Identification of Legal Requirements on Establishment, Operation and Participation in a South Eastern Europe Coordinated Auction Office

Kelemenis & Co
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STUDY ON THE IDENTIFICATION OF LEGAL REQUIREMENTS AND ISSUES RELATED TO THE ESTABLISHMENT AND OPERATION OF AND THE PARTICIPATION IN A COORDINATED AUCTION OFFICE IN SOUTH EASTERN EUROPE

PART 1: POSSIBLE OBSTACLES TO PARTICIPATION OF TSO AND TRADERS IN THE PLANNED COORDINATED AUCTION OFFICE IN SOUTH EASTERN EUROPE
(referred to as “task 3”)

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# TABLE OF CONTENTS

I. INTRODUCTION TO TASK 3 ...........................................................................................................6

1. Preparatory Work undertaken during the Inception Phase .........................................................6
2. Scope of Task 3 ..............................................................................................................................7
3. Methodology used in Task 3 ..........................................................................................................7
4. Characteristics of the SEE-CAO ..................................................................................................9
  4.1 Capacity Allocation Model ........................................................................................................10
  4.2 Corporate Structure of the SEE-CAO .......................................................................................10
  4.3 Operations and Management of the SEE-CAO .......................................................................10
  4.4 Services provided by SEE-CAO .............................................................................................12
  4.5 Location ................................................................................................................................12
  4.6 Commercial relationship between SEE-CAO, TSOs and Market Participants .....................12

II. EXECUTIVE SUMMARY ............................................................................................................18

III. FINDINGS OF THE NATIONAL LEGAL ORDERS .....................................................................30

  1 Harmonization of EU Legislation ...............................................................................................30
    1.1 Regional Overview ...............................................................................................................30
    1.2 Overall Conclusions ...........................................................................................................32
    1.3 Country Reviews ................................................................................................................32
      A. Albania ..................................................................................................................................32
      B. Bosnia & Herzegovina ..........................................................................................................34
      C. Croatia .................................................................................................................................36
      D. former Yugoslav Republic of Macedonia .........................................................................37
      E. Montenegro ..........................................................................................................................39
      F. Serbia ...................................................................................................................................40
      G. UNMIK ...............................................................................................................................41
      H. Greece .................................................................................................................................41
      I. Hungary ..................................................................................................................................42
      J. Romania ..................................................................................................................................42
      K. Slovenia ..................................................................................................................................43
      L. Italy .........................................................................................................................................43
      M. Bulgaria ...............................................................................................................................43

  2 Issues related to the TSO participating in the SEE-CAO .............................................................44
    2.1 Regional Overview ...............................................................................................................44
    2.2 Overall Conclusions ...........................................................................................................47
    2.3 Country Reviews ................................................................................................................51
      A. Albania ..................................................................................................................................51
      B. Bosnia & Herzegovina ..........................................................................................................53
      C. Croatia ...................................................................................................................................56
      D. former Yugoslav Republic of Macedonia .........................................................................58
      E. Montenegro ..........................................................................................................................60
      F. Serbia ...................................................................................................................................63
      G. UNMIK ...............................................................................................................................67
      H. Greece ...................................................................................................................................69
      I. Hungary ..................................................................................................................................71
      J. Romania ..................................................................................................................................74
      K. Slovenia ..................................................................................................................................78
      L. Italy .........................................................................................................................................80
      M. Bulgaria ...............................................................................................................................82

  3. License for performing auctions ...............................................................................................83
    3.1 Regional Overview ...............................................................................................................83
    3.2 Overall Conclusions ...........................................................................................................84
    3.3 Country Reviews ................................................................................................................86
      A. Albania ..................................................................................................................................86
      B. Bosnia & Herzegovina ..........................................................................................................89
      C. Croatia ...................................................................................................................................91
      D. former Yugoslav Republic of Macedonia .........................................................................92
      E. Montenegro ..........................................................................................................................94

Study on the Identification of Legal Requirements to the Establishment and Operation of and the Participation in a Coordinated Auction Office in South Eastern Europe
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8. MARKET DATA – PUBLICATION AND CONFIDENTIALITY

8.1 Regional Overview

8.2 Overall Conclusions

8.3 Country Reviews

A. Albania
B. Bosnia & Herzegovina
C. Croatia
D. former Yugoslav Republic of Macedonia
E. Montenegro
F. Serbia
G. UNMIK
H. Greece
I. Hungary
J. Romania
K. Slovenia
L. Italy
M. Bulgaria

9. ANTITRUST AND COMPETITION

9.1 Regional Overview

9.2 Overall Conclusions

9.3 Country Reviews

A. Albania
B. Bosnia & Herzegovina
C. Croatia
D. former Yugoslav Republic of Macedonia
E. Montenegro
F. Serbia
G. UNMIK
H. Greece
I. Hungary
J. Romania
K. Slovenia
L. Italy
M. Bulgaria

10. DISPUTE SETTLEMENT

10.1 Regional Overview

10.2 Overall Conclusions

10.3 Country Reviews

A. Albania
B. Bosnia & Herzegovina
C. Croatia
D. former Yugoslav Republic of Macedonia
E. Montenegro
F. Serbia
G. UNMIK
H. Greece
I. Hungary
J. Romania
K. Slovenia
L. Italy
M. Bulgaria
ANNEX I – STRUCTURE OF THE LEGAL STUDY .................................................................254
ANNEX II – CAPACITY ALLOCATION MODELS .................................................................263
ANNEX III – TABLE OF MAIN OBSTACLES / REQUIREMENTS FOR SETTING UP CAO ....266
ANNEX IV – ACKNOWLEDGEMENT .....................................................................................269
I. Introduction to Task 3

1. Preparatory work undertaken during the Inception Phase

The Consultant completed Tasks 1 and 2 of the Project during the 1st month of the Project’s course (Inception Phase) as well as all preliminary and preparatory work for the time efficient carrying out of the remaining Tasks 3 and 4 of the Project. The findings of such work can be found in the Inception Report to this Study. In summary, we note that during the Inception Phase, the Consultant undertook and completed the following tasks:

- **Preliminary research.** In particular, the Consultant conducted a research and reviewed:
  
  - local energy laws, Market Rules, Grid Codes, and secondary legislation related to congestion management and allocation of cross border transfer capacity, wherever English-language versions were available, on the websites of the TSOs and Regulators.
  
  - reports and studies on compliance monitoring of Regulation 1228/2003 and the Congestion Management Guidelines and coordinated auction offices in various sources (e.g. Energy Community Secretariat, ECRB, ETSO, CEER, ERGEG, EFET etc.).
  
  - documents related to the SEE-CAO such as (i) the Business Plan presented by SETSO at the 13th Athens Forum, (ii) the Due Diligence Report presented by Hunton & Williams LLP on 30 November 2007 for USAID, (iii) the Action Plan approved by the SEE-CAO IG in 2008, (iv) the Conclusions from the 1st Interregional Workshop on Coordinated Congestion Management held on 21 October 2008, (v) the Conclusions from the 13th Athens Forum, (vi) the Conclusions and Presentations at the 5th Ministerial Council held on 11 December 2008 in Tirana and (vii) the MoU presented at the 5th Ministerial Council circulated for signature;

- **Preliminary/preparatory work.** The Consultant prepared and sent introductory letters and held ongoing conference calls with officials representing the national stakeholders (i.e. Regulators and TSOs) in the 13 jurisdictions in order to provide necessary information and clarifications regarding the objectives of the Study and to inform the stakeholders the necessary input required of them during Task 3.
• **Task 1.** The Consultant provided a summary of the main findings of existing studies on the legal, regulatory and administrative barriers for the participation of national TSOs and traders in the establishment and operation of the South East Europe Coordinated Auction Office (SEE-CAO);

• **Task 2.** The Consultant prepared a Questionnaire in English as a pre-listing of possible legal, regulatory and administrative requirements in order for the TSOs in the 8th Region to participate in the SEE-CAO. The Questionnaire was circulated to all 13 TSOs and Regulators and constituted the basis of the Study which was the object of Task 3.

2. **Scope of Task 3**

The scope of Task 3 is the screening of the legal orders of the 13 jurisdictions covered in the 8th Region [i.e. Albania, Bosnia & Herzegovina, Croatia, the former Yugoslav Republic of Macedonia, Montenegro, Serbia, the territory under administration by The United Nations Interim Administration Mission in Kosovo (pursuant to United Nations Security Council Resolution 1244), Bulgaria, Greece, Hungary, Romania, Slovenia and Italy (NB: Italy belongs to the 8th Region with regard to its interconnections with South East Europe)] with the objective of producing a written Report identifying the legal, regulatory and administrative requirements in the existing national primary and secondary legislation within the local jurisdictions in order for the local TSOs to be able to participate in the establishment and operation of the SEE-CAO, as the SEE-CAO is envisaged in the Business Plan presented by SETSO at the 13th Athens Forum and in accordance with the clarifications provided at the 8th SEE CAO IG Meeting held in Budva on 20 January 2009 (please see section 4 below for further details).

The present Report constitutes the findings and result of the work undertaken within Task 3. The Study began on 1 January 2009.

3. **Methodology used in Task 3**

The screening of the legal orders of the 13 jurisdictions in order to identify what is required from a legal, regulatory and administrative basis for the local TSOs to be able to participate in the establishment and operation of the SEE-CAO was carried out on the basis of the Questionnaire prepared by the Consultant in Task 1 during the Inception Phase (please see section 6 of the Inception Report).
The Questionnaire was circulated to all 13 TSOs and Regulators during the first week of January 2009 with the request that they review the Questionnaire and address the issues therein. The direct involvement of the national stakeholders and their legal departments was necessary for the following two crucial reasons:

- Most of the questions were directed and intended especially for the TSOs and Regulators and therefore their input was vital to the success of the Report;
- The national stakeholders carried out a preliminary review of the legal issues involved so that they could be better prepared for their TSO’s participation in the SEE-CAO.

In order to ensure that the screening process of the legal orders of each of the 13 jurisdictions is fully and comprehensively reviewed, the Consultant initiated from the beginning two-way communication lines with the appropriate departments within the TSOs and the Regulators of all 13 jurisdictions with the aim of working closely with these departments in order to ensure that the national stakeholders had a clear understanding of the issues addressed in the Questionnaire and that there was a smooth and constant flow of information between the Consultant and the national stakeholders.

Moreover, the Consultant scheduled and conducted on-site visits to the TSOs and the Regulators in the 8th Region (with the exception of Italy and Bulgaria) during the months of January, February and March 2009 in order to:

- carry out meetings with the TSOs and the Regulators and their legal counsel;
- facilitate the process of accumulating the responses to the Questionnaire as well as all relevant national primary and secondary legislation.

Following the meetings, the national stakeholders provided the Consultant with their input with respect to the issues in the Questionnaire. The Consultant, having reviewed the responses provided by the national stakeholders and the relevant national primary and secondary legislation, carried out follow up communications with the TSOs and the Regulators, where necessary, for purposes of completeness and accuracy. With the conclusion of the follow up communications, the Consultant prepared the present Report.
The Consultant would like to note that the final structure of the issues presented in this Report (please see Annex I herein), albeit based on the Questionnaire provided to the national stakeholders (please see section 6 of the Inception Report), has been slightly restructured from the initial Questionnaire. This restructuring, although by no means reducing the issues of the Questionnaire, was a result of the communications the Consultant had with the national stakeholders and the responses received.

Lastly, given the volume of the report and in particular section III “Findings of the National Legal Orders” we would like to note that this section is divided into 10 main legal topics. For purposes of conciseness, the reader could limit himself/herself to perusing the “Regional Overview” and the “Overall Conclusions” subsections of each legal topic in conjunction with “Table of Main Legal Obstacles – Requirements for setting up the SEE-CAO” found in Annex III of this report in order to get an overview of the legal issues involved and refer to the country reports in each legal topic section for further details, if required.

4. Characteristics of the SEE-CAO

On the basis of:

- the Business Plan prepared and approved by the SETSO TF,
- the Minutes of the 8th SEE-CAO IG Meeting in Budva on 20.1.2009 (which took place following the preparation and approval of the Business Plan),
- the work the Consultant has undertaken and the meetings he has concluded thus far with national stakeholders during the Inception Phase and the 2nd Stage of the Project (Task 3) and
- the Consultant’s communication with other consultants involved in the SEE-CAO project

we provide below the form and structure of the SEE-CAO, the capacity allocation model to be initiated ("coordinated explicit load-flow based auctions" vs "coordinated bilateral NTC-based auctions"), the nature and type of services the SEE-CAO will provide the TSOs’ of the 8th Region and the legal relationship the SEE-CAO will have with the Market Participants and the TSOs.
4.1 **Capacity Allocation Model**

According to the Business Plan for the formation of the SEE Auction Office prepared by SETSO TF, the model of the SEE-CAO is aimed at capacity allocation based on coordinated explicit load-flow based auctions. However, before achieving the final approach of a region wide flow-based allocation scheme, the national stakeholders concluded at the 8th SEE-CAO IG Meeting that the initial capacity allocation mechanism could be based on coordinated bilateral NTC-based auctions as an intermediate stepping stone.

4.2 **Corporate Structure of the SEE-CAO**

The SEE-CAO will be established in the form of a limited liability company, owned and operated by the regional SEE TSOs. Although limited liability companies are profit-oriented companies, the aim of the SEE-CAO is to operate on a very small (in the event investments are required for the following year) or zero net profit margin.

The founding member TSOs (it is likely that not all TSOs will initially join the SEE-CAO) will contribute equally to the share capital, each one holding the same number of shares. The remaining TSOs in the 8th Region (i.e. non founding members of the SEE-CAO) will be allowed to join the SEE-CAO as additional shareholders, if agreed by the existing shareholders and on the condition that they will participate in the auction mechanism.

In order to establish the SEE-CAO, different agreements will have to be concluded, such as the Articles of Association, the Agreement for syndication, Service Level Agreements between TSOs and the SEE-CAO and Inter-TSO Agreements.

4.3 **Operations and Management of the SEE-CAO**

The SEE-CAO will have the following operational and management features:

- **Management** will be responsible for the day to day activities of the SEE-CAO. One Managing Director elected by the TSOs shall manage the SEE-CAO in the first period of start-up (e.g. first 2 years). He/she will coordinate and supervise the staff as well as negotiate and conclude contracts between the SEE-CAO and its partners.

- The **Supervisory Board** will consist of the shareholders, i.e. the TSOs, and will represent the economic interests of the shareholders. Management will be bound by the decisions of the Supervisory Board and it will have to report to it on a regular basis.
- The **IT Department** will be part of the SEE-CAO. It will provide the technical services for coordinated auctioning as well as necessary ancillary services – such as scheduling support, online risk management assessment and billing.

- The **Risk Management Office** (RMO) will be a department within the SEE-CAO. The Market participants will provide risk management instruments to cover credit limit risks and they will be allowed to bid up to the credit limit provided. The RMO will be in charge of defining acceptable risk management instruments and administration of risk management instruments provided by market participants and corresponding credit limits. The risk management Instruments provided in the Business Plan are: (i) bank guarantees, (ii) deposits, (iii) promissory notes and (iv) custody accounts.

The figure below outlines the overall operations and management structure of the SEE-CAO.
4.4 **Services provided by SEE-CAO**

The main services or responsibilities of the SEE-CAO will include the following:

1. Coordinated merging and processing of data provided by TSOs;
2. Coordination of calculations performed by TSOs;
3. Market and customer Interface;
4. Comprehensive risk management services;
5. Execution of coordinated auctions and controlling auction results;
6. Calculation of congestion income distribution;
7. Issuing of Settlement Notifications;
8. Scheduling communication (interface TSOs and Traders);
9. Secondary market services for trading of PTRs

From the Business plan it is evident that the SEE CAO will not be allocated any authority on matters related to security of supply, which shall remain within the exclusive powers of the national governments and TSOs. Moreover, the SEE CAO will not own transmission assets, it will not manage national transmission systems or cross border interconnections and it will not provide access to the network. All these matters will remain within the competencies of the national authorities.

4.5 **Location**

Following the conclusions from the 5th Ministerial Council on 11 December 2008 in Tirana and the agreement of the TSOs, the location of the SEE-CAO will be in Montenegro.

4.6 **Commercial relationship between SEE-CAO, TSOs and Market Participants**

A. According to the Business Plan
Study on the Identification of Legal Requirements to the Establishment and Operation of and the Participation in a Coordinated Auction Office in South Eastern Europe

The Business Plan stipulates (page 11, section 3.1.4) that “In order to allow for distribution of auction incomes to the shareholders during the year and to avoid issues related to the corporate taxes it is recommended to set up the company to do transactions “for the account of another”. With such a construct the Auction revenues are not part of the balance sheet of the CAO and thus also possible taxation problems have less priority.”

Furthermore, the Business Plan stipulates (page 19, section 3.6.5) that “The settlement notification process performed by CAO is necessary for TSOs to prepare and submit invoices to market participants in automated way.”

On the basis of the above wording, it seems that the Business Plan envisages the SEE-CAO exclusively as a “service provider” to the TSOs providing the services noted above in section 4.4 and not as a “contracting” or “invoicing” party with any Auction Participant. In particular, when interfacing with Market Participants and executing coordinated auctions, the SEE-CAO will make known to Auction Participants that it is acting and entering into transactions in the name, on behalf and on the account of the TSOs. The above structure has the following legal characteristics:

1. The commercial relationship arising from the auctions will be concluded directly between the TSO and the Auction Participant and not between the SEE-CAO and the Auction Participant. In this case, the result of the auction will be commercially binding between the particular TSO and the Auction Participant and there will be no liability for the SEE-CAO.

2. Each TSO will invoice the Auction Participant directly for the congestion income.

3. In the event the SEE-CAO receives payment from the Auction Participant on the basis of the invoice issued by the TSO, this payment will be recorded in the SEE-CAO’s accounting books, however, not as the SEE-CAO’s income but as an off balance third party income.

4. The SEE-CAO will invoice the TSOs for its services on a cost basis.
The Consultant notes that the above structure may be feasible in the event of coordinated bilateral NTC-based auctions. However, this structure would have considerable legal complications and problems, in the event of coordinated explicit load-flow based auctions. In particular, in the event of load-flow based auctions, it is not apparent or certain (at least at the time of the auction) which path the TSOs will use to carry out the obligation to transfer power from the “source” to the “sink” and therefore it is not apparent or certain (at least at the time of the auction) which and how many TSOs will be the actual contracting parties and who will eventually be performing the allocation, thus being entitled to the congestion income.

The above commercial relationship is justified in the Business Plan (page 11) as follows:

In the event the SEE-CAO issued an invoice to an Auction Participant in connection with congestion income arising from a particular auction for a particular interconnection, the respective TSOs would have to issue invoices to the SEE-CAO for each one’s portion of that congestion income.

In this case, the congestion income paid by the Auction Participant to the SEE-CAO and from the SEE-CAO to the TSO respectively would go through the SEE-CAO’s accounts as income (based on the SEE-CAO’s invoice issued to the Auction Participant) and at the same time an expense (based on the TSOs’ invoice issued to the SEE-CAO), thus leaving a nil result in the SEE-CAO’s Profit and Loss Account and corporate tax statement.

At the same time, this would allow the TSOs to receive payment of their corresponding congestion income upon issue of their respective invoice.

B. Following clarifications provided at the 8th SEE-CAO IG Meeting in Budva
According to the Minutes of the 8th SEE-CAO IG Meeting, SETSO TF clarified that “it is envisaged that the future CAO will be responsible for invoicing, collecting and distributing revenues as described within the Business Plan.”

Notwithstanding the comments in section A above, on the basis of the above clarification with respect to the auctioning of cross border capacity, it is understood that the SEE-CAO will take a more active commercial role and in particular that of a “contracting” and “invoicing” intermediating counter party in a triangular commercial structure between the SEE-CAO, the TSO and the Auction Participants.

With respect to the auctioning of cross border capacity, the triangular commercial structure will be set up approximately as follows:

1. The SEE-CAO will execute coordinated auctions of cross border capacity on the borders between the TSOs in the 8th Region according initially to coordinated bilateral NTC-based auctions (the Auctions) in its name but on behalf of the TSOs (coordinated explicit load-flow based auctions will take place at some time in the future).

2. The SEE-CAO will represent and bind the TSOs and the TSOs will commit themselves to accept the results of the common auctions executed by the SEE-CAO.

3. The contractual relationship arising from the result of any Auction will be directly between the SEE-CAO and the Market Participants who will have submitted the winning bids. According to this contractual relationship, the SEE-CAO promises the allocation of the capacity to the Market Participants who submitted the winning bids.

4. The TSOs will commit themselves to accept the results of the common auctions executed by the SEE-CAO and allocate the capacity promised by the SEE-CAO to the Market Participant, according to the Common Auction Rules. The Consultant notes that the Auction Rules should stipulate that the TSOs will carry out the transmission services in accordance with their individual respective prerequisites, the legal requirements applicable to them and their mandatory national laws.

5. Following the announcement of the winning bids (to the TSOs and the Market Participants), the SEE-CAO will issue an invoice to the Market Participants who submitted the winning bids.
6. Following the issue and receipt of the SEE-CAO’s invoice, the Market Participants will pay the congestion income to the SEE-CAO within the deadline set out in the invoice.

7. Following the announcement of the winning bids and the issue of the SEE-CAO’s invoice, the TSOs (whose interconnection capacity was auctioned by the SEE-CAO) will then issue an invoice to the SEE-CAO for the congestion income it is entitled to according to the TSOs agreement. Payment of this invoice should be done on a regular basis and in any event perhaps before use of the capacity in the cases of monthly and yearly auctions.

8. The SEE-CAO should not make any “profit” from the allocation of interconnection capacity and not “mark down” the congestion income due to the corresponding TSOs. In this manner, 100% of the congestion income received by the SEE-CAO will be redistributed to the TSOs accordingly.

9. The redistribution of the congestion income will be made in the form of “income” due to the TSOs on a regular basis during the course of the entire year and not as “dividend” at the end of the SEE CAO’s fiscal year. Therefore, the TSOs can expect regular and prompt payments of the congestion income due to them.

10. Notwithstanding the above, the SEE-CAO will also invoice the TSOs for its services on a cost basis in order to cover its annual capital expenditures and working capital needs.

The Consultant notes that the above structure may be feasible in both coordinated bilateral NTC-based auctions and in coordinated explicit load-flow based auctions.
II. Executive Summary

We provide below a summary of the main legal, regulatory and administrative obstacles - requirements that should be taken into account by the local TSOs and Regulators in their effort to set up and operate the SEE-CAO. The reader of the report should refer to the relevant sections per topic for further details on the main issues below as well as on some additional secondary matters that may be of relevance:

1. Harmonization of EU Legislation

1 Currently, the legal orders of the SEE region do not have uniform rules regarding conditions for access to the network for cross-border exchanges in electricity. The legal basis for the 6 EU countries in the SEE region is EC Regulation 1228/2003/EC and the Congestion Management Guidelines which are directly applicable in their national legislation. On the other hand, these provisions do not have direct and automatic effect/application in the legal orders of the other 7 jurisdictions, albeit the local legislation makes general reference to them or to EU Directives.

2 Although the majority of non EU jurisdictions have made legislative progress aligning their national laws with EU legislation, the majority of the non EU jurisdictions will have to continue their efforts in fully aligning their national primary and secondary legislation with EC Regulation 1228/2003/EC and the Congestion Management Guidelines.

3 The current status of legal orders in the SEE region with respect to conditions for access to the network for cross-border exchanges in electricity will constitute a legal obstacle for the SEE-CAO to be able to establish and operate effectively “coordinated explicit load-flow based auctions” as the main capacity allocation model for the SEE-CAO, given that this model presupposes stronger and deeper integration, cooperation and coordination throughout the 8th Region, thus a more harmonized legal regime throughout the region. On the other hand, until all non EU jurisdictions in the 8th Region fully harmonize their legislation with EC Regulation 1228/2003/EC and the Congestion Management Guidelines, the SEE-CAO could and should be set up and operate by using coordinated bilateral NTC-based auctions as the initial capacity allocation mechanism and an intermediate stepping stone to “coordinated explicit load-flow based auctions”.

Study on the Identification of Legal Requirements to the Establishment and Operation of and the Participation in a Coordinated Auction Office in South Eastern Europe
2. The TSOs participating in the SEE-CAO

1 All TSOs can participate in the sharecapital of the SEE-CAO and no amendments in the founding acts or primary or secondary legislation are required.

2 As concerns the “outsourcing model” to be used for allowing the SEE-CAO to carry out the auctioning of cross border capacity allocation (i.e. assignment structure vs agency structure vs service provider structure) the following should be taken into account:

2.1 Implementing the assignment structure in the SEE Region is not possible given that most jurisdictions do not allow their TSO to assign any right regarding the allocation of available cross border transfer capacity.

2.2 The SEE jurisdictions (with the exception of Albania) do not have any legal obstacles in allowing their TSOs to enter into agreement(s) with the SEE-CAO for the latter to carry out auctions for the allocation of cross border capacity on the national borders in the name of the SEE-CAO but on behalf of the TSOs. In the case of Albania in particular, there seems to be a legal obstacle, in which case, an amendment of the relevant provisions of the Albanian legislation must be made.

2.3 All jurisdictions allow (i.e. they do not prevent or restrict) their TSOs from entering into a service agreement with the SEE-CAO to carry out auctions for the allocation of cross border capacity on the national borders in the name and on behalf of the TSOs.

3 In many cases, in order for the owner / sole shareholder / general assembly / supervisory board to take a decision, they will require to review all documents (i.e. Articles of Association, agreements for syndication, SLAs, Inter TSO Agreements) before they can provide their approval. For this reason, the TSOs must begin immediately drafting and negotiating the terms and conditions of these founding and commercial agreements, as the approval of such documents will prove to be a lengthy procedure.

4 With the exception of Albania, the Former Yugoslav Republic of Macedonia, Slovenia and Italy, in all the other jurisdictions the TSOs must obtain the approval of their national regulators. The approval does not constitute an obstacle but an additional legal requirement at national levels in realizing the establishment and operation of the SEE-CAO, which entails further administration and time.
5 None of the TSOs (with the exception of Romania) have assumed any contractual or financing obligations or have any litigation vis a vis third parties that would impede their participation in the SEE-CAO. The Romanian TSO has the obligation to inform its Lenders and seek the consent of the EBRD before it can participate in the SEE-CAO.

