties. Implementation is, however, to be expected in the short or medium time and consequently requires consideration in the framework of the present discussion paper.

### 2.2 Customer Protection

The general need for protecting the interests of customers is recognised by national **customer protection** legislation. The 2008 ECRB Report on the Implementation of the Best Practice Guidelines on the Protection of Vulnerable Household Customers<sup>13</sup> identified that general customer protection laws exist in all Contracting Parties.

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<sup>7</sup> Directive 2003/54/EC of the European Parliament and Council of 26 June 2003 concerning common rules for the internal market in electricity and repealing Directive 96/92/EC, OJ L 176 of 15.7.2003, p. 37 et seqq (“Electricity Directive”) and Directive 2003/55/EC of the European Parliament and Council of 26 June 2003 concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC OJ L 176 of 15.7.2003, p. 57 et seqq (“Gas Directive”).

<sup>8</sup> Art 3 (5, 9) Electricity Directive and Art 3 (3) Gas Directive.

<sup>9</sup> Art 23 (8) Electricity Directive and Art 25 (8) Gas Directive.

<sup>10</sup> Recital 2 and 24 and Art 3 (5,) Electricity Directive; Recital 2 and Art 3 (3) Gas Directive.

<sup>11</sup> OJ L 211, 14 August 2009.

<sup>12</sup> Directive 2009/72/EC of the European Parliament and Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (“new Electricity Directive”), recital 45. Similar ibd, recital 53, Art 3 (7, 8) and 36 lit h. For the gas market Directive 2009/73/EC of the European Parliament and Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC (“new Gas Directive”) defines in parallel in recitals 33, 44, 50, Articles 3 (3, 4) and 36 lit h. It is important to note that the relevant Articles explicitly do *not* establish an obligation to consider energy poverty as part of what constitutes a vulnerable consumer.

<sup>13</sup> Chapter 3.



Related legislation aims at supporting the interests of those market participants that are usually less familiar with and/or have less access to necessary technical and legal knowledge of the market they are acting in and are therefore more exposed to potential violation of their rights. In the case of general customer protection vulnerability and the need for protection is assumed by lack of professional knowledge and power rather than by income or other factors.

In the energy sector the scope of overall customer protection typically involves the right to network access; kind and type of contract; billing procedures – payment deadlines; dunning procedures; procedures for disconnection from the grid; treatment of energy theft and so-called non-technical or commercial losses; dispute settlement; general conditions of delivery.

### 2.3 Vulnerable Customers

It can be assumed that availability of electricity can be subsumed under the category of services of public interest. Therefore it is of high relevance that customers are provided with services which are essential for life. It can consequently be concluded that **systems are needed to support and protect vulnerable energy customers**. For the considerations of the present discussion paper this understanding is limited to **household customers**.

According to this and going beyond principal customer protection the third legislative package expresses also the need that adequate safeguards to protect vulnerable customers are in place.

The term “vulnerable customers” involves a number of considerations and should be very tightly defined. It is anticipated that the actual number of consumers that would fall within the categorization of vulnerable customers would be quite low. Analysis shows that so far there is **no common understanding or definition of vulnerable customers** neither within and among the Energy Community Contracting Parties<sup>14</sup> nor on European level<sup>15</sup>.

For the definition of the policy for protection it is key to define generally accepted criteria.

- The **level of monthly income is often used as criterion** for defining the group of vulnerable customers. A related assessment for the European Member States shows that in the majority of cases where financial support schemes within the energy system for vulnerable customers exists, this applies to “households with an income below a defined level”<sup>16</sup>.

<sup>14</sup> ECRB Report on the Implementation of the Best Practice Guidelines on the Protection of Vulnerable Household Customers (Ref: R08-GA-08-08 (2 Dec 2008), chapter 3 topic 1.2. See also Annex.

<sup>15</sup> On European level only 8 countries (B, BG, GB, GR, H, IRL, IT, SI) state that the term is commonly known or used in their country. ERGEG, Status review of the definitions of vulnerable customer, default supplier and supplier of last resort, Ref. E09-CEM-26-04 (9 September 2009), chapter 2.1.