3. License for performing Auctions

1. All TSOs/ISO in the 8th Region are licensed to allocate cross border capacity and based on this license they can participate in the SEE-CAO, without any legal obstacles or additional regulatory requirements. No amendment to the existing licenses are required. The duration and expiration date (if existing) of the licenses should be reviewed by the individual TSOs to ensure that each TSO participating in the SEE-CAO has a minimum license period.

2. The SEE-CAO (with the exception of Romania) will not require, according to national legislation, a separate license by any of the national Regulators of the SEE region in order to conduct auctions for cross-border capacity allocations on the national borders in SEE-CAO’s name but on behalf of the TSOs provided the SEE-CAO’s role is limited to conducting the auctioning function required for the national TSOs to allocate the cross border capacity. It should be noted that, according to Romanian law, the SEE-CAO will need to be licensed by the Romanian Regulator in order to be able to auction cross border capacity on behalf of the Romanian TSO.

3. As concerns the regulatory and administrative framework in each jurisdiction with respect to the extent and degree each Regulator monitors its TSO, we note that although some of the general obligations are similar in every jurisdiction, each TSO has different regulatory obligations of varying degree, depending on the relevant powers bestowed on the Regulator in each jurisdiction. Given that the Regulators will have no powers or contractual relationship with the SEE-CAO, the agreements to be signed among all TSOs and the SEE-CAO for the operation of the latter must contain the specific national regulatory obligations each TSO has vis a vis its Regulators with respect to their “licensed” duty of allocating cross border capacity on their national borders so as to ensure that the SEE-CAO assumes the contractual obligation to facilitate, support and endorse these regulatory obligations.
4. The regulatory differences among the jurisdictions in the 8th Region may constitute a legal obstacle for the SEE-CAO to be able to establish and operate effectively "coordinated explicit load-flow based auctions" because this model presupposes a more harmonized legal regime throughout the region. Initially and until the TSO-Regulator relationship throughout the 8th Region becomes more harmonized and uniform, the SEE-CAO should use coordinated bilateral NTC-based auctions as the initial capacity allocation mechanism and an intermediate stepping stone to "coordinated explicit load-flow based auctions".

4. Regulatory – Supervisory Authority over the performance of Auctions

1. All Regulators in the 8th Region approve auction rules, with the exception of the Regulator of the Former Yugolsav Republic of Macedonia (which is supposed to change following the next amendment of the Energy Law which is scheduled to take place by the end of 2009). In the event of the SEE-CAO, the coordinated auction rules will have to be approved by the national regulators. Given the number of national Regulators, it is vital that the TSOs begin immediately drafting the Auction Rules so that any specific regulatory issues are detected from the beginning and resolved with any necessary corrective measures.

2. According to national legislation and international public law, the Regulators will no longer, according to the present regulatory regime, have the ability and power to directly monitor and enforce its national primary and secondary energy legislation directly on the SEE-CAO (if the SEE-CAO is not located in the jurisdiction of the TSO). The solution to this legal obstacle is two fold:

   a. According to present regulatory regime, the regulatory supervision can be carried out indirectly through the monitoring of each one’s TSO, given that the SEE-CAO’s actions will be undertaken on behalf of the national TSOs. In order to be able to do so, the Regulators will have to impose certain conditions on their TSOs for the latter to provide in their agreements with the SEE-CAO for the implementation of mechanisms so that TSOs may be in the position to fulfill their regulatory obligations vis a vis the Regulators and for the Regulators to be able to carry out their regulatory duties.
b. The above regulatory obstacle may also be resolved by introducing in the future new regulatory institutions. In particular, the regulatory obstacle in the 8th Region may be resolved within the framework of the Energy Community, whereby the Ministerial Council may empower the ECRB to undertake certain regulatory tasks required on a regional level in order for the national Regulators to be able to address regulatory issues that require multilateral regulatory intervention.

3. Reporting obligations by the TSOs to their national Regulators vary from jurisdiction to jurisdiction. Given that the Regulators will have no regulatory powers or contractual relationship with the SEE-CAO, the agreements to be signed among all TSOs and the SEE-CAO must contain special terms and conditions for specific reporting obligations so as to ensure that the SEE-CAO assumes the contractual obligation to facilitate, support and endorse such reporting requirements.

4. Notwithstanding the Regulators general duty to approve the auction rules, monitor the SEE-CAO through their TSOs, and hear complaints filed by market participants for regulatory matters (i.e. disputes on TPA) the actual performance of auctions for cross-border capacity allocations will not require further involvement or prior approvals from the national Regulatory Authorities. To this effect, there are no national legal obstacles or additional regulatory requirements in order for the SEE-CAO to carry out auctions as purely commercial transactions.

5. **Cooperation among Regulators and Supervisory Authorities**

   1. According to the legal regime of several of the jurisdictions in the 8th Region, there is an obstacle in the legal capacity of the Regulators to enter into legally binding agreements with other regulators for common monitoring of the SEE-CAO, thus presenting a legal obstacle in the efficient and effective monitoring of the SEE-CAO. The same applies in the event an Advisory Board was created within the SEE-CAO.

   2. A possible solution to the above regulatory obstacle could be to use the institutional framework of the Energy Community in order for the ECRB to be set up as an institution of the Energy Community in which regulators cooperate. In this case, the Ministerial Council of the Energy Community may empower the ECRB to take legally binding decisions on issues regarding dispute resolution mechanisms, monitoring of the SEE-CAO, auditing the SEE-CAO’s books of account, etc. The Regulators seem to be in accord with this solution.
3. One of the main obstacles related to the ability of Regulators to cooperate among themselves is the Regulators’ legal limitation from sharing information classified as “confidential” either for commercial, public or national purposes with third parties that are not deemed national public authorities, according to their national legislation. This legal and regulatory obstacle must be resolved in order for the Regulators to be able to effectively monitor jointly the SEE-CAO. From a legal perspective, the issue of the Regulators sharing “confidential” information could be resolved if national legislation were amended (with the condition of reciprocity) in the 8th Region empowering Regulators to share “confidential” information with other Regulators either on a bilateral basis or within the institutional framework of the Energy Community, on the condition that the legal entities providing such information are informed of this possibility.

4. There are no uniform rules regarding what constitutes “confidential” information, each national legislation having different criteria. Uniform regulation (lex specialis) would need to be adopted throughout the 8th Region to overcome this legal obstacle.

6. Capacity Allocation Auction Rules

1. As noted above, in order for the SEE-CAO to be used for undertaking auctions, the coordinated auction rules would have to be approved by each Regulator individually, according to existing national legislation. This does not create a legal obstacle but rather an additional and fairly difficult administrative burden/requirement as the coordinated auction rules will need to be approved by 13 different regulators, each one with its own timeframe, rules and requirements. A possible solution to the above administrative constraint could be for this matter to be addressed at a regional level within the framework of the Energy Community Treaty if the ECRB were to be empowered by the Ministerial Council to undertake the approval of the coordinated auction rules. Until the matter is resolved on a regional level, the coordinated auction rules will still have to be approved by each Regulator individually.

2. The individual national legislations have some general similarities but specific differences regarding various issues such as limitation of liability and the definition of “force majeure” and “emergency situation”. These differences constitute a legal obstacle in the TSOs’ efforts to create and operate efficiently the SEE-CAO and therefore it is imperative for the sake of certainty and clarity in the market that these issues be harmonized in the coordinated auction rules.
3. It should be noted that as concerns the auction model, the differentiation of some of the terms and conditions in the coordinated auction rules per jurisdiction may be possible in the event the SEE-CAO adopts the use of “coordinated bilateral NTC-based auctions”, which effectively constitutes, from a legal perspective, a triangular legal relationship between the SEE-CAO – the TSO – Auction Participant the object of which is the cross border allocation of capacity on one specific border. However, such differentiation may not be possible in the event the SEE-CAO adopts the use of “coordinated explicit load-flow based auctions” because this mechanism presupposes a uniform internal market in the 8th Region with harmonized legal rules throughout the region.

4. According to current national legislation, commercial differences between the TSO and the Auction Participant arising from the auction and the allocation of cross border capacity are filed and settled before national civil courts, unless the difference relates to regulatory issues, in which case, it is resolved by the national Regulator. In the event the SEE-CAO undertakes the auctioning of cross border capacity allocation as a separate contracting-invoicing vehicle, whereby a three party legal relationship arises between the SEE-CAO – the TSO – Auction Participant, the TSOs will have to agree in the SLAs and the Inter-TSO agreement (this is permissible according to national legislation) that commercial disputes arising from the auctioning of cross border capacity between the SEE-CAO, the TSO and the Auction Participant will be settled in the same foreign or international arbitration tribunal to be agreed by all TSOs, otherwise we may be faced with the possibility that the same dispute within the triangular relationship among the SEE-CAO – the TSO – Auction Participant will end up in two different courts of law with the possibility of having two conflicting court decisions.

5. Each jurisdiction in the 8th Region has different requirements that Auction Participants must satisfy in order to be able to participate in the allocation of cross border capacity. The various requirements are related to the particular obligations existing in each jurisdiction arising from the subsequent scheduling and nomination of the capacity. It should be noted that the differentiation of requirements per jurisdiction may be possible in the event the TSOs choose “coordinated bilateral NTC-based auctions”. However, the differentiation of requirements will not be possible in the event the SEE-CAO adopts the use of “coordinated explicit load-flow based auctions”
6. Given the current national legislation in some of the 13 jurisdictions, if there was agreement on the issue of one standardized “traders license” which would be valid at least for “horizontal” movement throughout the region, this license would not be recognized in the majority of the jurisdictions in the 8th Region (with the exception of Slovenia and Italy which do not require licenses).

7. Accounting and Taxes

1. With the exception of Albania, according to national accounting rules, there are no accounting restrictions or limitations that would prevent or prohibit the SEE-CAO from being used as a contracting-invoicing company. No legislative or administrative measures are required on a national level to facilitate such an invoicing – contracting structure. In Albania in particular, this matter requires further investigation with local accounting rules.

2. As concerns whether the SEE-CAO must charge VAT to the Auction Participants for congestion income it allocated on behalf of EU TSOs (i.e. Bulgaria, Greece, Hungary, Italy, Romania and Slovenia), according to the general principles of EU VAT legislation and based on current VAT practice exercised by EU member states conducting common auctions, since the restructuring is being effected for genuine business purposes and not for tax avoidance purposes, if the SEE-CAO were to perform auctions on behalf of the EU TSOs, the SEE-CAO should not be subject to the local VAT laws of the TSO (i.e. local VAT) and therefore its invoices would not have to charge local VAT. This scenario has been tested, as it is currently in operation among EU member states.

3. On the basis of the above, there does not seem to be a problem with respect to companies from other EU member states invoicing on behalf of the local TSO. However, there is no relevant VAT experience in similar situations when the TSO or any other company undertaking auctioning activities on behalf of the local TSO is not from a neighbouring EU member state (i.e. if the SEE-CAO is from Montenegro). On the basis of the above, the VAT issue needs to be examined carefully and a question must be filed with the national EU Ministries of Finance or the EU Commission enquiring whether the SEE-CAO duly established and operating out of Montenegro must appoint a local fiscal representative in order to deal with local EU VAT.

4. The above VAT issues may also apply accordingly to non EU member states.
8. Market Data – Publication and Confidentiality

1. The majority of the jurisdictions have more or less extensive “confidentiality” obligations and very rigid administrative rules with respect to the TSO’s and the Regulator’s ability to share information classified as “confidential” by national laws. The majority of jurisdictions provide for the ability to divulge information only to national state authorities, organizations and institutions under certain conditions. This problem constitutes a major legal obstacle in creating an “integrated Internal Electricity Trading Market” in the 8th Region through the proper operation of a SEE-CAO and the effective monitoring of the SEE-CAO by the Regulators.

2. A possible solution to the above “confidentiality” issue may be for national legislation in the jurisdictions of the 8th Region to provide, under certain conditions and guarantees, specifically (*lex specialis*) the power to the TSOs on the one hand to be able to share information classified as “confidential” with the SEE-CAO (given that the SEE-CAO operates as an “agent” for the TSO and the TSO is a shareholder and a member of the SEE-CAO’s supervisory board), and to the Regulators on the other hand to share such information among themselves and/or in the framework of a particular regional regulatory institution (i.e. the ECRB).

3. Another obstacle is the differentiation of criteria and rules that each jurisdiction has for classifying information as “confidential”. Following agreement among all TSOs and Regulators, the national laws in the 13 jurisdictions should adopt in their national legislation special and uniform rules (*lex specialis*) regarding what criteria constitutes information as “confidential” for the electricity sector.

4. Moreover, data published by the national TSOs may also differ slightly from jurisdiction to jurisdiction, although there is a degree of convergence due to the TSOs involvement in UCTE and ETSO.

5. In the legal order of EU member states, there is no preferential access to “reserved” cross border transmission capacity, known as “already allocated capacity” (“AAC”). AAC exists in some non EU jurisdictions of the 8th Region, with different rules. The legal entity that has PSOs is not required to bid for congested capacity or pay the congestion fee paid by winning bidders for any capacity set aside for it.
6. The degree of required harmonization of national legislation in each of the 13 jurisdictions with respect to the above (i.e. criteria used to classify information as “confidential”, national legal obligations and administrative rules regarding the sharing of “confidential” information, AAC etc.) is dependent highly on the capacity allocation mechanism that will be selected by the TSOs to undertake auctions. In particular, the use of “coordinated explicit load-flow based auctions”, which presupposes a uniform internal market with a higher degree of cooperation and transparency among stakeholders, the national legislation in each of the 13 jurisdictions must be uniform and harmonized. Until such harmonization, the SEE-CAO should initially operate with “coordinated bilateral NTC-based auctions” as the initial capacity allocation mechanism and an intermediate stepping stone to “coordinated explicit load-flow based auctions”.

9. Antitrust Competition

1. In some jurisdictions the participation of their TSO in the SEE CAO may (i.e. pending final agreement on the nature of the service to be provided by the SEE-CAO, the legal relationship between the “SEE-CAO - TSOs – Auction Participants” and the terms and conditions of the agreements to be signed among the TSOs) create an obligation for notifications or approval from the national Competition Authority whereas in other jurisdictions, since the TSO will not be ceding any licensed rights regarding the allocation of cross border transmission capacity, the participation of the TSO in the SEE-CAO should not create any obligation for notifications or approval from the national Competition Authority.

2. Some jurisdictions will likely have to file notifications with their national Competition Authorities. However, it is noted that even in the event that these jurisdictions will be required to notify or receive the approval of their national Competition Authorities, this should not be perceived as a legal obstacle but rather as an additional administrative requirement because the risk of receiving a refusal is very low and only some time delay in the implementation process may be encountered.

3. As concerns the EU countries, if the SEE CAO received approval from the European Commission for Competition this should relieve the EU TSOs and Regulators from their obligation to notify or acquire approval from their national Competition Authorities.
4. Unlike in the European Union, there is no single Directorate General from which to seek a ruling on the anti-competitive effects of establishing a centralized coordinated auction office. Therefore, where necessary in the non EU countries, notifications with the national competition authorities may be required.

10. Dispute Settlement

1. As concerns whether there are any constitutional or other legal barriers that would prevent national Regulators from agreeing to arbitration by a panel of experts as a means of resolving disputes with other regulatory authorities, some jurisdictions have clear provisions preventing such agreement whereas in some other jurisdictions it is likely that the Regulators would not be able to agree to an arbitration panel as there are no provisions under national law envisaging this possibility. In order for Regulators to be able to agree to the above, amendments to national laws would be required and in some jurisdictions amendments to the Constitution (Italy).

2. A possible solution to the above issue could be the use of the mechanisms available for resolution of disputes between regulators within the framework of the Energy Community envisaged under Art. 90-93 of the Energy Community Treaty.

3. All the TSOs can agree to be subject to a foreign governing law and a foreign court or arbitration, with the exception of cases of mandatory national legislation that does not allow deviation.

4. As concerns the TSOs agreeing to be subject to a foreign governing law and a foreign court or arbitration, we note the following:

   a. International arbitration should be the dispute resolution mechanism of choice among TSOs. Therefore, all agreements to be signed among the TSOs which will govern the relations between the TSOs, the Auction Participants and the SEE-CAO should have provisions stipulating the same governing law and the same arbitration tribunal in the event of any dispute among the contracting parties.

   b. With regards to the type of arbitration selected, the TSOs can choose to use “ad hoc” rules or the rules of UNCITRAL or arbitral institutions such as the International Court of Arbitration established by the International Chamber of Commerce in Paris, the London Court of International Arbitration, the Arbitration Institute of Stockholm Chamber of Commerce.
c. In light of the above, the TSOs should elect to use the law of a neutral third country with a well-developed commercial legal system to govern the commercial relationships of the TSOs and dispute resolutions and arbitrations.

d. Notwithstanding the above, a restriction on the choice-of-law clause is that parties cannot avoid otherwise applicable mandatory national laws and lex loci arbitri (local procedural laws).
III. Findings of the national Legal Orders

1 Harmonization of EU Legislation

1.1 Regional Overview

Preliminary Note: We would like to note that our findings regarding the harmonization of national legislation with EC Regulation 1228/2003/EC and the Congestion Management Guidelines are based on current reports filed with the Energy Community Treaty Secretariat, the Energy Community Regulatory Board and ERGEG, the replies we received from the national Regulators and our perusal of the primary national energy legislation of the jurisdictions. To this effect, it should be noted that it was not possible within the scope and time frame of the present project to undertake an in depth search and analysis of the legal orders of all 13 jurisdictions in the 8th Region to identify if and the degree to which the primary and secondary legislation of these jurisdictions have been harmonized with EC Regulation 1228/2003/EC and the Congestion Management Guidelines and recommend amendments to specific laws and enactments of secondary legislation.

As concerns the issues related to harmonization of EU Legislation, we provide below a summary of the issues set out in the country review section:

1. As concerns the EU member states that will participate in the 8th Region, according to article 249 of the EC Treaty and national primary legislation, EC Regulation 1228/2003/EC and the Congestion Management Guidelines are directly applicable in their national legislation. Furthermore, there are no legal provisions in national legislation that introduce any legal deviations or divergences from the Regulation and the CMGs.

2. As concerns the non EU countries participating in the 8th Region, we set out the following comments:

   a. The provisions of EC Regulation 1228/2003/EC and the CMGs do not have direct and automatic effect/application, albeit the national legislation makes general reference to them or to EU Directives in general.
b. Although progress has been made in the past years to align local national legislation with the provisions of EC Regulation 1228/2003/EC and, to a lesser degree, the CMGs (progress in legislative harmonization is not uniform in the non EU SEE region), special legislation has not been passed specifically transposing (“harmonizing”) comprehensively and in its entirety EC Regulation 1228/2003/EC and/or the CMGs in each national legislation. It was noted that more progress has been made in the introduction of provisions harmonizing national legislation with EC Regulation 1228/2003/EC. The Congestion Management Guidelines on the other hand, especially following the amendment pursuant to EU Commission Decision of 9 November 2006 still require further legislative work.

c. Reports forwarded by the appropriate national regulators to the Energy Community Secretariat provide evidence that the non EU countries are continuing their efforts to harmonize their energy legislation with EC Regulation 1228/2003/EC and the Congestion Management Guidelines.

d. Although, the Contracting Parties have gone a long way forward in the process of implementation, it is still evident that the non EU countries have to make more efforts not only to improve their existing laws and regulations and to adopt the missing ones, but to undertake a general overhaul of their energy legislation to introduce full harmonization, especially after the Ministerial Council on the establishment of the South East Europe region - the so called the 8th region - according to the requirements of the Regulation (EC) 1228/2003.

e. From the information we have accumulated, Croatia seems to have harmonized its legislation with EC Regulation 1228/2003/EC. However, it requires further investigation as to whether the CMGs, following the amendment brought on by Commission Decision of 9 November 2006, have been fully harmonized.
1.2 **Overall Conclusions**

As concerns whether the harmonization of EU legislation will constitute an obstacle and whether legal, regulatory and administrative requirements are needed in order for the local TSOs to be able to participate in the SEE-CAO, we draw the following main conclusions:

1. Given the current status and until all non EU jurisdictions in the 8th Region fully harmonize their legislation with EC Regulation 1228/2003/EC and the Congestion Management Guidelines, the SEE-CAO could be set up and operate by using coordinated bilateral NTC-based auctions as the initial capacity allocation mechanism and an intermediate stepping stone to “coordinated explicit load-flow based auctions”.

2. The lack of full harmonization in the non EU jurisdictions will constitute a legal obstacle for the SEE-CAO to be able to establish and operate effectively “coordinated explicit load-flow based auctions” as the main capacity allocation model for the SEE-CAO, given that this model presupposes stronger and deeper integration, cooperation and coordination throughout the 8th Region, thus a more harmonized legal regime throughout the region.

3. With the above aim, the non EU countries jurisdictions will need to make a greater effort in introducing comprehensive legislation in order to fully harmonize their legislation with EC Regulation 1228/2003/EC and the Congestion Management Guidelines.

1.3 **Country Reviews**

**A. Albania**

1.1 As concerns EC Regulation 1228/2003/EC, ERE and OST are of the opinion that there are no deviations and that the Regulation has been fully integrated into Albanian legislation. This position is based on that (a) there is a general reference in primary energy legislation stipulating that all EU energy legislation is deemed to be part of Albanian legislation and (b) there are no national provisions to the contrary.

Notwithstanding the above, according to the “Energy Community Report on Implementation of EU Acquis” (Dec 2008), it is stated that although concrete
steps in development of Albania’s primary and secondary legislation in the electricity sector has taken place over the past period (e.g. five amendments of the Power Sector Law, targeting improvements in the areas of the development the market model, the authorization procedures, electricity measurements and penalties etc.; A Government Decree for approval of the New Market Model;), the implementation of Regulation 1228/2003 is progressing in the interconnection capacity allocation, however full implementation is needed. ERE should also improve its activities in regulating the cross-border trade as well.

Moreover, according to the latest Country Report filed by Albania with the Energy Community Secretariat (Sept 2008), the approval of the Albanian Market Model was an important step towards the consolidation and steady development of the Albanian Electric Power Market with the aim to be in full compliance with the European Directives. The aim of this new market model among other things is to permit market oriented import and export trades that preserve consumer benefits. Concerning Management and Allocation of Cross Border Transmission Capacities, there was only minor progress. Up to the time the report was filed there was no market based allocation scheme in place.

On the basis of the above, although Albania seems to be making steady progress in developing the legal transposition of EC Regulation 1228/2003/EC into its national legislation, it has not introduced in the form of special legislation transposing the provisions of EC Regulation 1228/2003/EC into local legislation. It should be noted that ERE is authorized to legislate without the intervention of the Ministry or other governmental/state authorities. ERE, however, being of the opinion that there no deviations and the Regulation is fully transposed, has no plans to take any measures to this direction.

As concerns the Congestion Management Guidelines, no action towards transposition of the CMGs in national legislation has been taken. Therefore, there are no local legislative or policy initiatives to integrate, transpose and actually implement the provisions of the CMGs into Albanian law. It should be noted that the position of ERE and OST is that Albanian legislation has an appropriate general clause that treats all EU energy legislation as part of
national legislation. However, this is not sufficient.

B. Bosnia & Herzegovina

1.1 BiH Law make general references to EU legislation. According to BiH law, the provisions of EC Regulation 1228/2003/EC and the CMGs do not have direct and automatic effect/application in Bosnian energy legislation and therefore they are not part of BiH Law, until they are enacted by Parliament. Moreover, BiH does not seem to have passed special legislation specifically transposing (“harmonizing”) EC Regulation 1228/2003/EC and/or the CMGs in Bosnian legislation or amending its existing legislation so that it may be fully harmonized with that of EC Regulation 1228/2003/EC and the CMGs.

Indicatively, we note certain provisions of the following two pieces of legislation:

1. The Law on Transmission of Electric Power, Regulator and System Operator of BiH makes the following general references to the EU and its legislation:

   • The Law is guided by prevailing international practices and applicable Directives of the European Union. The Law is intended to facilitate and advance the creation of an electric energy market in Bosnia and Herzegovina and a regional electric market. (art. 1).

   • This law establishes the State Electricity Regulatory Commission, having jurisdiction and responsibility over transmission of electricity, transmission system operations and foreign trade in electricity in accordance with international norms in harmony with European Union standards (art. 4).

   • The electricity market in Bosnia and Herzegovina shall be a single market, based on free and equal access to the transmission network and upon the principles of regulated access and applicable Directives of the European Union (art. 8).

2. The Law establishing an Independent System Operator for the transmission system of BiH makes the following general references to the EU and its legislation:
The Law is based on existing international practices and applicable Directives of the European Union (and their implementation in EU Member States)

On the basis of the above, BiH does not seem to have passed special legislation specifically transposing ("harmonizing") EC Regulation 1228/2003/EC and/or the CMGs in Bosnian legislation or amending its existing legislation so that it may be fully harmonized with that of EC Regulation 1228/2003/EC and the CMGs.

This is also evidenced in the following Energy Community reports:

"ECRB Benchmarking Report on SEE Compliance with EC Regulation 1228/2003/EC and the CMGs" (April 2008), extracts of which we set out below:

• Bosnia and Herzegovina performs pro rata allocation at its borders .................. It is planned that also Bosnia and Herzegovina introduces a market based allocation scheme, fulfilling all provisions out of the Regulation (EC) No 1228/2003 by mid of 2008. The scheme itself is already developed and waits for its final approval by the regulatory authority. (3.1.1.1)

• Bosnia and Herzegovina has foreseen no provisions about the use of congestion management income within its legislation. ............... (3.2.1.1)

"Energy Community Report on Implementation of EU Acquis" (Dec 2008), extracts of which we set out below:

• Whereas the obligations set by the Treaty lie on Bosnia-Herzegovina (at federation level), the spread of competence between entities and between the entities and the federation remains critical and has not brought about a clear and coherent legal framework. (PAGE 7)

• In 2008 problems are registered in the operation of BiH State level Transmission Company (Elektroprijenos), caused by insufficiently developed legal framework, as well as lack of consensus ............ Operational consolidation, further commercialization and politically independent management of the company, along with appropriate amendment of the relevant Law, enforcement of the independent regulatory rule of SERC and improved cooperation with the ISO (NOS
Bosnia and Herzegovina) should be considered as urgent steps to sustaining security of supply and develop the electricity market pursuant to the Treaty; (PAGE 8)

- Legislation - Since mid-2008 Federation of Bosnia and Herzegovina (FBiH) is attempting to amend its Law on Electricity. A coherent law at federal level is urgently needed. The Federal Energy Regulatory Commission is regulating only the electricity matters in FBiH; further development of the legal environment in this entity is required. (PAGE 8)

- Electricity cross-border matters - Implementation of Regulation 1228/2003 is partially accomplished and progressing, corresponding regulatory practice needs improvement in sharing the responsibilities among regulators. There is insufficient communication of data between NOS and Transmission Company. State level Regulatory Authority (SERC) has drafted Rules for Allocation of interconnection capacities based on competitive principles however these are pending for adoption since 2007 due to lack of consensus. Efficient and independent operation of SERC needs to be further enforced. Its cooperation with the Entity Regulatory Authorities should be improved and supported as well. (PAGE 9).

Notwithstanding the above, according to the Regulator’s position, there is no need for the Parliament of Bosnia and Herzegovina to be additionally bound by a separate act to the application of Regulation 1228/2003/EC because BiH is already bound to it through the ratification of the Treaty Establishing the Energy Community. The situation will be considerably improved when SERC approves the application of the Rules on Utilization of Cross-Border Transmission Capacities.

C. Croatia

1.1 As a full member of the Energy Community Treaty, Croatia is bound to apply the relevant EU energy acquis. Croatia has made good progress towards implementing the obligations out of the Energy Community Treaty, especially in terms of transposing the 2nd package of EU energy directives and market...
Progress towards the regional (SEE) and EU internal market is clear and commendable. The Energy Act (Official Gazette 68/01, 177/04, 76/07), the Electricity Market Act (Official Gazette 177/04, 76/07) and accompanying legislation fully transpose into national legislation EC Regulation 1228/2003/EC.

The Croatian TSO (HEP-Operator prijenosnog sustava d.o.o.) published in December 2008 (in force since 1 January 2009) the Rules on Allocation and Use of Cross Border Transfer Capacity defining procedures and requirements for allocation and use of Cross-border capacities, participation in auctions, etc, whose aim was to bring the framework in full compliance with the Regulation 1228/2003. The Rules on Allocation and Use of Cross Border Transfer Capacity have envisaged in article 33 the right of participants to transfer their rights to use transfer capacity. Moreover, the new rules do not have any provisions regarding reserved capacity on the interconnections, thus correcting certain pending compliance issues Croatia had in 2008.

Moreover, Croatian legislation includes provisions concerning the use of congestion income, aligning Croatia with the three options provided within Regulation (EC) No 1228/2003.

On 1 June 2007 the Croatian TSO joined the ITC via the Interim ITC Clearing and Settlement Agreement. Following the Interim ITC Agreement, the Croatia TSO joined the Pan-European ITC mechanism for 2008-2009.

D. former Yugoslav Republic of Macedonia

1.1 The Assembly of the Former Yugoslav Republic of Macedonia ratified on the 03.05.2006 the Energy Community Treaty (signed on 25.10.2005). In this manner, the Former Yugoslav Republic of Macedonia has undertaken the obligation to implement, among other legislation, EC Regulation 1228/2003/EC and the Congestion Management Guidelines.

National legislation has made some progress in its Energy Law with respect to EC Regulation 1228/2003/EC. Indicatively, we note that the Former Yugoslav Republic of Macedonia performs explicit auctions at its border with Serbia and Greece (auctions at the border with Greece are performed as joint auctions by
the Greek HTSO). Macedonian legislation also includes provisions concerning the usage of congestion management income. Congestion management income is used for all three options mentioned within Regulation (EC) No 1228/2003.

Notwithstanding the above progress, according to Macedonian law, the provisions of EC Regulation 1228/2003/EC and the CMGs do not have direct and automatic effect/application in national energy legislation and therefore they are not part of Macedonian Law, until the assembly enacts special laws transposing (“harmonizing”) EC Regulation 1228/2003/EC and/or the CMGs in national legislation or amending its existing legislation so that it may be fully harmonized with that of EC Regulation 1228/2003/EC and the CMGs. According to the Energy Regulator, by the end of 2009, EC Regulation 1228/2003/EC should be transposed into national legislation. As concerns the Congestion Management Guidelines, as amended following EU Commission Decision of 9 November 2006, there does not seem to be any immediate plans for enactment. According to national legislation, the regulatory authority is not empowered to take action to implement EC Regulation 1228/2003/EC and the CMGs.

This is also evidenced in the “Energy Community Report on Implementation of EU Acquis” (Dec 2008), extracts of which we set out below:

- **Substantial amendments in the Energy Law were made in August 2008. However, several requirements of EC Regulation 1228/2003/EC (along with other from Directive 2003/54/EC, the Directive 2003/55/EC and Regulation 1775/2005) still have not been properly transposed. (PAGE 12)**

- **In relation to implementation of EC Regulation 1228/2003/EC, the Regulator’s monitoring task regarding access to the networks, including rules on capacity allocation on interconnections, is of critical importance. It is advisable that the implementation of the Regulation 1228/2003 has to progress furthermore under the Regulator’s oversight. (PAGE 12)**
E. Montenegro

1.1 According to the position of the Montenegro regulator, EC regulation 1228/2003/EC has been fully transposed into Montenegro legislation. As concerns whether local legislation has been harmonized with the Congestion Management Guidelines (CMGs), the Regulator stated that it approved the Congestion Management Rules submitted by the TSO and that there are no deviations.

Notwithstanding the above, we note the following:

- The Energy Law does not have specific provisions regarding congestion management. There is a general reference to EU legislation. In particular, Article 1 (6) of the Energy Law stipulates that, “The regulation of the Energy Sector … shall comply with relevant international norms including international standards, the Energy charter Treaty and European Union provisions in the field of Energy.”

- According to the “Report on the Implementation of the Acquis under the Treaty establishing the Energy Community issued in November 2008”, Montenegro Energy Law revision needs further attention to proper transposition of Directive 2003/54/EC and EC Regulation 1228/2003/EC. Moreover, the Implementation of EC Regulation 1228/2003/EC has to advance and the transparency of Regulator, TSO and still vertically integrated electricity company has to further increase.

In light of the above, we note that the provisions of EC Regulation 1228/2003/EC and the CMGs do not have direct and automatic effect/application in Montenegro energy legislation and therefore they are not part of Montenegro Law, until they are transposed into national law. Moreover, Montenegro does not seem to have passed special legislation specifically transposing (“harmonizing”) EC Regulation 1228/2003/EC and/or the CMGs in Montenegro legislation or amending its existing legislation so that it may be fully harmonized with that of EC Regulation 1228/2003/EC and the CMGs.
F. Serbia

1.1 The Constitution of the Republic of Serbia (Art. 16 thereof) stipulates that “…ratified international agreements are an integral part of the legal system of the Republic of Serbia. Ratified international agreements have to be in compliance with the Constitution”. Annex I to the Treaty establishing the Energy Community stipulates that “each Contracting Party shall implement within twelve months of the entry into force of this Treaty: … (iii) the European Community Regulation 1228/2003/EC of the European Parliament and of the Council of 26 June 2003 on conditions for access to the network for cross-border exchanges in electricity.” According to Article 38 of the Serbian Energy legislation, “The transmission i.e. transportation System Operator is obliged to enable the energy transit through the transmission, i.e. transportation system that he is in charge of, respecting stipulated international conventions or contracts. The transmission, i.e. transportation System Operator is obliged to enable the energy transit through the system he manages respecting principles of regulated third party access, non-discrimination and transparency.”

Although the Constitution provides that international agreements (i.e. the Treaty establishing the Energy Community) are an integral part of the legal system, there is a contractual obligation arising from a ratified international agreement to implement EC Regulation 1228/2003/EC and the CMGs and the Serbian energy law provides that EMS must respect stipulated international conventions, nonetheless, there is no direct implementation of EC Regulation 1228/2003/EC and the CMGs. However, EMS has passed the Grid Code, where the vast majority of the requirements of 1228 have been transposed, such as Title 5 (especially 5.2.1.3, 5.6, 5.7) and Title 6 (especially 6.4. and 6.8). The Grid Code was approved by AERS.
G. UNMIK

1.1 ERO and KOSTT maintain that UNMIK’s legislation has transposed EC Regulation 1228/2003. In their view, this is because the primary legal framework (i.e. Law on Energy, Law on Electricity and Law on Energy Regulator) sets forth the obligation of UNMIK to approximate and comply with EU’s energy legislation (Article 2, Law on Energy; Article 4, Law on Electricity). Nonetheless, no structured transposition of the Regulation has been undertaken. As with most other SEE countries, legal approximation and transposition of the Regulation is confused with its implementation and the actions that need to be taken to turn provisions of a foreign legislative text (i.e. the Regulation) into national law.

ERO is empowered to take actions to implement the Regulation. Implementation of provisions of Regulation 1228/2003 is said to be imposed through the licensing process and secondary legislation which is developed and approved by ERO (e.g. Tariff Methodology, General Conditions of Energy Supply, Rule on Licensing, TSO License and MO License) or developed by KOSTT and approved by ERO (e.g. Market Rules, Procedures for Allocation of Transmission Interconnection Capacities, Connection Charging Methodology, Grid Codes).

There have been no transpositions into national legislation of the Congestion Management Guidelines (CMGs). As with the Regulation, both ERO and KOSTT hold the view that the CMGs, having been adopted in June 2008 by the Ministerial Council of the Energy Community, have instantly become an obligatory legal order of UNMIK. In the understanding of ERO and KOSTT, the measures taken are exhausted in UNMIK’s participation in the regional Implementation Group (Coordinated Auction Office IG) of the Regulators and TSOs.

H. Greece

1.1 Greece, as a member of the European Union, complies with the European Rules and Regulations. The regulation 1228/2003 applies directly as such. The general principles of the Regulation are in force while compliance with the provisions of 1228/2003 is being constantly monitored by the Regulator in cooperation with HTSO both at national and regional level (RAE and HTSO).
participate in the regional initiatives of ERGEG in order to ensure further harmonization).

RAE is empowered by the Greek legislation (law 2773/1999, as applicable) to take actions in the case the Greek TSO does not act in compliance with the existing laws. The Greek TSO implements any decision forwarded by RAE, according to Art 19 of the law 2773/1999

I. Hungary

1.1 As an EU Member State and according to article 249 of the EC Treaty and section 184 (2) of the Hungarian Electricity Act no. LXXXVI/2007 (conformity with the laws of the European Union), Regulation 1228/2003 and the Congestion Management Guidelines are directly applicable in Hungarian legislation. Furthermore, there are no legal provisions in national legislation that introduce any legal deviations or divergences from the Regulation and the CMGs.

J. Romania

1.1 The Energy Community treaty was signed by Romania and was ratified by Law 231/2006. There are no explicit provision in the Romanian Electricity Law 13/2007 harmonizing or implementing EC Regulation 1228/2003/EC. However, art. 6 (n) and (p) entitles the Romanian Ministry to implement the applicable EU legislation (EC Regulation 1228/2003 etc.) in the national strategy and policies.

As of 1 January 2007, as a new Member State, according to article 249 of the EC Treaty, Romania has the obligation to directly apply the provisions of EC Regulation 1228/2003 and the CMGs. No other national legislation is needed to transpose its provisions.

Furthermore, there are no legal provisions in national legislation that introduce any legal deviations or divergences from the Regulation and the CMGs.
K. Slovenia

1.1 As an EU Member State and according to article 249 of the EC Treaty Regulation 1228/2003 and the Congestion Management Guidelines are directly applicable in Slovenian legislation. No other national legislation is needed to transpose its provisions.

Furthermore, there are no legal provisions in national legislation that introduce any legal deviations or divergences from the Regulation and the CMGs.

L. Italy

1.1 EC regulation n. 1228/2003 and Congestion management guidelines have been transposed into Italian legislation and regulatory decisions. There are no legal provisions in national legislation that introduce any legal deviations or divergences from the Regulation and the CMGs.

M. Bulgaria
2 Issues related to the TSO participating in the SEE-CAO

2.1 Regional Overview

As concerns the issues related to the TSOs participating in the SEE-CAO, we provide below a summary of the issues set out in the country review section:

1. The legal forms of the TSOs differ from jurisdiction to jurisdiction (e.g. the BiH and Serbia TSOs have been set up as public corporations/enterprises, the Croatian, Slovenian, Hungarian and Romanian TSOs have been set up as commercial companies with limited liability). The TSOs that are set up as public enterprises, as opposed to those set up as commercial companies, are governed and operate according to special laws, which are not purely commercial. From a legal and regulatory perspective, these TSOs have more rigid national administrative procedures and obligations which might, at times impede or delay the taking of decisions within the framework of the general assembly and supervisory boards of the SEE-CAO. For example, in the case of the Serbian TSO, in order for the State to approve the TSO’s participation in the SEE-CAO will require the opinion of all relevant Ministries and the Secretariat of Legislation. This procedure, from a legal and administrative perspective, may be lengthy, depending on political situation at times. (please see below item 2.1 in the Country Review section for further details per jurisdiction)

2. All TSO’s, with the exception of Romania and Italy, belong 100% to the State, as the sole owner and shareholder in the General Assembly. (please see below item 2.1 in the Country Review section for further details per jurisdiction)

3. All TSOs are managed by a multi-member management/supervisory board with one official (i.e. managing director / chief executive officer etc.) acting as the legal representative, empowered to bind the company. The managing director / chief executive officer is elected for a fixed term allowing for stability. BiH has 3 members in its management, who rotate the position of managing director on a yearly basis. (please see below item 2.1.2 in the Country Review section for further details per jurisdiction)
4. In order for the TSOs to participate in the formation and share capital of the SEE-CAO, all TSOs, with the exception of the Croatian, Slovenian, Albanian and Italian TSO, require first a decision of the owner / sole shareholder / general Assembly of the TSO, which must empower the Management / Supervisory Board to take a relevant decision empowering the company’s legal representative to sign any and all documents relevant to the signing of the Articles of Association of the SEE-CAO and all other relevant agreements between the TSOs and SEE-CAO. As concerns the Slovenian Albanian and Italian TSO, management can take such decision without requiring a prior decision of the owner / sole shareholder / general Assembly. *(please see below item 2.1.2 in the Country Review section for further details per jurisdiction)*

5. There are no provisions in the founding acts of any of the TSOs that prevent or restrict them from participating in the SEE-CAO. Therefore, no amendments in the founding acts are required. *(please see below item 2.1.1 in the Country Review section for further details per jurisdiction)*

6. There are no general or special conditions in the TSO’s license, local laws, the market rules, grid codes, power exchange codes, orders and regulations that would prevent or restrict the TSOs from participating in the share capital of the SEE-CAO. *(please see below item 2.2 in the Country Review section for further details per jurisdiction)*

7. According to national primary and secondary legislation in the 8th Region, no TSO (with the exception of the Romanian and Italian TSO) has the right to assign or transfer any right regarding the allocation of available cross border transfer capacity. In order to do so, the respective energy laws, regulations and codes would need to be amended and new licenses would have to be issued by the Regulators. *(please see below item 2.3 in the Country Review section for further details per jurisdiction)*
8. There are no provisions in national primary and secondary legislation in the 8th Region, with the exception of Albania, preventing or restricting the TSOs entering into agreements with the SEE-CAO to carry out auctions for the allocation of cross border capacity on the national borders in the name of the SEE-CAO but on behalf of the TSOs. In the case of Albania in particular, there seems to be a legal obstacle in its ability to outsource the organization of auctions for the cross-border capacity to any third party, including the SEE-CAO, in which case, an amendment of the relevant provisions of the Albanian legislation must be made that will allow the ceding of the auctions function to SEE-CAO on behalf of OST. (please see below item 2.3 in the Country Review section for further details per jurisdiction)

9. All TSOs can enter into a service agreement with SEE-CAO for the latter to provide services in connection with the auctioning of available cross border transfer capacity in the name of the TSOs. (please see below item 2.3 in the Country Review section for further details per jurisdiction)

10. Notwithstanding our notes in item 4 above regarding the TSOs obligation and procedure to obtain approval from their owners (which in their entirety is the State or the government itself), as concerns whether the Regulators or any other State Body is required to approve the TSOs general participation in the operations of the SEE-CAO, the legal orders within the 8th region vary. (please see below item 2.4 in the Country Review section for further details per jurisdiction)

   a. In some jurisdictions, such as Albania, Croatia, Former Yugoslav Republic of Macedonia, Slovenia and Italy there is no approval procedure and therefore, the Slovenian TSO only needs to file a notification procedure without requiring any special approval.

   b. In other jurisdictions such as Serbia and BiH, although there is no formal procedure for the Regulator to directly approve the TSO’s participation in the SEE-CAO, the Regulator approves the financial aspects arising from the TSO’s ownership in the SEE-CAO and the financial aspects of its contractual arrangements with the SEE-CAO and therefore these issues need to be addressed by the Regulator.
c. In other jurisdictions such as Montenegro, UNMIK, Hungary and Romania, prior approval by the Energy Regulator is needed, along with notification requirements to the appropriate Ministries (where applicable).

11. As concerns whether the State or the Regulator may condition its approval and say that it grants the right to participate in the SEE-CAO on the condition that the TSO will have to ensure that the SEE-CAO reports to Regulator either directly or through the TSO, the answer varies from one jurisdiction to another. Indicatively we note that this is legally possible in UNMIK, Serbia and Romania, where the appropriate State or Regulator respectively may condition their approval and say that they grant the right on the condition that the TSOs ensure that the SEE-CAO reports to the Regulators either directly or through the TSOs. On the other hand, such condition is not possible in other jurisdictions, such as Albania, BiH, Former Yugoslav Republic of Macedonia, Montenegro, Hungary, Italy and Slovenia. (please see below item 2.4.3 in the Country Review section for further details per jurisdiction)

12. With the exception of Romania, the remaining TSOs have not assumed any contractual or financing obligations vis-à-vis third parties and they do not have any pending litigation or any other proceedings which might require consent, or result in a default or be used to object to the TSOs participating in the SEE-CAO. The Romanian TSO has the obligation to inform its Lenders about changes in its business which will require that the TSO either notify or seek the consent of the bank (in the case of EBRD). Therefore, the Romanian TSO will have to notify its commercial banks and seek the consent of the EBRD. (please see below item 2.5 and 2.6 in the Country Review section for further details per jurisdiction)

13. As concerns whether contractual arrangements are void if entered into by the TSOs beyond the scope of their authority, the answer is “yes” in most cases. Therefore, it is vital that the TSOs pay meticulous attention to following their administrative procedure to avoid any legal implications in the future. (please see below item 2.9 in the Country Review section for further details per jurisdiction)

### 2.2 Overall Conclusions

As concerns whether the issues above will constitute an obstacle and whether legal, regulatory and administrative requirements will be required in order for the local TSOs to participate in the SEE-CAO, we draw the following main conclusions:
1. All TSOs can participate in the sharecapital of the SEE-CAO and no amendments in the founding acts or primary or secondary legislation are required. In particular, there are no provisions in the founding acts of any of the TSOs and there are no general or special conditions in the license, local laws, market rules, grid codes, power exchange codes, orders and regulations that would prevent or restrict the TSOs from participating in the share capital of the SEE-CAO.

2. As concerns the “outsourcing model” to be used for allowing the SEE-CAO to carry out the auctioning of cross border capacity allocation (i.e. assignment structure vs agency structure vs service provider structure) the following conclusions can be made:

   a. Most jurisdictions (with the exception of Romania and Italy) do not allow their TSO to assign any right regarding the allocation of available cross border transfer capacity. Therefore, the assignment structure is not possible, unless the respective national energy laws, regulations and codes are amended and/or new licenses are issued by the Regulators.

   b. With the exception of Albania, all jurisdictions allow (i.e. they do not prevent or restrict) their TSOs from entering into agreement with the SEE-CAO to carry out auctions for the allocation of cross border capacity on the national borders in the name of the SEE-CAO but on behalf of the TSOs. Although legal provisions in the 8th Region (with the exception of Albania) do not prohibit the TSOs from outsourcing the performance of the administrative duty concerning the cross border capacity allocation mechanism (in the form of an “agency” agreement), this is feasible under the following two conditions:

      i. The SEE-CAO’s role is limited to simply conducting the auctioning function (as an administrative duty) required for the TSOs to allocate the cross border transfer capacity. The actual allocation of the cross border capacity will be effected solely by the TSOs. This means that the SEE-CAO will only assume the contractual obligation to instruct a 3rd party (i.e. the TSOs) to allocate cross border capacity without actually being allowed to allocate it itself, given that the actual allocation of cross border capacity is a regulated activity.
ii. The terms and conditions to be agreed between the TSOs and the SEE-CAO (i.e. Articles of Association, Inter-TSO Agreements, SLAs etc.) must be compliant with national primary and secondary legislation. Given that 6 of the 7 jurisdictions are member states in the EU, this effectively means that the agreements must be compliant with EC Regulation 1228/2003/EC and the Congestion Management Guidelines, for which there can be no deviation. However, a legal obstacle may arise in the event that any of the remaining 7 jurisdictions, when reviewing the compliance of the agreements with their national legislation, brings forward any objection based on their primary and secondary legislation which may not be in line with EC Regulation 1228/2003/EC and the Congestion Management Guidelines. This risk, although not detected during the course of this study (given that the agreements to be signed have not yet been prepared), may arise, especially for those jurisdictions that have not fully transposed EC Regulation 1228/2003/EC and the Congestion Management Guidelines in their national legislation. For this reason, it is vital that the TSOs begin immediately drafting and negotiating the terms and conditions of these founding and commercial agreements so that any specific legislative issues are detected from the beginning and resolved with any necessary corrective legislative measures.

c. All jurisdictions allow (i.e. they do not prevent or restrict) their TSOs from entering into a service agreement with the SEE-CAO to carry out auctions for the allocation of cross border capacity on the national borders in the name and on behalf of the TSOs.
3. The fact that the TSOs in the SEE Region have different legal forms and management structures of a varying degree does not constitute an obstacle in establishing the SEE-CAO. It does however indicate that the TSOs which have been set up as public corporations/enterprises have (from a legal and regulatory perspective) more rigid national administrative procedures and obligations, in which case the procedure required to obtain the decision from the “owner” of the TSO to participate in the SEE-CAO (from a legal and regulatory perspective) may be lengthy which might impede or delay the setting up of the SEE-CAO.

4. In many cases, in order for the owner / sole shareholder / general assembly / supervisory board to take a decision, they will require to review all documents (i.e. Articles of Association, agreements for syndication, SLAs, Inter TSO Agreements) before they can provide their approval. For this reason, it is vital that the TSOs begin immediately drafting and negotiating the terms and conditions of these founding and commercial agreements, as the approval of such documents will prove to be a lengthy procedure, not only on the part of the TSOs drafting and negotiating the terms among themselves, but also obtaining approvals from their owners / sole shareholders / general assemblies / supervisory boards.

5. The approval from the national regulator or competent line Ministry does not constitute an obstacle but an additional legal requirement at national levels in realizing the establishment and operation of the SEE-CAO, which entails further administration and time. With the exception of Albania, the Former Yugoslav Republic of Macedonia, Slovenia and Italy, in all the other jurisdictions the TSOs must obtain the approval of their national regulators. This effectively will require the TSOs to file all documents (i.e. Articles of Association, Syndicate Agreement, Inter TSO Agreement and SLAs) and information with the Regulator before signing any agreement. For this reason, it is vital that the TSOs begin immediately drafting and negotiating the terms and conditions of the necessary founding and commercial agreements so that the Regulators may review them beforehand.

6. None of the TSOs (with the exception of Romania) have assumed any contractual or financing obligations or have any litigation vis a vis third parties that would impede their participation in the SEE-CAO. The Romanian TSO has the obligation to inform its Lenders and seek the consent of the EBRD.
2.3 Country Reviews

A. Albania

2.1 OST (Operatori Sistemit Transmetimit Shqiptar “OST sh.a.”), the Albanian Transmission System Operator. Is a company incorporated under the laws of Albania, in the form of a “Shoqeri (tregetare) anonime (Sh.a.)” (a joint stock company). It is a state-owned company registered with the Trade Register of Tirana and has all the features of a limited liability company with shares. It has its own General Assembly (General Meeting of the Shareholders), which is the supreme body of the company and is controlled by the Albanian Minister of Economy, Trade and Energy. According the Statute (i.e. Articles of Association) of OST, the General Assembly is free to take far-reaching decisions such as, in the wording of the Statute itself, “To change the statute with all its provisions”, to decide “the reorganization and split-up of the company” (art. 9 of the Statute) etc.

The General Assembly nominates the members of the Supervising Council (article 13 of the Statute), which effectively acts as the Board of OST. The Supervising Council has 6 (six) members and is authorized to “control and supervise the application of OST’s commercial policies by the manager”, to decide the “conclusion and change of the annual business plan of OST as well as any short-term, mid-term and long-term activities of the Company”; etc. (arts 20 and 23 of the Statute). The Supervising Council nominates the General Manager of the company who is responsible for the day-to-day management of OST (art. 22 of the Statute).

2.1.1 There any no provisions in the Statute of OST that would prevent or restrict OST from participating in the share capital of a foreign limited liability company, including SEE-CAO.

2.1.2 OST may participate in the share capital of other companies provided that have an object along the lines of article 20 (point 2.k) of the Statute of OST. OST could indeed participate in the formation and share capital of the SEE CAO. To this end, the Supervising Council of OST should approve such participation.

2.2 There are no conditions in Albania’s primary and secondary legislation that
prevent or restrict OST from participating in the share capital of a foreign limited liability company and in particular in the SEE-CAO.

2.3 There are no express provisions that OST could, assign, cede or outsource the organization of auctions for the cross-border capacity to another entity, local or foreign. ERE (and OST) may opt, however, to make an express provision in the Albanian legislation that will allow the ceding of the auctions function to SEE-CAO.

The License makes at present no reference to OST’s capacity to organize auctions. Similarly, legislation makes no arrangements in connection with this matter, which is still very much in early, formative stages. An amendment to the Market Rules would be required.

2.4 The approval of the Supervising Council will be sufficient for OST’s participation in the share capital of the SEE-CAO.

Nonetheless, it should be noted that the very institutional organisation of auctions in Albania is still in the making. Indeed, no auction rules and guidelines have yet been issued by OST and the introduction of such rules will be pending for some time. Crucially, OST’s license currently covers only the transportation function of a TSO and it will soon need to be amended to cover expressly for all functions the TSO including the one for market operation alongside the provisions of the draft market rules that will soon be adopted. Additionally, it may be deemed necessary in order to avoid any legislative gaps to make an express provision in local legislation about the capacity of OST to cede/outsource the function of organising auctions to SEE-CAO.