<sup>16</sup> “Only in a few countries other customer groups (such as senior citizens, households with children and disabled persons) receive economic support, and if they receive this it is often in addition to the general economic support that all

- Other countries and regions know different definitions: in New Zealand a customer is vulnerable if, for reasons of age, health or disability, the disconnection of electricity presents a clear threat to their or a member of their household's health or wellbeing<sup>17</sup>. In Slovenia, the Energy Act determines that a system operator should not reduce the supply of electricity or gas below a limit that is - with respect to circumstances – necessary for not threatening the life and health of the customer in question (vulnerable customers)<sup>18</sup>. The Energy Retailers Association of Australia defines vulnerable customers as those who, due to genuine financial hardship, are unable to pay for the energy they have been used, be it permanent or temporary in nature<sup>19</sup>. In Ireland, the national regulatory authority for electricity and gas (Commission for Energy Regulation, CER), defines vulnerable customers as those relying on electrical life support equipment, elderly (66 years and more) and customers with visual/hearing/mobility deficiencies<sup>20</sup>. In Romania, vulnerable customer is defined as residential customers who for reasons of illness, age, or of other nature and after thorough decision of Government and local administration benefits from facilities in connection with electricity supply service<sup>21</sup>.

## 2.4 Protection and Support Schemes

Protection of vulnerable customers **typically does not involve a specific support scheme for energy customers** but rather provides a more general support to the group of eligible persons. Also on European level no common approach for protection of vulnerable customers exists as this should be left to Member States to adapt to their own circumstances<sup>22</sup> but Members States follow different solutions – from more general support systems to tailor made economic support schemes for specific sectors, e.g. energy<sup>23</sup>.

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households with an income below a defined level receive". ERGEG, Status review of the definitions of vulnerable customer, default supplier and supplier of last resort, Ref. E09-CEM-26-04 (9 September 2009), page 14 and table 2.

<sup>17</sup> [www.empower.co.nz/files/vulnerablecircumstances.pdf](http://www.empower.co.nz/files/vulnerablecircumstances.pdf).

<sup>18</sup> Ref: R08-GA-08-08 (2 Dec 2008), [www.energy-community.org](http://www.energy-community.org).

<sup>19</sup> Energy Retailers Association of Australia, Vulnerable Customers – Position Paper, June 2005.

<sup>20</sup> Commission for Energy Regulation, Decision Paper: The Provision of Services to Vulnerable customers by Suppliers and Network Operators in the Natural Gas and Electricity Industries, CER/05/248 December 2005.

<sup>21</sup> Art.3 paragraph 18 of the Electricity Law. Ref: R08-GA-08-08 (2 Dec 2008), [www.energy-community.org](http://www.energy-community.org).

<sup>22</sup> Also the 3rd EU legislative package for electricity and gas only calls for definition of "vulnerable customers" on national level.

<sup>23</sup> ERGEG, Status review of the definitions of vulnerable customer, default supplier and supplier of last resort, Ref. E09-CEM-26-04 (9 September 2009), chapter 2.2 and table 1.

Table 1: Specific support scheme for vulnerable energy household customers

Contracting Parties	Does a specific support scheme for vulnerable energy household customers exist?			
	Electricity		Gas	
	YES	NO	YES	NO
Albania	X			X
Bosnia and Herzegovina	X <sup>24</sup>		X <sup>25</sup>	
Croatia	X			X
FYR of Macedonia		X		X
Montenegro	X			X
Serbia	X			X
UNMIK	X		N/A	N/A

Support is typically provided on an economic basis. The **approaches for how financial support reaches the addressee differ widely**. For both the Contracting Parties<sup>26</sup> and on European level<sup>27</sup>, the options in countries which have a financial support system within the energy sector vary from discounts on the network tariff, social tariffs, rebates and trust funds to measures not related to grid fees such as state heating aid and governmental subsidies. [Some European countries<sup>28</sup> and none of the Contracting Parties have regulated energy prices for such customer groups. Nevertheless, energy end-user prices in Contracting Parties are still regulated \(for all customers or certain customer groups\).](#)

<sup>24</sup> Republika Srpska; Brcko District of BiH; Sarajevo Canton - allowance can be used for electricity, district heating or gas.

<sup>25</sup> Sarajevo Canton where 93,8% of distribution customers in Bosnia and Herzegovina are located.