2.4.1 The necessity of the participation of OST in the SEE CAO will be the deciding factor. The participation in the SEE-CAO will be treated as part of the integration process of Southeast European countries, which are not member states of the EU such as Albania, into the energy market of the EU.

2.4.2 The approval of the Supervising Council of OST will suffice for OST’s participation in the SEE-CAO.

2.4.3 ERE will not require SEE-CAO to report to it and will not interfere in the day-to-day running of the SEE-CAO and will only monitor the process.
2.5 OST is not aware of any agreements, other documents, litigation or any other proceedings which might require consent, or result in a default or affect OST’s participation in the SEE-CAO.

2.6 There are no agreements OST is a party to granting third parties powers which could be used to object to OST participating in the SEE-CAO.

2.7 According to the prevailing legal regulations, it is not possible to make it a condition of the TSO’s license that the TSO participate in the SEE-CAO. OST could, in theory, be compelled by the Minister of Economy, Trade and Energy acting on behalf of the State (i.e. the shareholder of OST) to participate in the SEE-CAO.

2.8 The ITC agreement is the only multilateral agreement signed by OST to date and no legal or practical difficulties have arisen.

2.9 If OST enters contractual arrangements beyond the scope of its authority, such arrangements would be void and would produce no legal results.

2.10 No requirement exists for the Government to hold a “golden share” in any company in which OST has an ownership share. According to Law nr. 9072 dt. 22.05.2003, article 13.2, ERE grants the licence for the transmission of electricity only to a state-owned legal person. According to the Statute of OST (art. 6), the only shareholder of the company is the State.

B. Bosnia and Herzegovina

2.1 The Independent System Operator in BIH (NOS BIH / ISO) was established by special law by the Parliamentary Assembly of BIH (Law of Establishing Independent System Operator for the Transmission System in Bosnia and Herzegovina Official Gazette BIH 35/04) as a Public Corporation recorded in the Special Registrar of companies established as legal person set up by institutions of BiH. The Owners of ISO BH are the Federation of Bosnia and Herzegovina (FBiH) and the Republika Srpska (RS). ISO is managed by a Managing Board and Management. The Managing Board consists of 7 members (4 from FBiH and 3 from RS). Management consists of 3 members, of whom one is the Managing Director, with the right to represent and bind ISO
and the other two are members.

2.1.1 There are no legal restrictions related to NOS BiH participation in SEE-CAO.

2.1.2 In order for ISO to participate in the formation and share capital of the SEE CAO, the Managing Board of ISO BiH have to issue relevant decision.

2.2 There are no general or special conditions in ISO’s license, local laws, the market rules, grid codes, power exchange codes, orders and regulations that would prevent or restrict ISO from participating in the SEE-CAO.

2.3 ISO may outsource the performance of the auction to the SEE CAO, or enter into an agency or brokerage agreement or to allow the SEE-CAO to carry out auctions on its behalf according to the terms of its license.

2.4 ISO will require and request the approval from the State Electricity Regulatory Commission (SERC), although this obligation is not provided for explicitly in the law. SERC approves all of ISO’s costs and therefore, since ISO’s participation in SEE-CAO will incur costs, ISO will be required to request the approval of SERC.

2.4.1 In order for SERC to provide its approval, it reviews the following:

- the cost that will be incurred by ISO in the form of service fees to the SEE-CAO;
- the level of regional cooperation.
- whether the specific terms of the agreements (i.e. Articles of Association, Inter TSO Agreements, SLAs etc.) to be signed between the TSOs and the SEE-CAO and the overall structure of the services to be performed by the SEE-CAO are compliant with BiH law.

2.4.2 ISO will file with SERC all documentation it will sign in the future with SEE-CAO (i.e., Articles of Association, SLAs etc.) and the other TSOs (i.e. Inter TSO Agreements) in draft form. This means that the documents to be signed will have to be in their final versions (following negotiations) when they are filed with SERC. Once the file is submitted, the SERC will have to issue a decision. Moreover, if there is a gradual approach to drafting all the relevant
documentation, ISO will have to file each document separately.

There are no time limitations according to law and on the basis of practice, such decisions may take a long time, depending on the nature of the request.

Moreover, it should be accentuated that SERC is organised as a State Regulatory Agency, whose decisions require the unanimous approval of all 3 Commissioners. According to Law on Transmission of Electric Power, Regulator and System Operator of Bosnia and Herzegovina (Official Gazette of BiH 7/02), Art. 4.7 “All SERC decisions shall be approved by unanimous vote of all the Commissioners. In the event that the Commissioners fail to agree unanimously, then, upon notice by any one Commissioner to the others, all disputes shall proceed to arbitration.”

A possible solution to this problem would be to avoid the procedure of requiring an approval from SERC in the event the Ministerial Council of the Energy Community issued a decision for the TSOs/ISOs to participate in the SEE-CAO. However, even in this unlikely scenario, ISO would still have to obtain approval for the costs related to its participation in SEE-CAO.

2.4.3 In practice the Regulator (SERC) does not condition its approvals. The solution is for SERC to monitor the SEE-CAO through its regulatory powers over ISO. Any information SERC will require, it will ask it from ISO. To this effect, ISO will need to be able to obtain any information and/or data from SEE-CAO. Direct reporting from SEE-CAO to SERC is not possible. The regulatory issue of monitoring directly the SEE-CAO could only be solved through the appropriate institutions and mechanisms of the Energy Community.

It is most likely that the Regulator will require regular reports from ISO related to SEE-CAO. The Regulator (SERC) believes that direct reporting from SEE-CAO to the Regulator should be solved on a regional level.

2.5 ISO does not have any agreements, other documents, litigation or any other proceedings which might require consent, or result in a default or affect ISO’s participation in the SEE-CAO.

2.6 There are no agreements ISO is a party to granting third parties powers which could be used to object to ISO participating in the SEE-CAO.
It should be noted that as concerns agreements or arrangements in connection with trading activities, according to Article 2. item 2 of the Law on NOSBiH, it is forbidden for ISO to sell electric power.

2.7 According to BiH Law, SERC can amend ISO’s license, making it a condition of the license that ISO participates in the SEE-CAO. However, SERC would still need to have a unanimous decision of all 3 Commissioners to do so.

2.8 N/A

2.9 Contractual arrangements are void if entered into by ISO beyond the scope of its authority.

2.10 There is no requirement for the BiH government to hold a “golden share” in any company in which ISO has an ownership share.

C. Croatia

2.1 The Croatian TSO (HEP-Operator prijenosnog sustava d.o.o.) is a daughter company of HEP d.d. state-owned corporation (Hrvatska elektroprivreda d.d.). HEP-OPS is accounting, legal and management independent of HEP. HEP is owned by the Croatian state. Partial privatization has been foreseen by the Act on the Privatization of HEP (“Official Gazette”, No. 32/02).

The structure of HEP-OPS is mainly made up of the General Assembly (which effectively owned by HEP), the Supervisory Board and the Chief Executive Officer.

2.1.1 There are no provisions in the founding act of HEP-OPS that would prevent or restrict it from participating in the SEE-CAO.

2.1.2 The Chief Executive Officer, or any other official duly representing HEP-OPS, may sign any agreement for the establishment and participation in the SEE-CAO, following the consent of HEP-OPS’s Supervisory board. No decision from the General Assembly is required.

2.2 There are no conditions in HEP-OPS’s current license, local laws, market rules, grid codes, power exchange codes, orders and regulations that would
prevent or restrict HEP-OPS from participating in the SEE-CAO.

2.3 HEP-OPS cannot assign or transfer the right to conduct auctions regarding the allocation of available cross border transfer capacity.

Although not explicitly provided in Croatian legislation, it is implicitly allowed for HEP-OPS to enter into bilateral agreements allowing third parties to carry out some of its functions.

It should be noted that on the Croatian-Hungarian borders, HEP-OPS has agreed with Mavir for the performance of coordinated auctions, pursuant to which Croatia introduced a common explicit auction scheme (for base load on a monthly) together with MAVIR. HEP OPS fully accepts the result of the individual auction procedures held by MAVIR.

Based on the above, HEP-OPS should be able to enter into an agreement with a third party supplier (i.e. SEE-CAO) who will carry out auctions for the allocation of cross border capacity on the Croatian borders either as a service provider or as an agent in its name (i.e. SEE-CAO) but on behalf of HEP-OPS.

2.4 Croatian law does not provide for whether the Croatian Regulator is required to approve HEP-OPS' participation in the share capital of the SEE CAO. According to the current status of the information provided by HEP-OPS and the Croatian Regulator, HEP-OPS is not required to obtain such approval from the Croatian Regulator.

Notwithstanding the above, the matter of probable regulatory approval requires further review by the Croatian stakeholders.

2.4.1 N/A

2.4.2 According to the current status of the information provided by HEP-OPS and the Croatian Regulator, no filings are required.

2.4.3 Notwithstanding the above issue regarding whether or not HEP-OPS requires prior approval by the Croatian Regulator, the Croatian regulatory authority can require HEP-OPS to provide reporting from the SEE-CAO, on the basis of its existing license.

2.5 HEP-OPS has not concluded any agreements, other documents, litigation or
any other proceedings which might require consent, or result in a default or affect HEP-OPS’ participation in the SEE-CAO.

2.6 HEP-OPS is not a party to any agreement that gives power to third parties which could be used to object to HEP-OPS participating in the formation and ownership of the SEE-CAO.

2.7 The Croatian Regulator cannot make it a condition of HEP-OPS’ license for HEP-OPS to participate in the SEE-CAO.

2.8 HEP-OPS has not previously entered into any agreements regarding the allocation of cross border capacity. However, HEP-OPS has agreed with Mavir for the performance of coordinated auctions on the Croatian-Hungarian borders, pursuant to which Croatia introduced a common explicit auction scheme (for base load on a monthly) together with MAVIR. HEP OPS fully accepts the result of the individual auction procedures held by MAVIR.

2.9 Contractual arrangements of a company made with third parties beyond the scope of its authority (as these are registered in the Commercial court registry) are valid - doctrine of ultra vires does not apply.

2.10 There is no requirement for the Croatian government to hold a “golden share” in any company in which HEP OPS has an ownership share.

D. former Yugoslav Republic of Macedonia

2.1 The TSO (AD MEPSO) is a Joint Stock Company owned 100 % by the state.

2.1.1 There are no provisions in the founding act of MEPSO that would prevent or restrict it from participating in the SEE-CAO.

2.1.2 Given that MEPSO is stated owned company, a decision by the Government (in its capacity as the owner of MEPSO) will be required. Moreover, once a Government decision is taken, the Management Board of MEPSO will also have to issue a relevant decision to this effect.

2.2 There are no general or special conditions in MEPSO’s license, local laws, the market rules, grid codes, power exchange codes, orders and regulations that
would prevent or restrict ISO from participating in the SEE-CAO.

2.3 According to paragraph 2 of article 38 of the Energy Law, the License can not be transferred or assigned to another entity.

There does not seem to be any impediments preventing or prohibiting MEPSO from entering into an agreement with a third party supplier (i.e. SEE-CAO) who will carry out auctions for the allocation of cross border capacity on the Macedonian borders in its name (i.e. SEE-CAO) but on behalf of MEPSO. In a similar case, at its border with Greece, joint explicit auctions are performed by the Greek HTSO in its name but on behalf of MEPSO (for 50%). In this case, the invoicing to the traders would be effected by the SEE-CAO.

For the reasons stated above, MEPSO can enter into a service agreement with the SEE-CAO in order for the latter to provide auction services to MEPSO.

2.4 Apart from the decision of the Government (as the owner of MEPSO), the Regulator is not required to approve MEPSO’s decision to participate in the SEE-CAO.

2.4.1 N/A

2.4.2 N/A

2.4.3 N/A

2.5 No response

2.6 No response

2.7 The Regulatory Authority cannot make it a condition of the license that MEPSO participate in the SEE-CAO.

2.8 MEPSO participates in a Serbian company called EKC (Electricity Coordinating Center) which is a purely energy consulting company. Other owners are electricity companies from Serbia, Montenegro and Republic of Srpska. It used to have activities similar to those envisaged for the SEE-CAO for Serbia, former Yugolsav Republic of Macedonia, Montenegro and Republika Srpska.
2.9 No response

2.10 No response

E. Montenegro

2.1 TSO was recently unbundled as a self-existing legal person. The main founding and management bodies are Shareholders Assembly, Board of Directors, Executive Director and Secretary of the Company. According to the “National Report Electricity and Gas Montenegro Ref: ECRB-S-Version 1.1 of 2nd September 2008, the transmission system is operated by TSO-EPCG, a business unit of EPCG. The TSO has the following shareholder structure(2008): State owned shares: 70.59%, Private owned shares: 10.41% and Fund owned shares: 19%

2.1.1 There are no provisions in the founding act of TSO-EPCG that would prevent or restrict it from participating in the SEE-CAO.

2.1.2 According to Montenegro legislation and its founding act, in order for TSO-EPCG’s Executive Director to sign the Articles of Association establishing the SEE-CAO and any other agreement related to the SEE-CAO undertaking auctions on behalf of TSO-EPCG, its Shareholders Assembly will need to take a relevant decision to this effect authorizing the Board of Directors to empower the Executive Director.

2.2 There are no conditions in TSO-EPCG’s current license, local laws, the market rules, grid codes, power exchange codes, orders and regulations that would prevent or restrict TSO-EPCG from participating in the SEE-CAO.

2.3 According to the license conditions, TSO-EPCG cannot assign or transfer the License or the right regarding the allocation of available cross border transfer capacity without the prior confirmation from the Regulator.

As concerns whether TSO-EPCG can enter into an agreement with a third party supplier (i.e. SEE-CAO) who will carry out auctions for the allocation of cross border capacity on the Montenegro borders in its name (i.e. SEE-CAO) but on behalf of TSO-EPCG, it is noted that although there are no explicit
provisions in national legislation and in the TSO’s license, this form of arrangement and structure is feasible given that it also constitutes a core activity of TSO-EPCG. In this case, the approval of the Regulator with respect to the agreements may not be required (see our comments below in item 2.4). The only duty of TSO-EPCG would be to inform the Regulator regularly on both technical and commercial aspects of auctions.

TSO-EPCG can enter into a service agreement with SEE-CAO for the latter to provide services in connection with the auctioning of available cross border transfer capacity in the name of TSO-EPCG.

2.4 According to national legislation, TSO-EPCG has the obligation to submit a relevant request to the Regulator in order to deal with any additional business. Although participation in establishing the SEE-CAO could be treated as additional activity, there should be no problems in this respect, as SEE-CAO will be dealing with transmission, which is the core activity of TSO-EPCG.

As concerns requiring an approval by the Regulator, the following should be taken into consideration:

- Even if the above scenario were true, there would be no problems with acquiring an approval from the Regulator.

- The possibility of treating the establishment and participation in the SEE-CAO as additional activity relates only to TSO-EPCG establishing a new institution as a shareholder. In this case alone (i.e. the establishment of a new institution) there may be a need for Regulatory approval. Regulatory approval is not required in the case of agreements with SEE-CAO for the performance of coordinated auctions, as this is a core activity of the TSO.

- Requiring approval from the Regulator may be possible but it seems unlikely given that TSO-EPCG currently participates in the ITC mechanism without any permission required from the Regulator. One significant difference in this case however is that there is no institution dealing with ITC, as in the case of the SEE-CAO.

2.4.1 As concerns the factors that may be used by the regulatory authority in deciding whether to give its approval, there are three conditions:
- The additional activity should not influence negatively TSO-EPCG's economy and finances.
- The additional activity should not influence negatively TSO-EPCG's human and technical capacities.
- The accounting of the additional activities should be done separately from TSO-EPCG's core business.

2.4.2 TSO-EPCG must submit the request to the regulator with justification that the conditions under 2.1.1 are fulfilled.

After the request has been submitted, the appropriate department of the Regulator (Agency) works on the request, which it then refers to the Director of the Agency which submits the proposal to the Board of the Agency. This procedure takes approximately one month, depending on the subject each time.

2.4.3 The regulatory authority cannot directly condition its approval of the TSOs acquisition of an ownership interest in the SEE-CAO and make it a condition that the SEE-CAO has to report to the regulatory authority.

However, there is an obligation arising from TSO-EPCG's licence to inform the regulator on its international activities. As the SEE-CAO will be reporting to its shareholders, TSO-EPCG will have to forward that report or include that report to its own report to the regulator.

2.5 TSO-EPCG has not concluded any agreements, other documents, litigation or any other proceedings which might require consent, or result in a default or affect TSO-EPCG's participation in the SEE-CAO.

2.6 TSO-EPCG is not a party to any agreement which could be used to object to it participating in the formation and ownership of the SEE-CAO.

2.7 As concerns whether the Regulatory Authority, the appropriate Ministry or any other governmental institution or agency which is responsible for issuing the TSO's license can make it a condition of the license that TSO-EPCG participates in the SEE-CAO, by law the Regulator may have the right to alter the license and involve anything appropriate into it. However, this is not common in practice. It would be much simpler if the Regulator approved TSO-
EPCG’s participation in establishing the SEE-CAO.

In addition to the above, given that the major shareholder of TSO-EPCG is the Government which signed the Treaty on establishing the Energy Community, the Government would have to endorse TSO-EPCG’s participation in the SEE-CAO.

2.8 TSO-EPCG has not previously entered into any agreements regarding the allocation of cross border capacity. However, TSO-EPCG is the member of SETSO (now merged with UCTE) and participates in the ITC mechanism on voluntary basis.

2.9 As concerns whether contractual arrangements are void if entered into by TSO-EPCG beyond the scope of its authority, the answer is “yes” if there is a breach of the procedure.

2.10 There is no requirement for the Montenegro government to hold a “golden share” in any company in which TSO-EPCG has an ownership share.

F. Serbia

2.1 JP Elektromreža Srbije (EMS) is the independent transmission system and market operator in Serbia, dealing with cross-border trades of electricity and capacity allocation on the interconnection lines. EMS has been set up in the form of a public enterprise. The sole owner (100%) is the Republic of Serbia, i.e. the Government. As a public enterprise, EMS operates in accordance with the Law on Public Enterprises and performance of activities of general interest. The management of the EMS is undertaken by the Management Board (with 9 members 2/3 state 1/3 employees) and the General Manager. The State nominates the Management Board and the General Manager. There is also a Supervisory Board with 4 members.

2.1.1 There are no provisions in the founding act of EMS that would prevent or restrict it from participating in the SEE-CAO.

2.1.2 According to Serbian legislation on public enterprises (art. 19, 20) and the founding act of EMS (art. 17, 19, 25), the General Manager can sign any
agreements regarding the SEE-CAO, once it has been authorized by a decision of the Management Board. The decision of the Management Board requires the approval of the State, in its capacity as owner of EMS. The State on its part will require the opinion of all Ministries and the Secretariat of Legislation. This procedure takes about 3 months, unless unforeseen complications arise. The government will require to review all documents (i.e. Articles of Association, agreements for syndication, SLAs, Inter TSO Agreements) before it will provide its approval.

2.2 There are no conditions in EMS’s current license, local laws, the market rules, grid codes, power exchange codes, orders and regulations that would prevent or restrict EMS from participating in the SEE-CAO.

There are rules however, issued by National Bank of Serbia concerning the conditions under which EMS, as domestic company, can open a bank account and deposit money abroad.

2.3 EMS cannot assign or transfer the License or the right regarding the allocation of available cross border transfer capacity. In order to do so, the Energy Law would need to be amended and a new license would have to be issued by AERS.

EMS can enter into an agreement with a third party supplier (i.e. SEE-CAO) who will carry out auctions for the allocation of cross border capacity on the Serbian borders in its name (i.e. SEE-CAO) but on behalf of EMS. In this case, the invoicing to the traders would be effected by the SEE-CAO. This is feasible, on condition that the allocation of the cross border capacity is effected by EMS, in its capacity as the “Principal”, (according to its authorities from the License and Art.92 of Energy Law), and not by SEE-CAO. SEE-CAO’s role is limited to the role of simply conducting the auctioning function required for EMS to allocate the cross border transfer capacity (purely administrative tasks).

EMS can enter into a service agreement with SEE-CAO for the latter to provide services in connection with the auctioning of available cross border transfer capacity in the name of EMS. In this case, the invoicing would be effected by EMS.

EMS clarifies that “there are no restrictions for transfer of administrative
activities, but it is not possible to transfer authority related to system operation and other activities for which only TSO is responsible.”

2.4 EMS, as a public enterprise, can invest capital in other capital holding companies performing the activities of general interest or the activities based upon a prior approval of the Government of the Republic of Serbia and therefore, EMS may establish a subsidiary for the performance of the activities for which it is registered and defined in its founding act.

As concerns whether AERS is required to approve, enforce and/or monitor the agency agreement between EMS and SEE-CAO under which EMS outsources certain of its obligations and responsibilities to SEE-CAO or any other agreements on cooperation or adoption of common procedures between EMS and other national TSOs, it is noted that, although this situation is not required explicitly by Serbian legislation, AERS monitors the overall performance of the tasks of the TSO in general, but there is no formal enforcement or approval of these agreements by AERS.

However, financial aspects arising from EMS’ ownership of SEE-CAO and the financial aspects of its contractual arrangements with SEE-CAO are indirectly addressed through the process of reviewing the tariffs for use of system charges by AERS.

2.4.1 There are no specific factors as to what the Serbian government will review. The Government must ensure that it is in compliance with energy legislation.

Since SEE-CAO will assist EMS in performing the activity of general interest in the energy field, the Serbian Government may specify special conditions for the establishment of the SEE-CAO, in line with the Serbian Energy Development Strategy, Program of the Strategy realization and energy balance, such as:

- Guaranteeing the secure, high quality and reliable supply of energy and energy sources;
- Providing the conditions for the secure and reliable operation and functioning of the power system;
- Achieving long term development objectives.
2.4.2 EMS, as a public enterprise, can invest capital in other capital holding companies performing the activities of general interest or the activities based upon a prior approval of the Government of the Republic of Serbia and therefore, EMS may establish a subsidiary for the performance of the activities for which it is registered and defined in its founding act. Once EMS receives the approval from the State, it can proceed with initiating the corporate procedures within EMS in order to authorise the GM to sign the respective documents. This effectively means that before EMS can make its filings with the respective state bodies, it will have to have agree with the other TSOs as to the final form of the agreements.

2.4.3 It is possible that the Serbian Government may condition its approval and say that it grants the right on the condition that the TSO will have to ensure that the SEE-CAO reports to Regulator either directly or through EMS.

2.5 EMS has not concluded any agreements, other documents, litigation or any other proceedings which might require consent, or result in a default or affect EMS’ participation in the SEE-CAO.

2.6 The only agreement EMS currently has with third party suppliers regarding its operations in connection with the allocation of available cross border transfer capacity is with its IT software provider which ends in 2 years and can be terminated at any time by EMS. EMS is not a party to any agreement which could be used to object to EMS participating in the formation and ownership of the SEE-CAO.

2.7 According to the prevailing legal regulations, it is not possible to make it a condition of EMS’ license that EMS participate in the SEE-CAO.

2.8 EMS has not previously entered into any agreements regarding the allocation of cross border capacity. EMS does have however a 25% share in a domestic company called EKC (Electricity Coordinating Center) which is a purely energy consulting company. Other owners are electricity companies from FYRO Macedonia, Montenegro and Republic of Srpska. It used to have activities similar to those envisaged for the SEE-CAO for Serbia, former Yugoslav Republic of Macedonia, Montenegro and Republika Srpska.
2.9 As concerns whether contractual arrangements are void if entered into by EMS beyond the scope of its authority, the answer is “no”, unless the contracting party was aware of the excess, according to article 25.4 of the Serbian Company Law. If there is a breach of the procedure provided in the Serbian legislation on public enterprises (see above), the contractual arrangements are null and void.

2.10 There is no requirement for the Serbian government to hold a “golden share” in any company in which EMS has an ownership share.

G. UNMIK

2.1 KOSTT is a Joint Stock Company established in 2005 (100% of shares owned by the Government). It is managed by the Board of Directors and is supervised by The Board of Shareholder.

2.1.1 The law does not provide for any restriction or preventive provisions that would restrict KOSTT from participating in the share capital of a foreign limited liability company such as SEE-CAO.

2.1.2 The Board of Directors of KOSTT will make decision in accordance with the governmental policies and provide the Government of UNMIK (the shareholder) with relative information.

2.2 There are no conditions that prevent or restrict KOSTT from participating in the share capital of a foreign limited liability company and in particular in the SEE-CAO.

2.3 The Law on Energy Regulator (Article 15.2) provides for the competence of ERO to grant, modify, suspend, transfer and withdraw licenses. The Rule on Licensing of Energy Activities In UNMIK, (41.2. Transfer of the license) may be approved by ERO only in case the reasons for such transfer are justified by applicant and:

- the proposed transferee accepts and discharges all remaining obligations of the current Licensee, whether arising under the License, the Rule, or any other applicable legislation;
- the proposed transferee fulfils all conditions set forth in this Rule on License and other applicable legislation.

No restrictions exist for entering into an agency or brokerage agreement for the SEE CAO to carry out auctions on behalf of KOSTT. Similarly, there are no restrictions allowing in any other way the SEE-CAO to (i) carry out auctions for cross-border capacity allocations using a coordinated flow-based capacity allocation system, (ii) perform front office activities and (iii) facilitate secondary market activities on its behalf, on the basis of its License.

2.4 In order for KOSTT to participate in the SEE-CAO ERO must approve it.

2.4.1 As a signatory party to the Energy Community Treaty, ERO and KOSTT maintain that the government is obliged to comply with all requirements of the Treaty. This is indeed the main factor to be taken into consideration. ERO will also consider the legal issues of participation and the implications for tariffs upon the final customer.

2.4.2 If it is not included in its approved development plan, KOSTT has to make a formal request to ERO to obtain an approval for participation in SEE-CAO. According to Article 25 of the TSO’s license and Article 18 of the MO license, the Licensee must notify the Regulator of any intended change in its control at least sixty (60) days in advance of such a change. Change in control may not take place unless ERO has approved it.

2.4.3 The Regulator may ask KOSTT to continue its reporting on capacity allocation, even if the function would now be exercised by SEE-CAO.

2.5 There are no covenants or provisions arising from agreements, other documents, litigation or any other proceedings which might require consent, or result in a default or affect KOSTT’s participation in the SEE-CAO.

2.6 There are no agreements to which KOSTT is a party and grant third parties powers which could be used to object to KOSTT participating in the SEE-CAO.

2.7 The Regulator is empowered to make it a condition of the licence that KOSTT participates in the SEE-CAO. Moreover, the Shareholder (i.e. the government) can make such participation mandatory.
2.8 KOSTT has not entered into any contracts for syndication, multilateral agreements with other TSOs or loan agreements.

2.9 If KOSTT enters contractual arrangements beyond the scope of its authority, such arrangements would be void and would produce no legal results. Indeed, KOSTT may not enter into any such arrangements given that its mandate is clearly defined in primary and secondary legislation and its license.

2.10 No requirement exists for the Government to hold a “golden share” in any company in which KOSTT has an ownership share.

H. Greece

2.1 The Greek TSO is a societe anonyme, established by the presidential decree 328/2000. 51% of the shares of the company are owned by the Greek State and the remaining shares are owned by the Greek Public Power Corporation S.A. (PPC). However, according to article 5 of the TSO’s articles of association the 49% of the share capital may pass to holders of production licenses. The Greek TSO has a Board of Directors and a Managing Director.

2.1.1 There are no provisions in the founding act of the Greek TSO that would prevent or restrict it from participating in the SEE-CAO.

2.1.2 According to the Greek TSO’s (HTSO) Article of Association (art. 12), the Board of Directors is competent to resolve any matter regarding the development of its strategy and policies. To this effect, HTSO requires a resolution of its Board of Directors to participate in the SEE-CAO. Art. 23 of HTSO’s Article of Association regarding the powers of the General Assembly of Shareholders, does not provide for any powers of the Assembly to this effect.

2.2 The license for the operation of the System does not prohibit the Greek TSO from participating in the share capital of other entities, nor do any local laws, grid codes, power exchange codes, orders and regulations.

Greek Law no. 2773/1999 on the opening of the electricity market provides in particular (art. 15 par. h) that “the Greek TSO may participate in associations,
organizations and companies, members of whom are TSOs, whose objective is the processing and formation of common rules that effectively lead, within the framework of Community law, to the creation of a single internal power market or in particular to the sharing and assignment of rights with respect to the transmission of electricity through corresponding interconnections as well as to the administration of such rights on behalf of the aforementioned TSOs."

It should be noted that par h above (i.e. that allows the Greek TSO to assign some of its rights) was recently added to law 2773/1999 pursuant to law 3734/2009 on 28 January 2009.

2.3 According to Art. 15 par. h of Greek Law no. 2773/1999 on the opening of the electricity market, the Greek TSO may participate in companies whose objective is the creation of a single internal power market and in particular to the sharing and assignment of rights with respect to the transmission of electricity through corresponding interconnections as well as to the administration of such rights on behalf of the aforementioned TSOs.

According to the above provision, the Greek TSO apparently has the right not only to transfer or assign some of its rights provided by law, but also to the right to transfer the administration of such rights on behalf of the Greek TSO (i.e. use of the SEE-CAO as a contracting-invoicing vehicle or a service provider).

2.4 Provided that the participation in the SEE CAO falls within the scope of article 15 (h) of the law 2773/1999, once HTSO’s competent bodies take the respective decisions for its participation in the share capital of SEE-CAO, such decisions should be notified to the Greek Regulator (RAE) for its approval. Depending on the particular circumstances RAE may communicate with other competent administrative authorities, if necessary and HTSO may be required to adopt appropriate action.

2.4.1 The Greek Regulator (RAE), the Greek Ministry of Development or any other governmental body examine the compliance with the existing laws and regulations.

2.4.2 See comments above in item 2.4.
2.4.3 Based on its general competences, RAE may issue recommendations to the Greek TSO (HTSO) regarding its participation to the SEE-CAO in order to be able to exercise monitoring activities as regards SEE-CAO, in so far as it relates with HTSO activities.

2.5 To the best of HTSO’s knowledge, HTSO is not aware of any agreements, other documents, litigation or any other proceedings which might require consent, or result in a default or affect HTSO’s participation in the SEE-CAO.

2.6 The Greek TSO (HTSO) applies the rules set in the «Access Rules to France-Italy, Switzerland-Italy, Austria-Italy, Slovenia-Italy and Greece-Italy Interconnections» as regards the Greek-Italian interconnection and as regards its part in the respective interconnection the «Access Rules for the Greek-Albania, Greek-Bulgaria, Greek-FYR of Macedonia Interconnections».

HTSO has also signed operational and technical agreements with other TSOs but there does not seem to be any agreement prohibiting HTSO’s participation in SEE-CAO.

2.7 Modification of the existing license would be possible, under the same administrative procedure and the regulatory and competent ministerial bodies could in theory condition their approval by specific requirements. However, this would be in practice difficult and time consuming.

2.8 HTSO has already signed agreements with other TSOs. However, none of these agreements seem to prohibit HTSO from participation in the SEE-CAO. All agreements signed by HTSO contain a confidentiality clause and therefore HTSO is bound by this clause.

2.9 As concerns whether contractual arrangements are void if entered into by HTSO beyond the scope of its authority, under the general principles of Greek company law any legal entity has the right to proceed with any activity covered by the purposes described in its articles of association.

2.10 There is no requirement for the Greek government to hold a “golden share” in any company in which HTSO has an ownership share.

I. Hungary

Study on the Identification of Legal Requirements to the Establishment and Operation of and the Participation in a Coordinated Auction Office in South Eastern Europe CAO
2.1 The holder of the permit for TSO activity in Hungary is MAVIR Zrt. MAVIR Zrt. is a private company limited by shares, owned by MVM Zrt. the state owned national vertically integrated electricity company and MNV Zrt. the Hungarian State Holding Company. MAVIR Zrt. is legally unbundled of its owners according to the prevailing unbundling regime rules of the European Commission.

2.1.1 There are no provisions in the founding act of the TSO that would prevent or restrict the TSO from participating in the SEE-CAO.

2.1.2 According to its founding act, in order for Mavir’s Chief Executive Officer to sign the Articles of Association establishing the SEE-CAO and any other agreement related to the SEE-CAO undertaking auctions on behalf of Mavir, the General Assembly of MAVIR Zrt will need to take a relevant decision to this effect authorizing the Board of Directors to empower the Chief Executive Officer.

2.2 There are no conditions in Mavir's current license, local laws, the market rules, grid codes, power exchange codes, orders and regulations that would prevent or restrict Mavir from participating in the SEE-CAO.

2.3 Mavir cannot assign or transfer the license to SEE-CAO. In order to do so, the Electricity law would have to be modified.

Mavir has the right to outsource the performance of the auction to the SEE CAO, to enter into an agency or brokerage agreement or to allow the SEE-CAO to carry out auctions on its behalf according to the terms of its license.

2.4 In addition to the decision of the General Assembly, the following is also required:

- prior approval by the Hungarian Energy Office (HEO) - According to section 94 of the Electricity Act the former approval of the Hungarian Energy Office (HEO) is needed for the outsourcing of the fulfillment of a task, activity of a license holder. The outsourcing cannot result that the license requiring activity is completely performed by a legal entity that has no license for that activity. The duty of electricity cross-border
capacity allocation is a duty of the TSO license holder in Hungary - and
- notification to the Minister of Transport, Telecommunication and Energy.

2.4.1 In order for HEO to provide its approval, it reviews the following:
- whether Mavir’s participation is in accordance with the prevailing legal regulations and requirements of the European Union and Hungary;
- the degree to which Mavir’s participation ensures security of supply;
- Mavir’s ability to fully perform its obligations defined in the law and its operational license,
- whether the SEE-CAO will ensure an equal, non-discriminatory and transparent treatment of all market participants,

2.4.2 Mavir will need to file all documents (Articles of Association, Syndicate Agreement, Inter TSO Agreement and SLAs) and information with HEO. Mavir will approve only after it reviews the agreements. HEO must respond within 90 days with the right to request an extension for 30 more days.

The Minister of Transport, Telecommunication and Energy will also need to be notified by HEO.

2.4.3 HEO cannot condition its approval of Mavir’s acquisition of an ownership interest in the SEE-CAO and make it a condition that the SEE-CAO has to report to HEO.

2.5 Mavir is not aware of any agreements, other documents, litigation or any other proceedings which might require consent, or result in a default or affect Mavir’s participation in the SEE-CAO.

2.6 There are no agreements Mavir is a party to granting third parties powers which could be used to object to Mavir participating in the SEE-CAO.

MAVIR is a member of the CEE region of electricity cross-border capacity allocation coordination within the EU (CEE CAO), defined by point 3.2/d. of Annex 1 of 1228/2003/EC Regulation. Hungary has entered and undersigned the agreement constituting the CEE CAO. Therefore the provisions of 3.2. of the Regulation shall apply to the affected cross-border interconnections. In
particular, according to the provisions of 3.2. of the Regulation, “At an interconnection involving countries belonging to more than one region, the congestion management method applied may differ in order to ensure the compatibility with the methods applied in the other regions to which these countries belong. In this case the relevant TSOs shall propose the method which shall be subject to review by the relevant Regulatory Authorities.”

2.7 According to the prevailing legal regulations, it is not possible to make it a condition of the TSO’s license that the TSO participate in the SEE-CAO. However, the main shareholder (99%) of Mavir is MVM Zrt, hence MVM Zrt. is in the position to decide Mavir participation through the General Assembly of Mavir. However Mavir, being a TSO part of a vertically integrated electricity company, is unbundled of its owner in decision making in connection with TSO capacity connected issues, but the approval of the financial plan and the defining of the maximum indebtedness of MAVIR Zrt is within the owner’s competence, and the decision about founding of a company also within the exclusive competence of the General Assembly.

2.8 Yes. MAVIR is a member of the CEE region of electricity cross-border capacity allocation coordination. Hungary has entered and undersigned the agreement constituting the CEE CAO. Moreover, Mavir every year tries to find a solution with its neighbouring TSOs to organize a common capacity auction. In some cases Parties agree, that for example the yearly auction is organized by one of the TSO-s and the monthly/daily auction is organized by the other. For the year 2009, Mavir has such an agreement with APG, the Austrian TSO company. According to this agreement, auctions for yearly and monthly ATC are held by APG and auctions for daily ATC are held by MAVIR.

2.9 As concerns whether contractual arrangements are void if entered into by Mavir beyond the scope of its authority, this depends on case by case basis.

2.10 There is no requirement for the Hungarian government to hold a “golden share” in any company in which Mavir has an ownership share.

J. Romania
The Romanian Power Grid Company “Transelectrica”- SA is a legal person of Romanian nationality, a joint stock company, whose business is governed by the Romanian legislation and the incorporation document. The company’s leadership is ensured by the Director General and managed by the Managerial Board.

There are no provisions in the founding act of Transelectrica that would prevent or restrict it from participating in the SEE-CAO.

In order for Transelectrica to participate in the formation and share capital of the SEE CAO, a resolution of the Extraordinary General Assembly of Transelectrica is required, empowering its Managerial Board to take a relevant decision empowering the company’s CEO to sign any and all documents relevant to Transelectrica signing the Articles of Association of the SEE-CAO and all other relevant agreements between the TSOs and SEE-CAO. It should be noted that, the Romanian Ministry of Finance has 73% of the share capital and voting rights in Transelectrica and therefore, according to Romanian corporate law, the Ministry of Finance, as the majority shareholder of Transelectrica, has enough shares to take such a decision in the General Assembly. The minority shareholders do not have enough voting rights to stop such a decision in the General Assembly and may only try to do so by filing motions before the Romanian courts.

There are no general or special conditions in Transelectrica’s current license, local laws, the market rules, grid codes, power exchange codes, orders and regulations that would prevent or restrict Transelectrica from participating in the SEE-CAO.

However, Transelectrica’s participation in the SEE-CAO is conditional on whether the particular terms and conditions to be agreed between Transelectrica, the other TSOs and SEE-CAO in the Articles of Association of the SEE-CAO the Inter-TSO Agreements, the SLAs and the Auction Rules are compliant with Transelectrica’s license, Romanian laws, market rules, grid codes, etc.

According to Art. 108 of Transelectrica’s License: “The transfer (assignment) of the rights that the License gives to the Licensee can be done only under a
contract observing all legal conditions and after the Competent Authority’s written approval has been obtained beforehand. The Licensee will specify in the assignment contract the obligations taken over by the assignee; the obligation stipulated in Condition 88 will not be absent from such rights. The Licensee is jointly answerable together with the assignee for the obligations under the License. Any assignment of the Licensee’s rights performed without the Competent Authority’s approval is considered void, constituting an infringement of a License condition and it is sanctioned according to the Law.”

According to the above provision of Transelectrica’s license, Transelectrica has the right not only to transfer or assign some of its rights under the License, such as the right to conduct auctions for the allocation of cross border transmission capacity, but also to outsource the performance of such auctions to the SEE-CAO, to enter into an agency or brokerage agreement or to allow the SEE-CAO to carry out auctions on its behalf according to the terms of its license. It should be noted that according to this provision, the SEE-CAO is accountable to the Romanian Regulator (ANRE).

2.4 In addition to the decision of the General Assembly, the prior approval of the Romanian Regulator (ANRE) is also required.

2.4.1 In order for ANRE to provide its approval, it reviews the following:

- the cost that will be incurred by Transelectrica in the form of service fees to the SEE-CAO;
- the influence on the Romanian market and the efficiency of the project to the consumer;
- the economical and financial risk of outsourcing the performance of auctions to the SEE-CAO;
- whether the specific terms of the agreements (i.e. Articles of Association, Inter TSO Agreements, SLAs etc.) to be signed between the TSOs and the SEE-CAO and the overall structure of the services to be performed by the SEE-CAO are compliant with EU regulations, the Romanian Energy Law no. 13 / 2007, the Commercial Code of the wholesale electricity market, the Electricity Transmission Grid – Technical Code and the Electricity metering code. (It should be noted
that according to item 2.2 above, the above documents do not prevent or restrict Transelectrica from participating in the SEE-CAO and outsourcing the function of the auctioning. However, ANRE will have to ensure that the terms of the agreements to be signed will not deviate from Romania’s internal primary and secondary legislation.

2.4.2 According to License no.161 (condition no.98), Transelectrica has the obligation, “At least 60 weekdays before beginning the establishment procedure, the Licensee is obliged to inform the Competent Authority about its intention to set up a new company / branch carrying out activities in the Romanian electricity sector, if: a) the Licensee will fully own such new company / branch; b) the Licensee will hold shares or social parts in it or c) it will partially or fully belong to another company where the Licensee is an associate; The same obligation applies in the case a company whose associate is the Licensee changes its activity and proceeds to operate in the Romanian electricity sector. Trasnelectrica, can engage in such activities only when it receives a written agreement from ANRE, 30 days after having notified it. In the event ANRE requires additional information and/or documentation, the 30 day deadline begins from the date the additional information and/or documentation is provided.

2.4.3 According to Art. 108 of Transelectrica’s License, ANRE can condition its approval of Transelectrica’s acquisition of an ownership interest in the SEE-CAO and make it a condition that the SEE-CAO has to report to ANRE.

2.5 Transelectrica, as a borrower, has assumed the contractual obligation to inform its Lenders about certain changes in its business which may require that Transelectrica either notify or seek the consent of the bank (in the case of EBRD). In the case of its participation in the SEE-CAO, Transelectrica will have to notify its commercial banks and seek the consent of the EBRD.

There are no on-going or threatened litigation, administrative proceedings, governmental investigations or other disputes in which Transelectrica is involved which could affect Transelectrica’s participation in the SEE-CAO.

2.6 With the exception of operational agreements Transelectrica has concluded with the neighbouring TSO’s, according to UCTE Operational Handbook, with
1 year validity, there are no agreements Translectrica is a party to granting third parties powers which could be used to object to Translectrica participating in the SEE-CAO.

2.7 ANRE cannot make it a condition of Transelectrica’s license that it participate in the SEE-CAO.

2.8 A draft MoU is to be signed among Romania, Hungary and Austria establishing principles for cooperation towards coupling the three markets. There is no specific indication of setting up new entities (i.e. a Market Coupling Office). A specific challenge for the developments aimed by this MoU is about how to integrate the initial coupling Romania in the SEE landscape, so how to cooperate with the SEE-CAO. The coupling Hungary-Romania will be built on the principle “two PXs, one platform, one rulebook”.

2.9 As concerns whether contractual arrangements are void if entered into by Transelctrica beyond the scope of its authority, according to Art. 108 of its License: “…. Any assignment of the Licensee’s rights performed without the Competent Authority’s approval is considered void, constituting an infringement of a License condition and it is sanction according to the Law.”

2.10 There is no requirement for the Romanian government to hold a “golden share” in any company in which Transelectrica has an ownership share.

K. Slovenia

2.1 ELES is a limited company, founded by the state, which also is a 100% owner. The government of the state is the only member in the general assembly.

ELES has a single managing director and supervisory board of 7 members (5 named by the Government and 2 by employed workers).

2.1.1 There are no provisions in the founding act of ELES that would prevent or restrict it from participating in the SEE-CAO.

2.1.2 The general assembly (i.e. the State) does not seem to be required to issue a decision as the sole owner of ELES. The Managing Director will most likely require a decision of the supervisory board.
2.2 There are no general or special conditions in ELES’ current license, local laws, the market rules, grid codes, power exchange codes, orders and regulations that would prevent or restrict it from participating in the SEE-CAO.

2.3 ELES cannot assign or transfer the license to SEE-CAO. ELES has the right to outsource the performance of the auction to the SEE CAO, to enter into an agency or brokerage agreement or to allow the SEE-CAO to carry out auctions on its behalf according to the terms of its license.

2.4 The prior approval of the Slovenian Regulator is not required in order to participate in the SEE-CAO. ELES only has the obligation to notify the Regulator of its decision/intention to participate.

Moreover, all contracts (Articles of Association, agreement for syndication, SLAs, Inter-TSO agreements) must also be filed with the Regulator for information purposes not for approval.

Notwithstanding the above, it should be noted that the Coordinated Auction Rules require approval by the Slovenian Energy Regulator.

2.4.1 N/A – Regulator approval not required

2.4.2 N/A – Regulator approval not required

2.4.3 N/A – Regulator approval not required

2.5 ELES is not aware of any agreements, other documents, litigation or any other proceedings which might require consent, or result in a default or affect ELES’ participation in the SEE-CAO.

2.6 There are no agreements ELES is a party to granting third parties powers which could be used to object to ELES participating in the SEE-CAO.

2.7 The Slovenian Regulator cannot make it a condition of ELES’ license that it participate in the SEE-CAO.

2.8 ELES has previously entered into agreements with Verbund APG for the auctioning of cross border interconnection capacity on the Slovenian - APG border. ELES did not encounter any legal difficulties or implications in
concluding this agreement.

ELES is also participating in the CEE CAO. ELES did not encounter any legal difficulties or implications in concluding this agreement.

2.9 According to Slovenian legislation, contractual arrangements are void if entered into by ELES beyond the scope of its authority.

2.10 There is no requirement for the Slovenian government to hold a “golden share” in any company in which ELES has an ownership share.

L. Italy

2.1 The Italian TSO (Terna) has been established as a joint stock company governed by Italian law and the company’s by-laws. The Company is managed by a Board of Directors. Terna has been listed in the Italian stock exchange since 2004. Its major shareholder is Cassa Depositi e Prestiti, with 29.9% of shares, a government controlled company. 64% of share capital is held by Italian shareholders, while 36% is held by foreign funds.

2.1.1 There are no provisions in the founding act of Terna that would prevent or restrict it from participating in the SEE-CAO. According to its by-laws, Terna may acquire participations and interests in other companies and enterprises, both in Italy and abroad, which carry on analogous, similar or connected activities as its own (the activities carried out by Terna are referenced in article 4 of its By-laws)

2.1.2 According to Terna’s by-laws, the Board of Directors is competent to resolve upon the merger and spin-off as well as the opening or closing of branches. To this effect, Terna requires a resolution of its Board of Directors to participate in the SEE-CAO.

2.2 There are no general or special conditions in Terna’s current license and primary and secondary legislation preventing or restricting it from participating in the SEE-CAO. The main legislative act to be considered is Terna’s current license (Ministerial decree 29 April 2005) which allows Terna to invest in foreign companies operating in the transmission and dispatching services.
Notwithstanding the above, it should be noted that according to Terna’s license, Terna’s participation in foreign companies and activities (i.e. SEE-CAO) must not interfere (i.e. lowering the quality of the service provided) with the activities concerned by the public service obligation foreseen by the license itself at the national level.

Terna must inform the Ministry of Industry in connection with the economic development regarding the willingness to start activities abroad or to invest in foreign companies as stated above. No formal approval by the Ministry of Industry is necessary.

2.3 According to Terna’s license, there are no explicit restrictions as concerns the manner in which the SEE-CAO will be auctioning the allocation of cross border capacity on the Italian borders on behalf of Terna. In principle all of the SEE-CAO possible solutions (i.e. transfer, assignment, brokerage, agency, central invoicing vehicle, outsourcing in general) may be feasible without specific amendments to Terna’s present license.

2.4 No formal approval by the competent Ministry of Trade or the Energy Regulatory Authority would be necessary, on condition that Terna ensures that the level of services provided by Terna through SEE-CAO’s auctioning of cross border capacity at National level remains satisfactory.

Notwithstanding the above, Terna must inform the Ministry of Industry before it can participate in the SEE-CAO.

2.4.1 N/A

2.4.2 N/A

2.4.3 N/A

2.5 Terna is not aware of any agreements, other documents, litigation or any other proceedings which might require consent, or result in a default or affect Terna’s participation in the SEE-CAO.

2.6 Terna is not aware of any agreements it is a party to granting third parties powers which could be used to object to Terna’s participation in the SEE-CAO.
2.7 The appropriate supervisory Ministry of Industry may force Terna to participate in the SEE-CAO.

2.8

2.9

2.10 It is not possible for the Government to exercise certain “special powers” through the issue of golden shares (article 6.3 of Terna’s By-laws)

M. Bulgaria
3. License for performing Auctions

3.1 Regional Overview

As concerns the issues related to licensing, we provide below a summary of the issues set out in the country review section:

1. All TSOs/ISO (in the case of BiH) are licensed by their national Regulators for organization and operation of their national electricity markets. In Bosnia and Herzegovina in particular, the Independent System Operator (ISO) is empowered to deal with congestion management on the borders of BiH by virtue of a special License issued by the State Electricity Regulatory Commission (SERC). *(please see below item 3.1 in the Country Review section for further details per jurisdiction)*

2. Some of the licenses had specific durations or expiration dates. For example, the ISO’s (BiH) license is issued for the period from July 1, 2007 to July 11, 2012. Italy’s license is for 25 years. *(please see below item 3.1 in the Country Review section for further details per jurisdiction)*

3. BiH currently performs pro rata allocation at its borders. However, there are no limitations or prohibitions in BiH’s primary legislation that would forbid or prevent it from agreeing on the performance of coordinated auctions for the allocation of cross border capacity. In particular, the ISO has filed with the State Regulator for a market based allocation scheme to be introduced, fulfilling the provisions of the Regulation (EC) No 1228/2003 by end of 2009. *(please see below item 3.1 in the Country Review section for further details per jurisdiction)*
4. As concerns the obligations each TSO has vis-à-vis the Regulator and the powers each Regulator has on the TSOs, we note that although some of the general reporting obligations are similar in every jurisdiction, each TSO has different obligations of varying degree, depending on the relevant powers bestowed on the Regulator in each jurisdiction. In Slovenia for example, the TSO has much fewer obligations vis-à-vis its Regulator as compared to that in other jurisdictions, for example in Romania or BiH, where the relationship between the TSO and the Regulator is more extensive and requires a higher degree of monitoring and intervention on the part of the Regulator (please see below item 3.2 in the Country Review section for further details per jurisdiction):

5. With the exception of Romania, according to the national primary and secondary legislations in the jurisdictions of the 8th Region, the SEE-CAO does not require a separate license and does not need to be directly regulated by the national Regulators in order to conduct auctions for cross-border capacity allocations on the national borders in SEE-CAO’s name but on behalf of the TSOs as long as the allocation is effected by the TSOs and SEE-CAO’s role is limited to that of simply conducting the auctioning function required for the national TSOs to allocate the cross border transfer capacity. As concerns Romania, SEE-CAO will need a separate license to be issued by the Romanian Regulator to conduct auctions on behalf of the Romanian TSO. This is based mainly on the provisions of and the Commercial code on wholesale electricity market (chapters 3.6 and 9) and art. 13 (2 and 3) of the Romanian Energy Law no. 13/2007. Therefore, unless the relevant provisions of the Romanian Commercial code on wholesale electricity market are amended, the SEE-will have to receive a license from the Romanian Regulator. (please see below item 3.3 in the Country Review section for further details per jurisdiction)

3.2 Overall Conclusions

As concerns whether the issues related to licensing will constitute an obstacle and whether legal, regulatory and administrative requirements will be required in order for the local TSOs to participate in the SEE-CAO, we draw the following main conclusions:
1. All TSOs/ISO in the 8th Region are properly licensed to allocate cross border capacity and based on this license they can participate in the SEE-CAO, without any legal obstacles or additional regulatory requirements [please see our comments above in section 2.2 (1) and (2) “Overall Conclusions”]. No amendment to the existing licenses are required.

2. The duration and expiration date (if existing) of the licenses should be reviewed by the individual TSOs to ensure that each TSO participating in the SEE-CAO has a minimum license period that would not limit the TSO’s ability to commit itself for a minimum period of time.

3. The SEE-CAO (with the exception of Romania – please see below item 4) will not require a separate license and will not need to be directly supervised by the national Regulators in order to conduct auctions for cross-border capacity allocations on the national borders in SEE-CAO’s name but on behalf of the TSOs provided the SEE-CAO’s role is limited to conducting the auctioning function required for the national TSOs to allocate the cross border capacity.

4. Notwithstanding item 3 above, SEE-CAO will need a separate license for auctioning cross border capacity on behalf of the Romanian TSO from the Romanian Regulator. Therefore, unless the relevant provisions of the Romanian Commercial code on wholesale electricity market are amended, the SEE-CAO will have to receive a license from the Romanian Regulator.