<sup>26</sup> ECRB Report on the Implementation of the Best Practice Guidelines on the Protection of Vulnerable Household Customers (Ref: R08-GA-08-08 (2 Dec 2008), chapter 3 topic 5. See also Annex.

<sup>27</sup> ERGEG, Status review of the definitions of vulnerable customer, default supplier and supplier of last resort, Ref. E09-CEM-26-04 (9 September 2009), chapter 2.2 and figure 2.

<sup>28</sup> ERGEG, Status review of the definitions of vulnerable customer, default supplier and supplier of last resort, Ref. E09-CEM-26-04 (9 September 2009), chapter 2.2 and figure 2. ERGEG in this paper and already in a position paper published in 2007 made clear that "regulated prices distort the functioning of the market and should be abolished, or where appropriate, brought into line with market conditions" (End-user price regulation – An ERGEG Position Paper (E07-CPR-10-03), 18 July 2007).

Table 22a: Regulated energy prices in the Contracting Parties specific for vulnerable customers

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	Is there a regulated energy end-user price?			
	Electricity (Y/N)	If yes, for which group of customers?	Gas (Y/N)	If yes, for which group of customers?
Albania	Y	All customers	N/A <sup>29</sup>	There is no gas market in Albania N/A
Bosnia and Herzegovina	Y	All customers	Y	All customers
Croatia	Y	Temporarily block tariffs depending on consumption, Households	N Y	Households
FYR of Macedonia	Y	All connected below 110kV	Y	Industrial customers (no distribution network yet.)
Montenegro	Y	All customers	N/A	N/A
Serbia	Y	All customers	Y	All customers
UNMIK	Y	All customers	N/A	N/A

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Table 2b: Regulated energy prices in the Contracting Parties specific for vulnerable customers

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<u>Contracting Parties</u>	<u>Is there a regulated energy price specific for vulnerable customers?</u>			
	<u>Electricity (Y/N)</u>	<u>If yes, for which group of customers?</u>	<u>Gas (Y/N)</u>	<u>If yes, for which group of customers?</u>
<u>Albania</u>	<u>N</u>	<u>-</u>	<u>N/A</u>	<u>N/A</u>
<u>Bosnia and Herzegovina</u>	<u>N</u>	<u>-</u>	<u>N</u>	<u>-</u>
<u>Croatia</u>	<u>N</u>	<u>-</u>	<u>N</u>	<u>-</u>
<u>FYR of Macedonia</u>	<u>N</u>	<u>-</u>	<u>N/A</u> <u>(no household customers)</u>	<u>N/A</u>
<u>Montenegro</u>	<u>N</u>	<u>-</u>	<u>N/A</u>	<u>N/A</u>
<u>Serbia</u>	<u>N</u>	<u>-</u>	<u>N</u>	<u>-</u>
<u>UNMIK</u>	<u>N</u>	<u>-</u>	<u>N/A</u>	<u>N/A</u>

<sup>29</sup> There is no gas market in Albania.

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### 3 FINDINGS AND RECOMMENDATIONS

Based on the analysis of the present discussion paper the ECRB concludes on the following findings:

1. There is **no common understanding or definition of vulnerable customers** – neither within and among the Energy Community Contracting Parties nor on European level<sup>30</sup>. Also, **common criteria** for defining vulnerable customers do not exist – neither within and among the Energy Community Contracting Parties nor on European level. The level of monthly income is a commonly used criterion for defining the group of vulnerable customers. However, using income alone would be certainly inappropriate for defining vulnerable customers.
2. Protection of vulnerable customers **typically does not involve a specific support scheme for energy customers alone** but rather provides a more general support to the group of eligible persons within a social welfare system. Where the concrete modus for protecting/supporting vulnerable customers is to a prevailing extent part of the overall national social support scheme, taking out energy as single element without taking into consideration the others does not provide an adequate picture. What remains relevant for customers is the quality of the national support/protection instruments over all areas of life but not a specific element of the basket.
3. Support is typically provided on an economic basis. The approaches for how financial support reaches the addressee differ widely for both the Contracting Parties and on European level and reach from network tariff related discounts, social tariffs, rebates and trust funds via measures not related to grid fees such as state heating aid and governmental subsidies to regulated energy prices for certain customer groups. The ECRB already in earlier publications<sup>31</sup> made clear that regulated prices distort the market functioning. Where regulated prices exist, they shall be increased year after year in such a way that they reach market price level and that subsidies need not be maintained<sup>32</sup>. **While**

<sup>30</sup> An interpretative note of the European Commission on Directive 2009/72/EC and Directive 2009/73/EC concerning retail markets is expected to provide guidance on European level.