5. Given that the Regulators will have no regulatory powers or contractual relationship with the SEE-CAO, each TSO must put forward, when negotiating the terms and conditions of the agreements to be signed among all TSOs and the SEE-CAO for the operation of the latter, the specific national regulatory obligations each one has vis a vis their Regulators with respect to their “licensed” duty of allocating cross border capacity on their national borders so as to ensure that the SEE-CAO assumes the contractual obligation to facilitate, support and endorse these regulatory obligations so as to ensure and make it the SEE-CAO’s contractual obligation to assume such assistance in order for each TSO to be compliant with its national obligations. If the same agreement is signed by all TSOs, the agreement will have to take into consideration the obligations of those TSO with the most regulatory obligations.
6. Given that the jurisdictions in the 8th Region have considerably different regimes regarding the relationship between TSOs and Regulators, this may constitute a legal obstacle for the SEE-CAO to be able to establish and operate effectively “coordinated explicit load-flow based auctions” because this model presupposes stronger and deeper integration, cooperation and coordination among regulators throughout the 8th Region, thus a more harmonized legal regime throughout the region. Initially and until the TSO-Regulator relationship throughout the 8th Region becomes more harmonized and uniform, the SEE-CAO should use coordinated bilateral NTC-based auctions as the initial capacity allocation mechanism and an intermediate stepping stone to “coordinated explicit load-flow based auctions”.

### 3.3 Country Reviews

**A. Albania**

3.1 OST is authorized to conduct auctions for interconnection capacity in accordance with the Albanian Electricity Market Rules (Chapter X, point X.1.3), as approved by ERE, the regulator, with decision no. 68 dt.23.06.2008.

3.2.1 ERE, the Albanian Regulator, is the entity that issues the “License” for carrying out auctions.

3.2.2 Other than the reference to OST in the Albanian Electricity Market Rules (Chapter X, point X.1.3) as the entity that is authorized to conduct auctions for interconnection capacity (see question 3.1 above), there is no detailed set of auction rules dealing with the obligations of OST related to the performance of auctions. Chapter X of these Rules, however, has a general outline of how OST should deal with the allocation of interconnection capacity.

3.2.3 The Albanian Electricity Market Rules (Chapter X, point X.1.7 et seq.) provides that OST Market Operator, which is yet to be set up, will create the interconnection capacity registry. This will be used to record interconnection capacity rights in the interconnection capacity registry by type of capacity held (export or import status and whether the rights are annual, monthly or daily) at each interconnection. The Rules also stipulate the following:
X.1.8 The interconnection access rights process consists of:

i. Either party to the transfer submits an interconnection trade notice to the OST Market Operator that specifies:
   
   a) How many MW
   
   b) Which type of capacity (annual, monthly or daily)
   
   c) Which interconnection
   
   d) Which direction (export or import)
   
   e) The range of settlement periods

ii. The OST Market Operator then notifies the market participant who then has until the time when nominations must be made for utilization of the rights for the first settlement period specified in the notification to register its acceptance of the transfer

iii. If no acceptance is submitted to the OST Market Operator then the entire transfer lapses, otherwise the OST Market Operator will put the appropriate credits and debits in the interconnection capacity accounts of each party.

X.1.9 The OST Market Operator will each month notify all trading parties of interconnection trade notices in which they are involved that are pending, active, recently completed or recently lapsed.

X.1.10 Annual and monthly Interconnection Capacity Auctions:

i. Once each year and on monthly the OST Market Operator will notify parties of:

   ii. The maximum export capacity and maximum import capacity that will be sold in the capacity auction for each interconnection

   iii. The date on which the capacity auction will be held

   iv. The date from which the interconnection rights will become available

X.1.11 On receipt of an interconnection auction bid, the OST Market Operator will check its validity and will inform the party that either the interconnection auction bid has been accepted or the
OST Market Operator believes that the bid is invalid.

X.1.12 On the annual and monthly auction date the OST Market Operator will sort all accepted interconnection auction bids into direction of flow and into descending order of price and will then award the interconnection rights in the requested volume to the party with the highest interconnection bid price first and then to the party with the next highest interconnection bid price and so on until there is no further capacity available in the specified direction of flow.

X.1.13 If there are two or more parties with the same bid and there is insufficient capacity then the available interconnection capacity will be awarded on pro rata basis.

X.1.14 After the OST Market Operator has determined the interconnection capacity rights to be awarded to each party it will:

i. Inform each bidder of the volume of annual or monthly interconnection rights it has been awarded under each bid submitted;

ii. Record the rights awarded to each party in the interconnection capacity register; and

iii. Asks for payments at the interconnection bid price

X.1.15 The OST Market Operator will keep confidential all the prices offered and the volumes requested under each bid whether that bid is successful or otherwise except that parties acknowledge that the OST Market Operator may inform the ERE of all information relating to annual and monthly capacity auctions.

X.1.16 Daily Interconnection Capacity Rights

i. At [09:00] on Day - two, which is the Day that is two Days before the Day for which interconnection Capacity Rights will be made available, the OST will notify the parties as to the level of maximum export capacity and maximum import capacity that will be made available to market participants at each interconnection.

ii. After receiving the previous notification and before [09:30], the OST Market Operator will invite all market participants to submit requests
for additional allocations of interconnection capacity before [14:00].

X.1.17 The parties will be permitted to trade interconnection capacity rights with other parties according to the provisions in the OST procedure for Interconnection Capacity Trading.

X.1.18 The parties are required to nominate their interconnection capacity in accordance with the OST procedure for Interconnection Capacity Nomination.

X.1.19 Use-it-or-lose-it provisions shall apply, according to the provisions in the OST procedure for interconnection capacity allocation.

X.1.20 All interconnection capacity allocation rights purchased will be paid for in advance, according to the provisions in the OST procedure.

3.2.4 Other than the reference to OST in the Albanian Electricity Market Rules (Chapter X, point X.1.3) as the entity that is authorized to conduct auctions for interconnection capacity (see question 3.1 above), there is no detailed set of auction rules dealing with the obligations of OST related to the performance of auctions. Chapter X of these Rules, however, has a general outline of how OST should deal with the allocation of interconnection capacity and no provision for the allocation of duties and powers exists.

3.3 The adoption of the new Market Rules and eventually the granting of a new license to OST to cover all functions of OST should deal with this matter by providing that OST may cede the right to conduct auctions to a another entity. OST and ERE do not foresee, however, that there should be any need for the SEE-CAO to require a separate license and to be regulated by Albanian national authorities.

B. Bosnia & Herzegovina

3.1 The Independent System Operator in Bosnia and Herzegovina (ISO) is empowered to deal with congestion management is authorized by virtue of the “License for the performance of the activity of the Independent System Operator (Registration number of the license: 05-28-007-17/06). The license is issued in accordance with the Licensing Rule (“Official Gazette of BiH”, no. 38/05), and based on the application no. 05-28-007/06 of January 11, 2006
filed by the Independent System Operator in Bosnia and Herzegovina (ISO BiH). The license is issued for the period from July 1, 2007 to July 11, 2012.

3.2.1 The State Electricity Regulatory Commission (SERC)

3.2.2 N/A. A method of auctions has not yet been applied in congestion management.

3.2.3 N/A. A method of auctions has not yet been applied in congestion management.

3.2.4 According to its License, ISO has the following indicative obligation towards SERC:

- ISO regularly, or upon a request of SERC, submits financial reports.
- Prior to harmonizing ISO’s operation with any changes of international commercial or technical requirements related to trade in electricity, ISO is required to report such changes to SERC and obtain approval from SERC.
- The Market Rules and any changes must be submitted to SERC for approval.
- ISO submits monthly reports to SERC on all issues pertaining to the implementation of the cross-border trade mechanism (CBT mechanism), i.e. the mechanism for inter-TSO compensation (ITC mechanism), also including issues initiated by any CBT/ITC Agreement signatory.
- SERC may initiate emergency proceedings in order to react to any doubt pertaining to violation of obligations from the license, at its own initiative or as a response to a request of any person.
- SERC makes inspections of the facilities and documents related to the licensed activities. SERC is entitled to access any ISO-owned or operated facilities, premises of the licensee, its equipment, documents, business records and archive in order to inspect the licensed activity. ISO must provide any form of assistance requested by SERC during the inspection.
• ISO must prepare and submit to SERC monthly reports on invoices submitted to market participants for system services, collections of the system services tariffs during the previous month; all calculations for balancing payments in cash or in kind; and quantities and prices of ancillary services utilized during the month.

• ISO must submit reports on the Grid Code and Market Rules implementation on a six-month basis.

• ISO must submit a monthly report on the allocation and utilization of cross-border capacities.

3.3 The SEE-CAO does not require a separate license and does not need to be regulated by any BiH authority in order to conduct auctions for cross-border capacity allocations on the BiH borders on behalf of ISO.

C. Croatia

3.1 HEP - Operator prijenosnog sustava d.o.o. (HEP-OPS) is registered in the License Register under the license registration number 080517105-0023-02/03 in the section “HERA DOCUMENTS” “Licences”, “Collective Licence Register”, “Business Activity” under number “2. Electricity Transmission”.

3.2.1 The Croatian Energy Regulatory Agency is the competent authority empowered to issue Licenses for carrying out auctions, exercising supervision and monitoring compliance over HEP-OPS with respect to conducting auctions, according to Art. 16 of the Croatian Energy Act.

According to the Croatian Electricity Market Act (art. 36), administrative supervision over the implementation of the Act and regulations passed on the basis of the Act is carried out by the competent Croatian Ministry. Moreover, according to art. 59 of the Electricity Market Rules, the Ministry in charge of the energy sector carries out administrative control over the implementation of the market rules.

According to the Croatian Electricity Market Act (art. 12), approved financial plans are sent to the Croatian Regulator for monitoring and analysis of implementation and (art. 29) the market operator carries out its assignments under the supervision of the Regulator. Moreover, according to art. 60 of the
Electricity Market Rules, the Regulator supervises the activities of the market operator.

3.2.2 HEP-OPS must submit a report on the allocation of transfer capacities to the Croatian Regulator at least once a year, the content of which is defined by the latter.

3.2.3 The rights are provided in the Rules on allocation and use of cross border transfer capacities. These may change following the adoption of the coordinated auction rules.

3.2.4 According to the Croatian Electricity Market Act (art. 12), the mother company of HEP-OPS must approve its annual financial plans and set the limits to their indebtedness.

The Croatian Regulator monitors the implementation of the auction rules and hears complaints filed by market participants.

3.3 Croatian legislation does not provide whether the SEE-will CAO require a separate license and to be regulated by the Croatian Regulator. It should be noted that the Croatian Regulator was not able to provide a definitive answer to this question.

Notwithstanding the above legal ambiguity, we have noted that HEP-OPS has agreed with Mavir for the performance of coordinated auctions on the Croatian-Hungarian borders, pursuant to which Mavir conducts auctions on behalf of both Mavir and HEP-OPS (for base load on a monthly) and HEP OPS fully accepts the result of the individual auction procedures held by MAVIR. In this case, Mavir did not require a separate license.

In light of the above, although we believe that the SEE-CAO may not require a separate license, this matter requires further and definitive examination by the Croatian Regulator.

D. former Yugoslav Republic of Macedonia

3.1 The state owned company MEPSO has 4 licenses and performs the following activities: Transmission system owner, Transmission system operator, Market Operator and Wholesale supplier of electricity to tariff customers. Therefore,
MEPSO AD is empowered to deal with congestion management for the borders of the Former Yugoslav Republic of Macedonia.

3.2.1 The Energy Regulatory Commission (ERC) issues the license to MEPSO. The ERC monitors the mechanisms used to deal with congested capacity on the electricity system within the Republic of Macedonia, according to article 19 of the Energy Law.

3.2.2 MEPSO has the obligation to file reports to the ERC on the operation on regular and/or extraordinary basis. MEPSO has the obligation to allow the ERC free access to its premises in order for the latter to monitor the execution of obligations deriving from the license and upon its request to submit the entire documentation to it in manner, scope and form as defined by the ERC. MEPSO has the obligation to submit to the ERC an annual report for the operation in the previous year by 31 March at the latest in the current year and other interim reports and in manner, scope and form as defined in the license.

3.2.3 MEPSO AD, as the transmission system and market operator, organizes and implements auctions for the allocation of cross-border transfer capacities. MEPSO AD implements the auctions for the allocation of rights of use of cross-border transfer capacities on an annual, monthly and weekly basis.

3.2.4 The Energy Regulatory Commission monitors the fulfillment of the obligations deriving from the license by means of reports on the operation on regular and/or extraordinary bases that MEPSO is responsible to submit. It reviews and controls through direct inspection of operation to MEPSO under official duties or on the basis of a request and/or information from other government bodies, organizations, institutions, legal and natural entities.

3.3 It is not explicitly stipulated in national legislation whether the SEE-CAO will require a separate license issued by the Macedonian ERC. However, on the basis of existing national legislation and in a similar case, MEPSO has currently agreed with the Greek TSO (HTSO) in order for the latter to perform joint explicit auctions on the two countries common borders in the name of HTSO but on behalf of HTSO and MEPSO (at least for 50% of the capacity), without HTSO requiring a license from the Macedonian Energy Regulatory
Commission. Therefore, based on existing legislation and practice, the SEE-CAO should not be required to receive a separate license from the ERC to conduct auctions and to carry out front office activities and a secondary market on behalf of MEPSO (and the other TSOs in the 8th Region).

E. Montenegro

3.1 TSO-EPCG is authorised to conduct auctions according to the articles 3 23) and 27 (6) 2) and 9) of the Montenegro Energy Law.

3.2.1 The Energy Regulatory Agency issues the license and monitors if the licensee (i.e. TSO-EPCG) complies with its provisions.

3.2.2 According to the provisions of license, TSO-EPCG is obliged to comply with all issued or approved rules and regulations.

TSO-EPCG submits the Auction Rules for approval to the Agency, to reports it and is obliged to provide any kind of information to the Regulator. TSO-EPCG also publishes the auction results on its web page.

Moreover, TSO-EPCG is required to report to the Regulator at least yearly on all of its activities.

3.2.3 TSO-EPCG is entitled to allocate cross border capacity.

3.2.4 The Regulator (Agency) is empowered to take certain measures, such as warning notification in the event of breach of license provisions and revoking the license, but it is not empowered to impose any fines. Thus far, there has been no need to take any measures.

Moreover, the Agency is designated secondary body for the dispute resolutions.

3.3 The SEE-CAO does not require a separate license and does not need to be directly regulated by the Montenegro Energy Agency in order to conduct auctions for cross-border capacity allocations on the Montenegro borders in SEE-CAO’s name but on behalf of TSO-EPCG, because the auctions will be conducted on behalf of TSO-EPCG.
F. Serbia

3.1 EMS is in operation based on the Government’s Act on Establishment (2005) and license issued by AERS. EMS has three licenses in connection with the transmission system: (i) License for transmission of electricity, (ii) License for organization of electricity market and (iii) License for transmission system operation. The latter two licenses are relevant to the allocation of available cross border transfer capacity.

3.2.1 AERS is the competent authority empowered to issue Licenses for carrying out auctions, exercising supervision and monitoring compliance over EMS with respect to conducting auctions, according to Art. 15 and Art. 44 – 50 of the Serbian energy Law.

3.2.2 According to Article 16 of the Energy Law, EMS is obliged to provide any and all technical and financial data to AERS even if it is confidential or signed contracts.

There are reporting requirements envisaged in the Grid Code (regular and irregular reports), but these are made publicly available, and are not addressed to AERS or the State directly.

3.2.3

3.2.4 According to article 16 of the Energy Law, AERS can request any data it requires in order to execute it’s tasks.

Under Art. 10 of the Energy Law, AERS has been tasked (among other things) with monitoring the implementation of regulations and rules for energy systems operation.

Under Art 15 Para 3, AERS has been tasked (among other things) with collecting and processing data on energy entities with reference to performing energy-related activities

Under Art. 48/49 of the Energy Law, AERS has the right to suspend and revoke the issued license.

Under Art. 94 of the Energy Law, AERS approves the Grid Code.

AERS proposes the tariff system and passes the methodology for calculating transmission tariffs.

3.3 The SEE-CAO does not require a separate license (as no such license is envisaged in Serbian legislation) and does not need to be directly regulated by AERS in order to conduct auctions for cross-border capacity allocations on the Serbian borders in SEE-CAO’s name but on behalf of EMS (i.e. SEE-CAO will invoice for all congestion income paid by traders and EMS will invoice SEE-CAO) as long as the allocation is effected by EMS as the “Principal” and SEE-CAO’s role is limited to the role of simply conducting the auctioning function required for EMS to allocate the cross border transfer capacity. The role of EMS is stipulated in the Energy Law (Art.92), and the responsibility of EMS to perform this role lies with EMS even if something is outsourced, and the monitoring of EMS is conducted by AERS.

G. UNMIK

3.1 Article 11.2 of the Market Operator License issued by ERO provides that KOSTT shall advertise all necessary and appropriate information for carrying out annual and monthly capacity auctions and for the allocation of Interconnection capacity on a daily basis, according to the Market Rules.

3.2.1 The Regulator issues the “license” for organising auctions and performs their monitoring too.

3.2.2 KOSTT has the obligation to implement market-based auctions while following principles of transparency and non-discrimination. It also has the obligation to report to the Regulator at regular intervals, as required by Regulator, and to inform the Ministry of Economy and Finance based on the Law on Public Enterprises. The Market Operator License issued by ERO (Article 11: Interconnector Trading and Nomination) and the Market Rules contain relevant provisions too.

3.2.3 The procedures for performing auctions and the relevant framework contract, which are proposed by KOSTT, cover all the rights of KOSTT concerning the auctioning process, including the curtailment of capacity in case of force majeure. Relevant provisions are contained in the MO license (Article 11: Interconnector Trading and Nomination).
3.2.4 In case of default or violation of any license provision concerning capacity auctioning, the Regulator (as license issuing and supervisory authority) may withdraw the license. ERO (the Regulator) supervises and monitors whether the licensed activities are exercised in compliance with license conditions and may modify the license, impose sanctions and terminate/revoke the license.

3.3 National legislation does not foresee that there should be any need for the SEE-CAO to require a separate license and to be regulated by local authorities.

H. Greece

3.1 HTSO is authorized to perform activities as a transmission system operator on the basis of the License issued by the Greek Minister of Development as published in the Greek Government Gazette 492/B/27.4.2001 and the decision of the Greek Minister of Development dated 3.5.2001 regarding the approval of the agreement for assigning the control of the Greek transmission system between the Greek Public Power Corporation and HTSO. Auctions are conducted based on article 313 of the Greek Grid Code.

3.2.1 The Greek Ministry of Development has issued the license to HTSO to carry out the management and exploitation of the transmission system according to the Grid code which sets out the manner in which this can be done. Articles 311 seq. have special provisions on interconnection administration.

3.2.2 HTSO provides access to the transmission system according to the grid code. As concerns its obligations towards RAE, HTSO has the following obligations:
- approval of the Auction Rules;
- monitoring and informing RAE;
- reporting requirements;
- publishing relevant market data and monthly reports;
- reporting any infringements;

3.2.3 According to HTSO's license, HTSO has the right to manage and exploit the transmission system according to law 2773/1999, the regulations issued
pursuant the law, the Grid Code and the Power Exchange Code.

3.2.4 According to HTSO’s license, HTSO files its annual budget with the Greek Ministry and Regulator.

3.3 According to Greek legislation, the SEE-CAO will not need a separate license to conduct auctions on behalf of HTSO.

I. Hungary

3.1 The TSO operation license of MAVIR Zrt. was issued by the Hungarian Energy Office with its resolution No. 84/2008.

3.2.1 The Hungarian Energy Office (HEO) issues the “License” for carrying out the auctions. Supervision over Mavir is exercised by HEO and the Hungarian Competition Office (GVH) with respect to competition and unfair market behavior.

3.2.2 Mavir has the following obligations that are directly or indirectly related to the performance of auctions to HEO:

- define the Available Transfer Capacity (ATC) on the border.
- publish the prognosis regarding the Total Transfer Capacity (TTC) and ATC of border intercept based on the procedure regulated in the relevant appendix M4/A of the Commercial Code.
- publish the updated version of the regulation regarding the monthly and yearly auctions on its website,
- provide all necessary information to the participants of the auctions such as defined in section 4 of M4/A Appendix of the Commercial Code.
- provide, according to decree 6/2008. (VI.18.), all necessary data regarding allocation of ATC to HEO by the way determined in this specific decree.

3.2.3 Mavir has the right to prepare the auction’s code and to organize and supervise the capacity auction for a one year period, or monthly, weekly, or a
one day period.

3.2.4 According to Mavir’s license, the Hungarian Energy Office (HEO) is entitled to ask for all relevant information and data, and TSO is obliged to provide the Hungarian Energy Office with the necessary status reports regarding its activity, and data defined in the Commercial Code.

The HEO is entitled to visit the location of the authorized activity in order to examine, whether the authorized activity is performed in line with the regulations of the license and the prevailing law and in case of infringement is also entitled to penalize the TSO according the relevant provision (section 96) of Electricity Act.

3.3 The SEE-CAO does not require a separate license and does not need to be regulated by any Hungarian authority in order to (i) conduct auctions for cross-border capacity allocations on the Hungarian borders on behalf of Mavir, (ii) perform front office activities and (iii) facilitate secondary market activities.

J. Romania

3.1 Transelectrica is authorized to perform activities as a transmission system operator on the basis of License no. 161 for electricity transmission and system service supply from 2000, revised in 2005. As transmission and system operator-TSO, Transelectrica provides Romanian Power System interconnection capacities with other neighboring power systems. Transelectrica is also responsible for coordinating the activities of electricity import-export or transit and allocating the interconnection capacities according to regulations in force;

3.2.1 The Regulatory Authority (ANRE) – Market Monitoring Department issues the “License” to Transelectrica.

3.2.2 According to Art. 51 of the License, Translectrica must provide the allocation of interconnection transmission capacities by bidding them in order to ensure the access of electricity generators and suppliers to the interconnection capacities, in accordance with the provisions of the Commercial Code of the wholesale electricity market.
As concerns its obligations towards ANRE, Transelectrica has the following obligations:

- approval of the operational procedure (i.e. Auction Rules) by ANRE;
- market monitoring and informing ANRE of anticompetitive practices or inadequate market behavior of any market participant;
- reporting requirements (i.e. TTC/ NTC/ ATC, allocated capacity, auction clearing prices, level of usage of transfer capacity, price volatility, imported/exported energy – commercial/physical/unscheduled exchanges, requested quantities and offered prices, monitoring indicators);
- publishing of relevant market data and monthly reports, containing a synthesis of data resulting from the monitoring activity.
- reporting any infringements;

3.2.3 According to Art. 8 of the License, Translectrica provides: management, operation, maintenance, modernization and development of the electricity transmission network, including the RPS interconnection capacities with other neighboring power systems. Moreover, Transelectrica is responsible for coordinating the activities of electricity import-export or transit and allocating the interconnection capacities according to regulations in force.

Translectrica has the right to draft the Operational Procedure for the Allocation of the National Power System Capacity to the Neighbouring Power Systems.

3.2.4 ANRE approves according to the Romanian Commercial Code the framework contracts which Transelectrica concludes and Transelectrica has the obligation to refer any pre-contractual disputes to ANRE for resolution.

According to its License, Transelectrica provides ANRE with the following reports and information:

- all data and information ANRE requires in the exercise of its competencies (Condition 91 of the License);
- “Annual Report of activity” (Condition 92 of the License). The Report is subject to approval by ANRE;
- “Financial Report” (Condition 93 of the License). The Report is subject
to approval by ANRE;

In order to provide compliance with the License conditions and applicable regulations, ANRE may request, examine and copy any information, registrations and documents from Transelectrica, which it considers related in any way to its business and activities in the electricity sector. The requested information can contain state or business secrets. ANRE will use such information only for the purpose it was supplied and it will not reveal its content to any unauthorized person.

3.3 According to ANRE, SEE-CAO will need a separate license to be issued by ANRE to conduct auctions on behalf of Transelectrica. This is based mainly on the provisions of and the Commercial code on wholesale electricity market (chapters 3.6 and 9) and art. 13 (2 and 3) of the Romanian Energy Law no. 13/2007 which stipulates that ‘Generation, transmission, dispatch, distribution and supply of electricity as well as the activities of the electricity market operator and the ones related to the ancillary services are subject to licensing under the condition of the present law. All energy sector activities carried out without authorisation or license are subject to penalisation as per the laws in force.’.

K. Slovenia

3.1 ELES is authorized to perform activities as a transmission system operator on the basis of its License for electricity transmission and the energy act. The License is only an administrative act.

3.2.1 The Regulatory Authority issues the “License” to ELES.

3.2.2 The License does not provide for any special obligations that ELES must fulfill vis a vis the Regulator in connection with the auctioning of cross border capacity. The only obligation ELES has vis a vis the Regulator is to report to the Regulator on the basis of EC Regulation 1228/2003/EC.

3.2.3 ELES has the right to perform the auctions and distribute the revenues in accordance with Regulation 1228/2003/EC. ELES does not have any further rights or obligations.
As concerns outsourcing the auctioning function to the SEE-CAO, since the SEE-CAO will be acting as ELES’ agent, there are no legal restrictions in doing so. It should be noted that the SEE-CAO will have to undertake auctions as instructed by ELES and will not have the right to divert from this parameter.

3.2.4 The License and Slovenian law does not provide for any powers other than those provided by EC Regulation 1228/2003/EC.

3.3 The SEE-CAO does not require a separate license and does not need to be regulated by the Slovenian Energy Regulator.

L. Italy

3.1 Terna is authorized to perform activities as a transmission system operator on the basis of Ministerial decree dated 29 April 2005 issued by the Italian Minister of Industry (G.U. n. 98 del 29-4-2005 - Ministero delle Attività Produttive)

3.2.1 The Ministry of Industry issues the “license” to Terna. The current license is for 25 years. Terna is supervised by the Ministry of Industry and the Italian Energy Regulator.

3.2.2 As concerns the obligations Terna has that are directly or indirectly related to the performance of auctions, auction procedures have to be transparent and on non discriminatory basis as specified in EC Regulation 1228/2003/EC and the CMGs.

3.2.3 Terna does not have any particular rights other than the obligation to undertake auctions according to the auction rules approved by the Energy Regulator.

3.2.4 The Ministry of Industry can revoke, modify, update the licence.

3.3 No separate licenses would be required but the capacity allocation mechanism should in any case be approved by the Italian Ministry of Industry for the economic development, at least for what concerns capacity allocation involving Italian borders. The Regulatory Authority should approve the auction rules issued by Terna itself or by the participated SEE-CAO.
4. Supervisory / Regulatory Authority over the performance of Auctions

4.1 Regional Overview

As concerns the issues related to the supervisory / regulatory authority over the performance of Auctions, we provide below a summary of the issues set out in the country review section:

1. All Regulators in the 8th Region approve the auction rules, with the exception of the Energy Regulatory Commission of the Former Yugoslav Republic of Macedonia, which is supposed to change following the next amendment of the Energy Law which is scheduled to take place by the end of 2009. (please see below item 4.1.1 in the Country Review section for further details per jurisdiction)

2. With the exception of Slovenia and the Former Yugoslav Republic of Macedonia, the Regulators approve the methodology adopted by the TSOs to allocate congested transmission capacity. (please see below item 4.1.2 in the Country Review section for further details per jurisdiction)

3. As concerns reservation of capacity (AAC), EU member states, Croatia and UNMIK do not have legal provisions regarding the reservation of capacity. On the other hand, the remaining non EU jurisdictions in the 8th Region have provisions regarding AAC and grant AAC according to their national legislation. Some non EU Regulators must approve the granting of AAC and some do not. In particular, the Albanian and BiH Regulator approve or address issues related to reservation of capacity whereas the Serbian, Macedonian, and Montenegro Regulators are not authorized to approve/enforce/monitor such obligations. (please see below item 4.1.3 in the Country Review section for further details per jurisdiction)

4. The Regulators in the 8th Region do not approve/enforce/monitor the imposition of any restrictions on capacity allocations, which falls under the discretion of the TSOs. (please see below item 4.1.4 in the Country Review section for further details per jurisdiction)
5. The general reporting obligations vary from jurisdiction to jurisdiction, depending on the relevant powers bestowed on the Regulator in each jurisdiction. *(please see below item 4.1.5 in the Country Review section for further details per jurisdiction)*

6. As concerns agreements on cooperation or adoption of common procedures between the TSO and other national TSOs, the approval of the Regulator or the decision of the Government (in the case of Serbia) is required prior to the signing of any such agreements, according to national legislation. *(please see below item 4.1.8 in the Country Review section for further details per jurisdiction)*

7. Loan agreements signed by TSOs with commercial lenders or banks such as the EBRD are not subject to approval by the Regulators, with the exception of UNMIK and BiH. *(please see below item 4.1.9 in the Slovenia Country Review section for further details per jurisdiction)*

8. As concerns the sharing of technical, operational, or commercial information by TSOs among themselves, according to national energy primary and secondary legislation the TSOs are allowed to agree freely on such matters without any Regulatory intervention (i.e. approval) provided that the national provisions regarding confidentiality are respected. *(please see below item 4.1.10 in the Slovenia Country Review section for further details per jurisdiction)*

9. Assuming the SEE-CAO is not physically located in the jurisdiction of the TSO, the respective national Regulator does not have direct supervision of the SEE-CAO and therefore the regulatory supervision can only be carried out indirectly through the monitoring of each one’s TSO, given that the SEE-CAO’s actions will be undertaken on behalf of the national TSOs. The national regulators can only act within their jurisdiction as provided for under their national Energy Laws and they do not have any jurisdiction over foreign entities, even in the case of the Romanian Regulator, who must issue a license to the SEE-CAO, according to Romanian law. Therefore, the only way the national regulators would be able to monitor the SEE-CAO would be through their national TSOs. *(please see below item 4.2 and 4.3 in the Country Review section for further details per jurisdiction)*
4.2 Overall Conclusions

As concerns whether the issues related to the supervisory / regulatory authority over the performance of Auctions will constitute an obstacle and whether legal, regulatory and administrative requirements will be required in order for the local TSOs to participate in the SEE-CAO, we draw the following main conclusions:

1 One of the main regulatory requirements for the SEE-CAO to perform coordinated auctions on behalf of the TSOs is for the Auction Rules (which will be issued by the SEE-CAO) to be previously approved by each one of the national Regulators. Given the number of national Regulators, it is vital that the TSOs begin immediately drafting the Auction Rules so that any specific legislative issues are detected from the beginning and resolved with any necessary corrective legislative measures.

2 Notwithstanding the national Regulator’s duty to approve the Auction Rules and the methodology adopted by the TSO to allocate congested transmission capacity at cross-border interfaces, the carrying out and conclusion of auctions for cross-border capacity allocations does not require further involvement or prior approvals from the national Regulatory Authorities. To this effect, there are no national legal obstacles or additional regulatory requirements in order for the SEE-CAO to carry out auctions as purely commercial transactions (i.e. without any interference or intervention from the national Regulators). Notwithstanding the above, the national Regulators are still empowered to monitor the carrying out and conclusion of the auctions, through the reporting obligations of each TSO, which may differ as noted in section 3 above. Action will be taken only in case of a complaint by an auction participant, in which case our comments in the section “Dispute Settlement” will apply.
3 As concerns reservation of capacity (AAC) and the regime difference between EU and non EU member states in the 8th Region, the non EU member states will require to amend this matter in order for these jurisdictions to be compliant with EC Regulation 1228/2003/EC and the CMGs. Until the non EU jurisdictions amend their national provisions regarding AAC in order to be compliant with EC Regulation 1228/2003/EC and the CMGs, this will create a problem with the establishment and operation of “coordinated explicit load-flow based auctions” given the inequalities and inefficiencies that will arise in the 8th Region. Initially and until AAC is abolished in all jurisdictions, the SEE-CAO could use coordinated bilateral NTC-based auctions as the initial capacity allocation mechanism and an intermediate stepping stone to “coordinated explicit load-flow based auctions”.

4 The general reporting obligations by the TSOs to their national Regulators vary from jurisdiction to jurisdiction, depending on the relevant powers bestowed on the Regulator in each jurisdiction. Given that the Regulators will have no regulatory powers or contractual relationship with the SEE-CAO, each TSO must put forward, when negotiating the terms and conditions of the agreements to be signed among all TSOs and the SEE-CAO for the operation of the latter, the specific national reporting obligations each one has vis a vis their Regulators so as to ensure that the SEE-CAO assumes the contractual obligation to facilitate, support and endorse such reporting requirements so as to ensure and make it the SEE-CAO’s contractual obligation to assume such assistance in order for each TSO to be compliant with its national obligations.
A legal issue has arisen in Slovenia that may be applicable in other jurisdictions as well. Agreements signed by ELES on adoption of common procedures between ELES and other national TSOs must be translated into the Slovenian language and published. According to Slovenian law in the event of any dispute in the interpretation or enforcement of auction rules, the Slovenian version must supersede. In this case, when ELES signs a multilateral agreement for the coordinated auctioning of cross border capacity allocation, even if it is written that the English version will prevail in the event of dispute, according to Slovenian law, the Slovenian version will supersede. This legal obstacle with respect to the prevailing language must be resolved by enacting legislation amending this matter in particular for coordinated auction rules. In addition, the parties could also conclude in their agreement that any commercial disputes (not disputes arising from third party access which must go before the national Regulator, according to existing legislation) arising from the interpretation or performance of the agreement on the adoption of common procedures will be governed by foreign law and will be settled before foreign courts or acceptable fora of international arbitration.

With the establishment and operation of the SEE-CAO (i.e. established outside the jurisdiction of 12 of the 13 Regulators), the Regulators will no longer, according to the present regulatory regime, have the ability and power to directly monitor and enforce its national primary and secondary energy legislation. The solution to this legal obstacle is two fold:
6.1 According to present regulatory regime, if the TSOs receive the necessary State approvals to proceed with the restructuring, the only remaining way for the Regulators to monitor and enforce their decisions will be through the monitoring and enforcement of their decisions through their licensed TSOs. In order to be able to do so, the Regulators will have to impose certain conditions on their TSOs for the latter to provide in their agreements with the SEE-CAO for the implementation of mechanisms so that TSOs may be in the position to fulfill their regulatory obligations vis-à-vis the Regulators and for the Regulators to be able to carry out their regulatory duties. For this reason, the TSOs should agree beforehand the terms and conditions required by the Regulators so that the TSOs may negotiate and agree to such terms so that the common auction rules on the one hand and the other commercial agreements (SLAs, Inter TSO Agreements etc.) on the other hand facilitate the Regulators in carrying out their regulatory duties.

6.2 The above regulatory obstacle may also be resolved by introducing in the future new regulatory institutions. In particular, the regulatory obstacle in the 8th Region may be resolved, following political intervention, within the framework of the Energy Community, whereby the Ministerial Council may empower the ECRB to undertake certain regulatory tasks required on a regional level in order for the national Regulators to be able to address regulatory issues that require multilateral regulatory intervention.

4.3 Country Reviews

A. Albania

4.1.1 There is no involvement of ERE over the performance of auctions. Its involvement is exhausted in approving rules and procedures such as those stipulated in the Market Rules. But the very functioning of the Market Rules (i.e. Chapter X) related to procedures followed by OST rather than ERE.

4.1.2 ERE approves the methodology for allocating congested transmission capacity at cross-border interfaces. The Albanian Electricity Market Rules
ERE approves arrangements for the reservation of capacity by OST so as to serve entities having public service obligations. The Albanian Electricity Market Rules (Chapter X, point X.1.2), as approved by the ERE with the decision nr. 68 dt.23.06.2008, make such arrangements.

As concerns the imposition of restrictions on capacity allocations (and if so what criteria is used for the imposition of such restrictions), The Albanian Electricity Market Rules (Chapter X, point X.1.2) provide that OST shall reserve a capacity of 25 % for the Wholesale Public Supplier and 50 % for the DSO. ERE may review these quota every November.

**Ex ante reporting obligations**

The format and the framework content of the offers, as well as the scaling of price bids need to be established by OST, in its capacity as Market Operator, and be approved by ERE. This information will be made available by OST to all interested parties (Albanian Electricity Market Rules, Chapter XVII, point XVII.1.3).

**Ex post reporting obligations**

OST (Market Operator) will keep confidential all prices offered and the volumes requested under each bid whether a bid is successful or not. OST, however, is free to inform ERE about annual and monthly capacity auctions (Albanian Electricity Market Rules, Chapter X, point X.1.15).

There is no involvement of ERE over the performance of auctions. Its involvement is exhausted in approving rules and procedures such as those stipulated in the Market Rules. But the very functioning of the Market Rules (i.e. Chapter X) related to procedures followed by OST rather than ERE.

Under the Methodology of Transmission Tariff, revenues may be used to decrease the transmission tariff and rehabilitate/extend the interconnection lines.

There are no agreements in place on the cooperation or adoption of common
procedures between the OST and other national TSOs.

4.1.9 There are no obligations OST has with respect to loan agreements and recourse agreements executed by the TSO with commercial lenders or multilateral banks such as the EBRD.

4.1.10 The ITC Agreement and the Neighborhood Agreements with Greece, Serbia and UNMIK for sharing technical and operational information are the agreements regarding sharing of technical, operational, or commercial information that OST has entered into.

4.2 In the event the auction of capacity is performed by the SEE CAO, no legal, administrative and regulatory issues/problems are anticipated. ERE will keep monitoring, as it is now, and no changes to the current situation will be forthcoming.

4.3 ERE will monitor SEE-CAO only through OST.

B. Bosnia & Herzegovina

4.1.1 The Regulator approves the management of congestion using auctions while its direct performance and implementation belong to ISO. Other than the rules, there is no direct involvement. The Regulator just approves the auction rules. Currently there are only rules governing CMGs based on Pro rata.

4.1.2 The State Electricity Regulatory Commission (SERC) approves the methodology adopted by ISO to allocate congested transmission capacity at BiH borders.

According to Law on Transmission of Electric Power, Regulator and System Operator of Bosnia and Herzegovina (Official Gazette of BiH 7/02, Art. 4.1 “This law establishes the State Electricity Regulatory Commission, having jurisdiction and responsibility over transmission of electricity, transmission system operations and foreign trade in electricity in accordance with international norms in harmony with European Union standards.” Art. 4.2, “The scope of SERC’s jurisdiction and authority shall include approving mechanisms to deal with congested capacity within the electricity transmission system”
4.1.3 The State Electricity Regulatory Commission (SERC) approves or addresses issues related to reservation of capacity according to At. 4.2 of Law on Transmission of Electric Power, Regulator and System Operator of Bosnia and Herzegovina (see above item 4.1.2) and that of public service obligations.

4.1.4 The only restriction on capacity allocation is for security reasons and for AAC, which is monitored by SERC and not subject to approval.

4.1.5 According to its License, ISO provides SERC with the following reports and information:

- Financial reports.
- Report on changes regarding harmonizing ISO’s operation with any changes of international commercial or technical requirements related to trade in electricity.
- Monthly Reports on all issues pertaining to the implementation of the cross-border trade mechanism (CBT mechanism), i.e. the mechanism for inter-TSO compensation (ITC mechanism), also including issues initiated by any CBT/ITC Agreement signatory.
- Monthly reports on invoices submitted to market participants for system services, collections of the system services tariffs during the previous month; all calculations for balancing payments in cash or in kind; and quantities and prices of ancillary services utilized during the month.
- Reports on the Grid Code and Market Rules implementation on a six-month basis.

4.1.6 N/A. A method of auctions has not yet been applied in congestion management.

4.1.7 SERC approves the manner in which ISO uses revenues received from the allocation of its transmission capacity.

It should be noted that BiH Law has foreseen no provisions about the use of congestion management income within its legislation. However, the congestion
management income is nonetheless used as an income to be taken into account by SERC when approving the methodology for calculating network tariffs, and/or in assessing whether tariffs should be modified.

4.1.8 Prior approval of SERC is required, according to the Law on Transmission of Electric Power, Regulator and System Operator of Bosnia and Herzegovina (Official Gazette of BiH 7/02) Art. 4 before ISO can enter into agreements on cooperation or adoption of common procedures between ISO and other national TSOs.

4.1.9 Loan agreements and recourse agreements executed by ISO with commercial lenders or banks such as the EBRD are subject to approval by SERC, according to Art. 14 of Law on Establishing an Independent System Operator for the transmission system of Bosnia and Herzegovina (Official Gazette of BiH 35/04), “The ISO may, with authorization of the Management Board, enter into contracts and agreements to provide for its financing by any means, including, but not limited to, loans, issuance of notes or bonds bearing interest at such rate as it may fix, payable at such time and place and in such manner as it may determine, in any currency, or non-reimbursable grants from international organizations, and which financing shall be subject to approval by SERC as applicable.”

It should be noted that in the event of loans taken out by SEE-CAO, SERC’s approval is not required, except if ISO provides guarantees for the loans taken out by SEE-CAO, in which case SERC’s approval is required.

4.1.10 As concerns sharing of technical, operational, or commercial information by ISO with other TSOs or organizations inside or outside BiH, SERC reviews the policies and rules governing the treatment of confidential information ISO. According to Art. 7 of Law on Establishing an Independent System Operator for the transmission system of Bosnia and Herzegovina (Official Gazette of BiH 35/04), The ISO can establish appropriate policies and rules governing the treatment of confidential information, subject to review by SERC.
4.2 The first pressing issue, given SERC’s strong regulatory position with respect to ISO’s role in allocating cross border transmission capacity, is for ISO to agree with the SEE-CAO and the other TSOs the implementation of mechanisms so that ISO may be in the position to fulfill its obligations vis-à-vis SERC and for SERC to be able to carry out its regulatory tasks, which seem to be by law to a higher degree more intensive than in some other jurisdictions in the region. Moreover, SERC will also need to approve the auction rules, which may be time consuming, given that BiH does not currently have auction rules. SERC and ISO will have to agree beforehand the terms and conditions required by SERC so that ISO may negotiate and agree to such terms so that the common auction rules on the one hand and the other commercial agreements (SLAs, Inter TSO Agreements etc.) on the other hand facilitate SERC to carry out its regulatory duties.

4.3 If the SEE-CAO is not physically located within BiH, SERC does not have the power to supervise or monitor the SEE-CAO. SERC has legal power only over ISO. SERC’s view is that this problem must be addressed at a regional level within the framework of the Energy Community.

C. Croatia

4.1.1 Although Croatian law does not explicitly provide that the Regulator approves the auction rules, indirectly the Regulator has this power because according to article 12 of the Act on the Regulation of Energy Activity, the Regulator is authorized, where necessary, to request that HEP-OPS change the conditions, rules on managing and allocating interconnection capacity.

4.1.2 The Croatian Regulator approves the Rules on allocation and use of cross border transfer capacities adopted by HEP-OPS, that are fully in line with Regulation 1228/EC and CM Guidelines as its annex.

4.1.3 As concerns the reservation of capacity by HEP-OPS to serve entities having public service obligations, the Regulator has noted that there are no more reservations of cross border capacities for any purpose.

4.1.4 As concerns the imposition of restrictions on capacity allocations, according to
article 37 etc. of the current Rules on Allocation and Use of Cross Border Transfer Capacities, HEP-OPS has the right to limit the use of allocated capacity only if the operational security of the system is in danger. To this effect, the Croatian Regulator has the power, according to art. 56 to monitor the proper implementation of the above.

4.1.5 As concerns reporting requirements, we note the following:

HEP-OPS announces auction products and capacity prior to yearly, monthly and daily auctions.

HEP-OPS publishes auction results one hour after an auction closes.

HEP-OPS is ex-post reporting on monthly basis to the HERA.

4.1.6 There are no other obligations.

4.1.7 The Croatian Regulator monitors the use of congestion income, which is according to the provisions of the Congestion Management Guidelines (the use is aimed at increasing interconnection cross border capacities).

4.1.8 The Croatian Regulator monitors agreements on cooperation or adoption of common procedures between HEP-OPS and other national TSOs.

4.1.9 The Croatian Regulator does not approve or enforce loan agreements and recourse agreements executed by HEP-OPS with commercial lenders or multilateral banks such as the EBRD.

4.1.10 The Croatian Regulator is not required to approve agreements concluded by HEP-OPS regarding sharing of technical, operational, or commercial information by HEP-OPS with other TSOs or organizations inside or outside Croatia.

4.2 In the event the auction of capacity is performed by the SEE CAO, the Croatian stakeholders perceive that the legal, administrative or regulatory issues/problems that may arise with respect to the right and ability of the Croatian Regulator to approve, take action and/or supervise/monitor the issues raised above, would be in connection with the handling of complaints filed by market participants where national jurisdiction may present problems in respect to the SEE-CAO legal framework (the use of an arbitrarily defined court/ legal
system).

As concerns resolving the above issue, although existing Croatian legislation does not provide for a solution, some possible solutions could be:

1) Harmonization of licensing regimes for predefined regional capacity allocation schemes under SEE CAO.

2) Well-defined contracts for participants and detailed auction rules

4.3 As concerns whether the Croatian Regulator has the power to supervise or monitor the SEE-CAO (assuming the SEE-CAO is not physically located in Croatia), Croatian law does not provide for such an eventuality. Moreover, the Croatian stakeholders do not at the moment have a position on this matter.

Notwithstanding the above and considering the absence of relevant national provisions to the contrary, according to international public law, if the SEE-CAO is not physically located in Croatia, the Croatian Regulator should not have direct supervision of the SEE-CAO and its supervision should only be carried out indirectly through the monitoring of HEP-OPS.

D. former Yugoslav Republic of Macedonia

4.1.1 As concerns the carrying out and conclusion of auctions for cross-border capacity allocations, the ERC does not have the authority to approve the rules for capacity auctions, according to the existing Energy Law (i.e. the law will be amended by end of 2009, which will include reinforced powers of the ERC). According to article 19 of the Energy Law, the ERC monitors the mechanisms used to deal with congested capacity on the electricity system within the Republic of Macedonia.

Therefore the ERC’s involvement is limited to just monitoring MEPSO’s activities on the allocation of cross-border capacity. To this effect, MEPSO just informs ERC on a regular basis.

4.1.2 The ERC does not approve or take any action with respect to the methodology adopted by MEPSO to allocate congested transmission capacity at cross-border interfaces. Its activities are limited to just monitoring. See our comments above in 4.1.1.
4.1.3 MEPSO reserves the capacity to serve the entities having public service obligations which have priority. The ERC does not approve or take any action in this respect but just monitors MEPSO's activities in this respect. See our comments above in 4.1.1.

4.1.4 MEPSO has the right to reduce or cease those approved transmission capacities causing congestion in the transmission grid in the event of unforeseen disturbances in the power system. The cancellation of the granted right for transmission shall be implemented on the basis of the sorted List of bids received on auction, starting with the portion of the least offered price. The ERC does not approve or take any action regarding the imposition of restrictions on capacity allocations. It only monitors such restrictions.

4.1.5 MEPSO has reporting obligations to the ERC on a regular and/or extraordinary basis.

4.1.6 There do not seem to be any other specific obligations of MEPSO to the ERC with respect to the allocation of cross border capacity (with the exception of the obligations below, see 4.1.7 – 4.1.10).

4.1.7 As concerns the use to which MEPSO puts revenues received from the allocation of its transmission capacity, ERC approves the price for transmission of electricity according to the Rulebook on the method and conditions for regulating electricity prices (O.G. of the RM, no.95/04) and also monitors the use of the revenues through the monthly and yearly reports delivered by TSO in compliance with the license. Macedonian legislation also includes provisions concerning the usage of congestion management income. Congestion management income is used for all three options mentioned within Regulation (EC) No 1228/2003.

4.1.8 As concerns agreements on cooperation or adoption of common procedures between MEPSO and other national TSOs, ERC approves and monitors such agreements.

4.1.9 As concerns loan agreements and recourse agreements executed by MEPSO with commercial lenders or multilateral banks such as the EBRD, the ERC does not approve such agreements but only monitors them during the
procedure for the request of electricity price for transmission.

4.1.10 As concerns sharing of technical, operational, or commercial information by MEPSO with other TSOs or organizations, the ERC does not approve such activities. However, the ERC monitors the sharing of the technical and operation information by MEPSO with other TSOs or organizations inside or outside the country and approves the sharing of the commercial information, according to the Energy Law, Grid Code for transmission of electricity, Market Code, licenses and other legal acts and regulations.

4.2 No Response.

4.3 If the SEE-CAO is not physically located within the Former Yugoslav Republic of Macedonia, the ERC does not have the power to supervise or monitor the SEE-CAO. The ERC has legal power only over MEPSO, according to the existing national legislation.

E. Montenegro

4.1.1 Pursuant to the Montenegro legislation, TSO-EPCG is not strictly obliged to submit the Rules to the Regulator for approval. In the Montenegro Energy Law, articles 12 (2.1) and (2.10) have general provisions with respect to the Agency’s responsibility, in this respect.

However, it has been established as a common practice for the Regulator to review and confirm the Auction Rules submitted by TSO-EPCG, so all the auctioning procedure is in full responsibility of TSO.

4.1.2 As concerns the methodology adopted by TSO-EPCG to allocate congested capacity at cross-border interfaces, the Regulator reviews and confirms the Auction Rules submitted by TSO-EPCG.

4.1.3 The Montenegro Energy Regulator does not have specific powers from the Energy Law empowering it to approve/enforce/monitor public service obligations. The Energy Law has a general provision in articles 1 (3) and 24 (2) of stipulating that the activities in the energy sector will be performed as a public service.

In practice, the Regulator’s involvement is made through the process of review.
and confirmation of the Rules by regulator.

4.1.4 The Montenegro Energy Regulator does not approve/enforce/monitor the imposition of any restrictions on capacity allocations, which falls under the discretion of TSO-EPCG.

4.1.5 No response

4.1.6 According to the license, TSO-EPCG is obliged regularly (on three months) to report regulator on its activities.

4.1.7 Although according to the generally applicable recommendations that revenue should be kept separately and used only for improving the existing or constructing new interconnections, this is not done because that amount of money is too small for any serious investments. On the other hand, TSO-EPCG invests congestion income in new interconnectors without that specific obligation (for example new tone to Albania), so there is no specific need for strict application of previously mentioned principle.

4.1.8 As concerns agreements on cooperation or adoption of common procedures between TSO-EPCG and other national TSOs, it is noted that according to article 27 of the Montenegro Energy Law, TSO-EPCG decides as to the manner in which interconnectors are used. However, if the regulator considers that it is done in the way against market principles or in any abusive way, the Regulator is obliged to take measures.

4.1.9 The Energy Agency does not approve or enforce loan agreements and recourse agreements executed by TSO-EPCG with commercial lenders or multilateral banks such as the EBRD.

Notwithstanding the above, it is noted that according to the Grid Code, TSO-EPCG is obliged to prepare long, middle and short-term development plans. When applying for the tariffs, TSO is additionally obliged to submit the investment plan that should include all of that data.

4.1.10 According to Article 22 (1) (3) of the Energy Law TSO-EPCG possessing commercially sensitive information related to a third party shall not be shared with other parts of such entity. Information separation shall be ensured by
internal codes of conduct adopted within each separate function of each vertically integrated entity. The Regulator must ensure that such obligations are complied with.

According to Article 27 (9) of the Energy Law TSO-EPCG must preserve the confidentiality of commercially sensitive information as determined by the Agency, obtained in the course of its business.

4.2 In the event the auction of capacity is performed by the SEE-CAO, according to the Montenegro Regulator considers that the manner in which disputes will be resolved may be one of the main legal, administrative and regulatory issues/problems that would arise with respect to the right and ability of the Regulatory Authority to approve, take action and/or supervise/monitor the issues raised in section 4.1 above.

According to the Regulator, issue of dispute resolution, should most likely be resolved within the framework of the ECRB of the Energy Community, which would require a legal basis and a mechanism for enforcing its decisions.

Any issues/problems, which would have to be identified specifically, would require changes to relevant primary (and possibly secondary) legislation.

4.3 Assuming the SEE-CAO is not physically located in Montenegro, the Energy Agency does not have direct supervision of the SEE-CAO. Nonetheless, the energy regulator can oblige TSO-EPCG to report and deliver any information necessary for monitoring the SEE-CAO indirectly. TSO-EPCG, as shareholder of the SEE-CAO will be allowed to get any necessary information.

If the ECRB of the Energy Community is empowered to monitor the SEE-CAO, the Energy Agency will be able to monitor the SEE-CAO through the ECRB.

F. Serbia

4.1.1 Pursuant to the Serbian legislation, AERS’ involvement in auctions for cross-border capacity allocation is that it approves the auction rules (as a part of the Market Rules) and the use of revenues from congestion income (in the procedure of reviewing and giving an opinion on the transmission charges, which are finally approved by the Government).