<sup>31</sup> ECRB, Best Practice Guidelines on the Protection of Vulnerable Household Customers (Ref. R07-WGC-01-05 28-June-2007), chapter 5 and 11; [www.energy-community.org](http://www.energy-community.org).

<sup>32</sup> See as well: 14<sup>th</sup> Athens Forum, conclusion no. 14; ERGEG, End-user price regulation – An ERGEG Position Paper (Ref. E07-CPR-10-03; 2007) and ERGEG, Status review of the definitions of vulnerable customer, default supplier and supplier of last resort, Ref. E09-CEM-26-04 (9 September 2009), chapter 2.5. Under the provisions of the 3rd package regulators under their obligations have to examine supply prices and ensure that they are in line with competition policy, i.e. regulated prices must be a market levels.



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**the need for protection of vulnerable household customers is fully acknowledged, this challenge should only be addressed with market oriented instruments.**



Based on these findings the ECRB therefore recommends that

**1. The protection of vulnerable energy household customers is crucial and should be addressed by the Contracting Parties.**

- The protection of vulnerable energy household customers has to be discussed in a broader context of national social welfare systems and has **to be taken into account when implementing the Social Action Plans of the Energy Community Contracting Parties. The role of regulators needs to be clarified in this context.**

- Given the fact that protection of vulnerable energy household customers typically is part of the overall welfare system and linked to its single and connected elements, **a common regional definition of “vulnerable customers” is not recommended.** Also the 3<sup>rd</sup> EU legislative package for electricity and gas only calls for definition of “vulnerable customers” on national level<sup>33</sup>.

**2. The challenge of protecting vulnerable energy household customers in a liberalized market should only be addressed with market oriented instruments. Regulated prices should be abolished and, where necessary, substituted by instruments neutral to competition.**

<sup>33</sup> Also the Second Citizens Energy Forum in London (29-30 September 2009) also acknowledged that vulnerable customers must be defined at a national level. The definition will need to refer other social policy measures that are being used to protect vulnerable customers (Conclusions of the second meeting of the Citizens' Energy Forum, London, 29-30 September 2009).

### Annex – Status Quo Contracting Parties

Source: ECRB Report on the Implementation of the Best Practice Guidelines on the Protection of Vulnerable Household Customers (Ref: R08-GA-08-08 (2 Dec 2008)), chapter 3 topic 1.2 and 5

Definition of “Vulnerable Customers” in Contracting Parties					
Albania	Bosnia and Herzegovina	Croatia	FYR of Macedonia	Serbia	UNMIK
<p>Criteria for identification: Low level of income of the family, physical and physiological disability. Categories of vulnerable customers are: paraplegic and tetraplegic invalids, labor invalids, people with limited abilities, visor ill people unable to move including first group of invalid, unemployed groups</p>	<p>There is no single definition of vulnerable customer at a national level. Republika Srpska defined groups that can receive monthly support as follows: Pensioners with lowest pensions, Beneficiaries of permanent social financial support, disabled, maternity allowance, child support. Sarajevo Canton definition includes the following categories: households whose total revenue per member of the household does no exceed 36 €, single member pensioner less than 85€, two member pensioner household with revenue less than 113€, households in which one or more persons benefits from assistance and care of other people who are deaf and whose income is less than 62€, households where one of members are 100% disabled regardless of the income per family member</p>	<p>Not defined by legislation covering energy sector. Beneficiaries of social welfare are defined by the Social Welfare Act as unmarried persons or families without means to satisfy their basic necessities and not able to acquire them by some sort of income.</p>	<p>There is no single definition of vulnerable customer at a national level.</p>	<p>Vulnerable customers are defined by the welfare center as follows:            1. Customers using financial/welfare support;            2. Pensioners with lowest pensions;            3. Handicapped on care;            4. Foster families;            5. Families that receive financial support for the third and fourth child</p>	<p>There is no definition in primary laws. In use definition: “All customers who cannot afford to pay energy bills from their total incomes”.</p>

### Support Schemes in Contracting Parties – Tariff or Non-Tariff Based

Albania	Bosnia and Herzegovina	Croatia	FYR of Macedonia	Serbia	UNMIK
<p>Paraplegic, unable to move , visor ill people, first group invalidity pay only 20% of the monthly electricity billed consumption. From 2006, the subsidy scheme has been extended to: families with economic assistance, families that have a member with limited abilities, head member of family with invalidity pension and others do not work in public sector, head member of family with state elderly pension living alone or who has in charge any child without income, families of budgetary employees with monthly gross salary up to 270 € and other members of family is not self employed in private sector. Identification: by institution where he is employed, by himself through declaration to local government, by responsible ministry. Compensation was 4,2€/month for 200 kWh/month. The compensation is subject of increase for the increases in electricity price. Due to lack of funds in state budget in 2008 a block tariff has been introduced - 300kWh/month.</p>	<p>Non-tariff based support exist in the Republika Srpska, Sarajevo Canton and Brčko District of Bosnia and Herzegovina. Republika Srpska adopted the Vulnerable Customer Protection Program which is applicable from 1.01.2008. Defined groups can get monthly support of 100 kWh free of charge. This amount is increased to 150kWh from July 1, 2008. Funds are provided from entity budget with power utilities directly paid by the Ministry. In Sarajevo Canton, there is social allowance during 5 winter months (36€). Funds are from cantonal government budget. If allowance is used for electricity, district heating or gas, the amount is credited to the designated invoice. Otherwise, the allowance is paid to the vulnerable customer in cash.. In 2008 Government of Brčko District of Bosnia and Herzegovina introduced annual allowance from its budget for 8147 defined vulnerable customers in amount of €56. The programme is also applicable in 2009.</p>	<p>Aid for beneficiaries of social welfare cover expenses related to rent, communal levies, electric energy, gas, heating, water and other housing expenses. On July 1<sup>st</sup> 2008 Government Decision to exempt tariff customers with low consumption from the price increase until June 30 2009. The deficiency of revenue will be compensated from the State budget. Tariff customers under yearly consumption of 2000 kWh will not suffer any increase, with consumption 2001-2500 kWh/yr will have 5% increase and customers with consumption 2501-3000 kWh/yr will have to endure a 10% increase. In total, Decision will affect 45% of households.</p>	<p>The system from Government to support vulnerable customers is not yet established. The Government adopted Social Action Plans on 15<sup>th</sup> of September 2009.</p>	<p>Non-tariff based support. Social allowances are provided from the state budget and go directly to the beneficiaries. Electricity Power Company (EPS) allowed discount to customers defined by welfare centers: a first group have 35% discount for 450 kWh per month for the tariff element "active energy" all other groups have 35% discount for 350 kWh per month. Prerequisite for this discounts are accuracy in bill payment. There are no discounts for gas. For district heating, some municipalities allowed discount for vulnerable customers</p>	<p>Tariff based support: ERO approved three block tariff system aiming to protect customers with low incomes and low consumption, with slight cross subsidy. &lt; 200kWh/month; 200-600 kWh/month; &gt; 600 kWh/month</p> <p>Non tariff based support: There is no established system from government to support vulnerable customers. Only customers applying for social aid are treated as vulnerable even other categories have difficulties to pay energy bills. Support is done "ad hock" year by year with signing MoM between Min.of Labor and KEK. In 2008. Gov. has paid 4,5 mil.€ to KEK for 27,420 customers applied for social support. Customers who are qualified for this support will not be charged for consumption up to 500 kWh/month. In 2009 the MoM it is signed</p>

**Support Schemes in Contracting Parties – Tariff or Non-Tariff Based**

Albania	Bosnia and Herzegovina	Croatia	FYR of Macedonia	Serbia	UNMIK
<p>Cross subsidies between households (first block and the second block), and non households. The threshold at 300 kWh is more an efficiency measure than a social one. The price for the first block is expected to be increased in 2010. During the current rate case, remove of the block tariffs is subject of discussion, but the final decision will be on mid December 2009.</p>					<p>between Min.of Labor, MEF and KEK and it needs to be implemented. Above it they will be charged.</p>