In the case of SEE-CAO, AERS will review and provide an opinion the
transmission charges calculated by EMS in accordance with AERS’s methodology, and this will include the congestion revenues. The issue of the distribution keys is still an open issue in the Energy Community Framework.

4.1.2 AERS approves the methodology adopted by EMS to allocate congested transmission capacity at cross-border interfaces through the rules of access to the grid (including interconnectors) which are incorporated in the Grid Code in terms of technical aspects, and in the Market Code (in terms of market operation procedures).

4.1.3 AERS is not authorized to approve/enforce/monitor public service obligations. EPS as Public Wholesale Supplier has obligation to supply tariff consumers according to the Energy Law (Art.81) and in accordance with Energy Balance approved by the Government. In case EPS can not fulfill these obligations from its own production and imports electricity based on supply contracts awarded after public procurement procedure in which all traders can participate, EMS is obliged to allocate capacity exclusively for this purpose.

4.1.4 AERS does not approve/enforce/monitor the imposition of any restrictions on capacity allocations, which falls under the discretion of EMS. However, the criteria for imposition are to be a part of the Market Code, which is to be approved by AERS.

According to the Energy Law (Art. 76) the Government can decide matters regarding security of supply, not directly capacity restrictions. Only EMS can restrict capacity allocation in case of force majeure and emergency situations.

4.1.5 According to Article 16 of the Serbian Energy Law, AERS is authorized to request from energy entities data and documents necessary for conducting its activities stipulated in the Energy law.

Also, reporting requirements of EMS are envisaged in Art. 6.8 of the Grid Code (not directly to AERS, but available to AERS).

4.1.6 There are no other obligations.

4.1.7 The revenues received from the use of its transmission capacity are taken into account as income in the process of reviewing the tariffs for Use of System
charges by AERS (prior to governmental approval).

4.1.8  AERS monitors the performance of the tasks of the TSO in general (and this might be included if deemed necessary), but there is no formal enforcement or approval of these agreements by AERS.

4.1.9  AERS does not approve or enforce loan agreements and recourse agreements executed by EMS with commercial lenders or multilateral banks such as the EBRD. However, AERS has the obligation to monitor, through the methodologies for the transmission UoS charges, which are evaluated in the review of the calculation of the UoS charges by AERS, prior to their approval by the government.

4.1.10  AERS is not required to approve agreements concluded by EMS regarding sharing of technical, operational, or commercial information by EMS with other TSOs or organizations inside or outside Serbia.

4.2  AERS can only act within its jurisdiction as provided for under the Energy Law, and as described in section 4.1 above. In any case AERS has no jurisdiction over foreign entities. Therefore, the only way it would be able to monitor the SEE-CAO would be through EMS.

Any issues/problems, which would have to be identified specifically, would require changes to relevant primary (and possibly secondary) legislation.

4.3  Assuming the SEE-CAO is not physically located in Serbia, AERS does not have direct supervision of the SEE-CAO. Its supervision can only be carried out indirectly through the monitoring of EMS, given that the SEE-CAO’s actions will be on behalf of EMS. In this manner, AERS regulatory involvement will remain in Serbia and be confined to EMS.

If there is regional regulatory involvement involved [via the ECRB or other institutional arrangement within the framework of the Energy Community Treaty as described under 5 (a) (i)], then the supervision would be regional as well, and this would not be an issue.
G. UNMIK

4.1.1 Congestion management is a license obligation of KOSTT. The right to carry out and to conclude auctions is further enforced by the TSO and MO license issued by the Regulator. Market Rules defining the auctioning principles are prepared by the Market Operator and approved by the Regulator. Auctions are performed by TSMO following approved procedures.

4.1.2 Procedures for the allocation of capacity need to be approved by the Regulator. KOSTT prepares the procedures (and the framework contract) and submits them to all stakeholders for comments and suggestion. Afterwards Procedures & Framework Contracts are submitted to the Regulator for approval. All activities of KOSTT are subject to regulatory monitoring, including the performance and conclusion of auctions.

4.1.3 Entities with PSO should bid for capacity like any other market participant.

4.1.4 Restrictions of capacity are foreseen in emergency operation of the system. Other restrictions need to be justified and backed with ERO’s approval.

4.1.5 Reporting of all KOSTT’s activities, including ex-ante & ex-post capacity allocation process, is a license obligation. KOSTT reports to ERO on monthly, three-monthly and annual bases. ERO may also require ad-hoc reporting.

4.1.6 KOSTT should make capacity available to PTR holders if the system runs in normal conditions. KOSTT should comply with transparency and non-discriminatory provisions.

4.1.7 ERO’s approval is required for the way KOSTT’s revenues from capacity allocation will be used. KOSTT shall prepare and submit for approval its plan for the use of revenues received from capacity allocation and the use of such congestion revenues should be in compliance with Regulation 1228/2003.

4.1.8 Approval of the Framework Agreement is required. KOSTT is obliged to compile the framework of all technical and operational agreements and submit it to ERO for approval before concluding any agreements with other national TSOs.
4.1.9 Due to the direct implication on tariffs, ERO’s approval is required before entering into any loan agreements. Thus, investment plan and loan implications must be submitted to the Regulator for approval.

4.1.10 Rules, codes and procedures that require ERO’s approval may deal with issues of operational cooperation. But there is no need as such for specific approvals concerning operational cooperation.

4.2 ERO is directly involved in the process for establishing CAO, while it has no direct power over CAO. Article 4.2 of the Law on Energy Regulator is also relevant here: “Energy Regulatory Office shall perform the tasks given to it under this law, other laws, and international agreements to which UNMIK is a party or an associated member”.

It is the local counterparts’ view that a binding, regional agreement could deal with any difficulties that could arise from the establishment of CAO.

4.3 ERO’s power to supervise or monitor CAO is not found in either primary or secondary legislation, unless a regional binding agreement gives such power. Indeed, the Regulator would have no power to directly monitor CAO, while it retains the right to supervise the national TSMO and require data and information related to capacity allocation.

H. Greece

4.1.1 The Greek Regulator (RAE) monitors within its general monitoring competence the management and allocation of interconnection capacity, the level of transparency and competition in the energy markets and the publication of all appropriate information by the networks operators and is entitled to collect and process all relevant information from companies in the energy sector, while respecting the principles of confidentiality. Notably, RAE has the competence to impose financial sanctions (fines), to the violators of the primary and secondary energy legislation (including the TSO).

4.1.2 See comments in item 4.1.1.

4.1.3 See comments in item 4.1.1.
4.1.4 See comments in item 4.1.1.

4.1.5 See comments in item 4.1.1.

4.1.6 See comments in item 4.1.1.

4.1.7 See comments in item 4.1.1.

4.1.8 See comments in item 4.1.1.

4.1.9 See comments in item 4.1.1.

4.1.10 See comments in item 4.1.1.

4.2 The two main issues arising in Greek law in the event the auction of capacity is performed by the SEE CAO is the manner in which the Regulator will obtain data from the SEE-CaO and matters regarding dispute resolution.

RAE will require a mechanism pursuant to which HTSO will be able to provide it with any information necessary to perform its tasks provided by Greek law.

The data supply and dispute settlement issues can be addressed and/or resolved through appropriate rules and regulation in the Auction Rules and in the Agreements among the TSOs, as well as between the TSOs and the SEE CAO.

4.3 Assuming the SEE-CAO is not physically located within Greece, the Greek Regulator (RAE) does not have the power to supervise or monitor the SEE-CAO. The Regulator’s monitoring competence clearly does not extend beyond its jurisdiction, which is the main reason why regional regulatory supervision has been deemed necessary.

It should be noted that RAE has legal power to supervise and monitor any action related to the Greek electricity market. For this reason, RAE has legal competence to ask for any information in Greece as well as from HTSO.

I. Hungary

4.1.1 Pursuant to the Hungarian legislation, there is no need for any prior approval or action to be taken by any state administrative institution regarding the
carrying out and conclusion of auctions for cross-border capacity allocations. However the Hungarian Energy Office (HEO) supervises the carrying out and conclusion of the auctions. Action is taken only in case of a complaint by a market participant.

4.1.2 The HEO approves the Auction Rules (as part of the Commercial Code) and the methodology adopted by the TSO to allocate congested transmission capacity at cross-border interfaces.

4.1.3 N/A - Hungary does not have reservation of capacity.

4.1.4 As concerns the imposition of restrictions on capacity allocations (and if so what criteria is used for the imposition of such restrictions), Hungarian energy legislation in force does not contain any restrictions on capacity allocations. For such restrictions in the future (if any), it is necessary to amend the Hungarian Electricity Act and the Enforcement Decree.

4.1.5 The reporting obligations/publications is set by the Commercial Code (Auction Rules). It contains the data which the TSO has to make available to the market participants (available transmission capacity, allocated capacity, number of bid submitters, number of winners and price for each cross border sections) and also the publication deadlines.

4.1.6 N/A – There are no other obligations Mavir has with respect to the performance of auctions.

4.1.7 The auction revenues are taking into consideration in the system charges. The provisions are set by a ministerial decree, so the principles are approved by the Ministry, and the supervision of the usage of the auction revenue is the task of the HEO.

4.1.8 Prior consent of the HEO is necessary before the Hungarian TSO can enter into agreements on cooperation or adoption of common procedures between the TSO and other national TSOs (Electricity Act Section 17.).

4.1.9 HEO does not need to approve in advance any loan agreements and recourse agreements executed by Mavir with commercial lenders or multilateral banks such as the EBRD.
4.1.10 Agreements regarding sharing of technical, operational, or commercial information by the TSO with other TSOs or organizations inside or outside Hungary should contain the scope of the information to be shared. Concerning information which is commercially sensitive it should contain a confidentiality point.

4.2 In the event the auction of capacity is performed by the SEE CAO, the following issues must be addressed

- data supply issues. HEO needs a guarantee that it will be able to receive or acquire any information necessary to perform its tasks provided by Hungarian legislation.

- dispute settlement: according to the Directive 2003/54/EC, it is the regulatory authorities' task to examine and decide in case of complaints related to cross border capacity auctions. HEO needs a guarantee to have the information necessary to perform this task.

The data supply and dispute settlement issues can be addressed and/or resolved through appropriate rules and regulation in the Auction Rules and in the Agreements among the TSOs, as well as between the TSOs and the SEE CAO.

4.3 Assuming the SEE-CAO is not physically located within Hungary, it does not have the power to supervise or monitor the SEE-CAO. HEO has legal power only over Mavir.

However, the HEO has legal power to supervise and monitor any action related to the Hungarian electricity market. For this reason, HEO has legal competence to ask for any information from any market participant operating in Hungary as well as from Mavir. This is the reason why it is very important for HEO to approve the agreements and documents that are to be signed among the TSOs and the SEE-CAO.

J. Romania

4.1.1 ANRE approves the Auction Rules (the “Operational Procedure”) which Transelectrica prepares, according to Law nr. 13/2007 art. 11.
4.1.2 ANRE approves the methodology adopted by Transelectrica to allocate congested transmission capacity at cross-border interfaces according to Law nr. 13/2007 and the Commercial code on wholesale electricity market chapter (9.3.7).

4.1.3 N/A – Romania does not have reservation of capacity.

4.1.4 The only restriction on capacity allocation is for security reasons, as noted in art. 6.8.1 and 6.8.2 of the Operational Procedure TEL 01.06 – revision 4, “Allocation of the Romanian Power System Transfer Capacity to the Neighbouring Power Systems”.

4.1.5 Transelectrica provides ANRE with the following reports and information:

- all data and information ANRE requires in the exercise of its competencies (Condition 91 of the License);
- “Annual Report of activity” (Condition 92 of the License). The Report is subject to approval by ANRE;
- “Financial Report” (Condition 93 of the License) The Report is subject to approval by ANRE;

4.1.6 According to Art. 9.3.2 of the Romanian Commercial Code of the Wholesale Electricity Market, once Transelectrica determines the ATC for the next calendar year, but with at least two (2) months before the end of the current year, it submits to the Competent Authority (ANRE) a proposal for allocating the ATC, separately for each group of Interconnections. The Competent Authority (ANRE) is authorized to ask or adopt any modification of the proposal submitted, if considered necessary. After the Competent Authority’s approval, the allocation of ATC on different Auction Periods becomes compulsory for Transelectrica and the Metering Operator.

According to Art. 9.3.2 of the Romanian Commercial Code of the Wholesale Electricity Market, Competent Authority (ANRE) approves the framework-content and the framework-format of the offers and the offer submittal modality established and published by Transelectrica.

4.1.7 As concerns the use to which Transelectrica puts revenues received from the
allocation of its transmission capacity, this is taken into consideration for transmission tariff calculation, which is approved by ANRE according to Law nr. 13/2007, art. 11 para. (2) and the Commercial Code on wholesale electricity market.

4.1.8 Prior approval of ANRE is required, according to Law nr. 13/2007, before Transelectrica can enter into agreements on cooperation or adoption of common procedures between Transelectrica and other national TSOs.

Moreover, according to Art. 9.3.2 of the Romanian Commercial Code of the Wholesale Electricity Market, the Competent Authority (ANRE) has the right to approve or issue packages of supplementary regulations and procedures for the use of the transfer capacities considered necessary in order to facilitate the achievement of a regional electricity market. To this effect, Transelectrica may also propose supplementary regulations and procedures to be approved by the Competent Authority (ANRE). In this case, the above supplementary regulations and procedures will have priority in application versus any other rules and procedures mentioned in the Romanian Commercial Code of the Wholesale Electricity Market and will become compulsory for all parties, including Transelectrica.

4.1.9 ANRE does not approve loan agreements and recourse agreements executed by Transelectrica with commercial lenders or multilateral banks such as the EBRD, IBRD, EIB, KfW, West LB, NIB, Calyon, BCR, JBIC, Raiffeisen etc. with whom Transelectrica has existing loan agreements. ANRE does however monitor such agreements. On the other hand, investments plans are approved by ANRE.

4.1.10 ANRE does not approve or take any action with respect to information shared between Transelectrica and other TSOs.

ANRE can share information with other Regulators according to Art. 11 (3) of Energy Law nr. 13/2007, which stipulates, "ANRE monitoring activity refers mainly at: a) Management regulations and interconnection allocation capacity, in cooperation with regulatory authorities from the countries with which SEN in interconnected." However, ANRE cannot share information regarding "commercial and financial activities, whose publication may affect the fair
competition principle”.

4.2 As concerns any regulatory issues/problems raised due to the fact that the SEE-CAO will be conducting the auctions on behalf of Translectrica from outside Romania, this issue could be resolved by ANRE’s procedure with approval of Regulatory Committee of the Romanian Energy Regulatory Authority which has its duties given by Law.

4.3 ANRE has the responsibility to supervise or monitor the SEE-CAO according to Article 13 par.2 Law nr. 13/2007, if it conducts auctions on behalf of its Licensee (i.e. Transelectrica). However, it is doubtful if it will be able to exercise directly its regulatory powers and enforce its decisions on the SEE-CAO, as the SEE-CAO will be operating outside Romania, with the exception of ANRE’s right to regulate SEE-CAO through Transelectrica or to revoke the License.

K. Slovenia

4.1.1 The carrying out and conclusion of auctions for cross-border capacity allocations does not require the prior approval of the Regulatory Authority, the appropriate Ministry or any other governmental institution or agency.

The Regulatory Authority however approves the Rules on the Mode and Conditions of cross-border capacities allocation.

4.1.2 The Regulatory Authority does not approve the methodology adopted by ELES to allocate congested transmission capacity at cross-border interfaces.

4.1.3 N/A – Slovenia does not have reservation of capacity.

4.1.4 N/A - There are no restrictions on capacity allocation.

4.1.5 As concerns reporting with respect to the performance of auctions, ELES has the reporting obligation for monthly reports are required by EC Regulation 1228/2003/EC. ELES does not have any other obligations.

4.1.6 ELES does not have any special obligations as concerns the publication of results other than those specified in EC Regulation 1228/2003 and in the
Auction rules which are annually approved by the Regulator.

4.1.7 As concerns the use to which ELES puts revenues received from the allocation of its transmission capacity, ELES reports to the Regulator as concerns the revenues and spending of these revenues according to an approved investment plan. The regulator reports on it to the European Commission.

4.1.8 Prior approval of the Energy Regulator is required before ELES can enter into agreements on adoption of common procedures between ELES and other national TSOs.

It should be noted that such agreements on adoption of common procedures between ELES and other national TSOs must be translated into the Slovenian language and published. A legal issue has arisen from such practice which is the following: According to Slovenian law in the event of any dispute in the interpretation or enforcement of auction rules, the Slovenian version must supersede. In this case, when ELES will signs a multilateral agreement for the coordinated auctioning of cross border capacity allocation, even if it is written that the English version will prevail in the event of dispute, according to Slovenian law, the Slovenian version will supersede. This matter must be resolved by enacting Slovenian legislation amending this matter in particular for the coordinated auction rules.

In addition, the parties could also conclude in their agreement that any commercial disputes (not disputes arising from third party access which must go before the national Regulator, according to existing legislation) arising from the interpretation or performance of the agreement on the adoption of common procedures will be governed by foreign law and will be settled before foreign courts or acceptable fora of international arbitration.

4.1.9 The Energy Regulator does not approve loan agreements and recourse agreements executed by ELES with commercial lenders or multilateral banks such as the EBRD. On the other hand, investments plans are approved by the Energy Regulator.

4.1.10 The Energy Regulator does not approve the sharing of technical, operational, or commercial information by ELES with other TSOs or organizations inside or outside Slovenia.
4.2 The main problem perceived by the Energy Regulator is the regulatory gap given that the Regulator cannot monitor or regulate the SEE-CAO directly. The present rules are monitored by the Slovenian Energy Regulator for auctions undertaken by ELES for the borders in one direction, for the other direction Terna or APG undertake the auctions under the same coordinated rules and monitoring of the Italian and Austrian regulators, respectively. This regulatory gap has to be closed.

The regulatory gap may be closed in one of the two following ways:

- Following the implementation of the third energy package – which should enable the Slovenian regulator to monitor common auctions outside Slovenia.
- Through the implementation of regulatory powers provided to the ECRB by the Ministerial Council within the framework of the Energy Community.

4.3 If the auctions are undertaken outside Slovenia by the SEE-CAO which is not a Slovenian company, the Slovenian Energy Regulatory Authority will not have the power to supervise or monitor the SEE-CAO.

L. Italy

4.1.1 The Italian Ministry of Industry sets the general rules regarding the allocation of cross border capacity on the Italian borders. Terna prepares the auction rules which are thereafter approved by the Energy Regulator. The Regulator also approves other practical agreements such as the rules governing the secondary market, the nomination procedures etc.

4.1.2 The same rules above (4.1.1) apply for the methodology adopted by Terna to allocate congested transmission capacity at cross-border interfaces.

4.1.3 N/A – Italy does not have reservation of capacity.

4.1.4 See reply above 4.1.3.

4.1.5 As concerns ex ante and/or ex post reporting obligations by Terna with respect to the performance of auctions, a certain number of ex-ante and ex-post
obligations are imposed by the Regulator (see. Delibera AEEG n. 182/08, art. 5 and 7)

4.1.6 N/A

4.1.7 As concerns the use to which Terna puts revenues received from the allocation of its transmission capacity, this is decided directly by the Italian Ministry for economic development.

4.1.8 Terna is free to enter into agreements on cooperation or adoption of common procedures between Terna and other national TSOs. As concerns the allocation of cross border capacity on the Italian borders in particular, as noted above in 4.1.1 the Italian Ministry of Industry sets the general rules which must be subsequently approved by the Energy Regulator.

4.1.9 Terna is free to enter into loan agreements and recourse agreements with commercial lenders or multilateral banks. No prior approval is required.

4.1.10 The Energy Regulator does not approve or take any action with respect to information shared between Terna and other TSOs.

4.2 In the event the auction of capacity is performed by the SEE CAO, there are no legal, administrative and regulatory issues/problems that would arise in Italy with respect to the right and ability of the Italian Regulatory Authority and the appropriate Ministry to approve, take action and/or supervise/monitor the issues raised in section 4.1 above. The capacity of cross border capacity should be allocated according to the coordinated auction rules that will need to be approved by the Italian Regulatory Authority and the relevant Ministry.

According to the Italian Regulatory Authority, any supervisory obstacles arising from the fact that the auctions will be conducted by a company outside the jurisdiction of Italy (i.e. the SEE-CAO in Montenegro) will be resolved by the Regulator by exercising at the national level its necessary supervisory and control powers on Terna that will be participating in the SEE-CAO.

4.3 Assuming the SEE-CAO is not physically located in Italy, the supervision of the SEE-CAO can only be carried out indirectly through controlling and monitoring Terna.
M. Bulgaria
5. Cooperation among Regulators / Supervisory Authorities

5.1 Regional Overview

As concerns the issues related to the cooperation among supervisory / regulatory authorities, we provide below a summary of the issues set out in the country review section:

1. The issue of whether Regulators can enter into binding agreements with other regulators for common monitoring of the SEE-CAO is an issue that is divided among the jurisdictions of the 8th Region and one that does not have any precedence, thus making its reality and effectiveness uncertain. Indicatively, we note that according to their national legislation the Albanian, Romanian, Hungarian and Italian Regulators can enter into such binding agreements, whereas the BiH, Macedonian, Serbian, Montenegrin and Slovenian Regulators cannot. (please see below item 5.1. in the Country Review section for further details per jurisdiction)

2. The Regulators seem to be in accord with the solution that the institutional framework of the Energy Community could be used in order for the ECRB to be set up as an institution of the Energy Community in which regulators can jointly undertake regulatory duties with respect to the operations of the SEE-CAO. (please see below item 5.4. in the Country Review section for further details per jurisdiction)

3. There are no uniform rules regarding what constitutes “confidential” information. Each national legislation has different criteria of a varying degree throughout the 8th Region. (please see below item 5.5. in the Country Review section for further details per jurisdiction)
4. One of the main obstacles related to the ability of Regulators to cooperate among themselves is the Regulators’ legal limitation from sharing information with third parties that are not deemed public authorities, according to their national legislation. The general idea according to relevant provisions of national energy and commercial legislation, is that although Regulators are empowered by law to request from energy entities data and documents necessary for conducting their activities and the energy entities are obliged to deliver the requested data and documents, the Regulator is obliged to keep confidential any information classified as “confidential” either for commercial, public or national (i.e. military) purposes. Therefore, although Regulators can request to receive “confidential” information, they are limited in their ability to making such data known to third parties, such as other regulators. *(please see below item 5.5. in the Country Review section for further details per jurisdiction)*

5.2 Overall Conclusions

As concerns whether the issues related to the cooperation among supervisory / regulatory authorities will constitute an obstacle and whether legal, regulatory and administrative requirements will be required in order for the local TSOs to participate in the SEE-CAO, we draw the following main conclusions:

1. According to the legal regime of several of the jurisdictions in the 8th Region, there is a legal obstacle in the legal capacity of the Regulators to enter into legally binding agreements with other regulators for common monitoring of the SEE-CAO, thus presenting a legal obstacle in the efficient and effective monitoring of the SEE-CAO. The same applies in the event an Advisory Board was created within the SEE-CAO.

2. A solution of the “regulatory gap” could be the institutional framework of the Energy Community, which could be used in order for the ECRB to be set up as an institution of the Energy Community in which regulators cooperate. In this case, the Ministerial Council of the Energy Community may empower the ECRB to take legally binding decisions on issues regarding dispute resolution mechanisms, monitoring of the SEE-CAO, auditing the SEE-CAO’s books of account, etc., which would in fact indirectly empower the national regulators to deal with certain issues addressed by the Ministerial Council.
3. The legal and regulatory obstacle related to the inability of the national Regulators to share confidential information with other state regulators must be resolved in order for the Regulators to be able to effectively monitor jointly the SEE-CAO. From a legal perspective, the issue of the Regulators sharing “confidential” (i.e. this applies to trade secrets and commercially sensitive information not to state and military secrets) information could be resolved if national legislation were amended (with the condition of reciprocity) in the 8th Region empowering Regulators to share “confidential” information with other Regulators either on a bilateral basis or within the institutional framework of the Energy Community, on the condition that the legal entities providing such information are informed of this possibility.

4. Another legal obstacle in the ability of the Regulators to cooperate equally and effectively together with respect to sharing “confidential” information, is the absence of uniform rules regarding what constitutes “confidential” information. Uniform regulation (lex specialis) would need to be adopted throughout the 8th Region to overcome this legal obstacle.

5.3 Country Reviews

A. Albania

5.1 ERE will have the power to enter into binding agreements with other regulators for common monitoring of the SEE-CAO once there is a decision of the Ministerial Council of the Energy Community.

5.2 N/A

5.3 With regard to legal provisions or financial restrictions that either empower or prevent the regulator from entering into binding agreements with other regulators or from participating on advisory boards, there are no such provisions or restrictions in Albanian legislation, yet it would advisable that such agreements are made on express provisions.

5.4 N/A

5.5 ERE maintains that every regulatory authority should be in a position to share information regarding available and allocated capacity and should be given full
access to SEE-CAO. However, no matter how much transparency should a prime objective, there could be no additional access and confidentiality should apply to all financial information.

B. Bosnia & Herzegovina

5.1 There do not seem to be legal obstacles in BiH legislation preventing SERC from entering into binding agreements with other regulators for common monitoring of the SEE-CAO. In particular, SERC’s jurisdictions include, according to the Law on Transmission of Electric Power, Regulator and System Operator of Bosnia and Herzegovina (Official Gazette of BiH 7/02), “the issuance of licenses for transmission of electric power as well as other activities related to transmission of electric power, including those which facilitate international trade in accordance with international norms in harmony with European Union standards”

Notwithstanding the above, it should be noted that SERC is supervised by the Parliament of BiH and SERC may require the approval of the Parliament of BiH to enter into such agreements. In this case, although SERC has the power to enter into such agreements, it may require the approval of the Parliament of BiH.

5.2 Although SERC is not familiar with details of SETSO TF’s Business Plan, i.e. the role of an advisory body, there should be no obstacles to participate in this body.

5.3 There are no legal obstacles, with the exception of perhaps the administrative prerequisite of acquiring the approval of the Parliament of BiH, but there are financial restrictions that may prevent SERC from entering into binding agreements, such as the cost for participating in binding agreements or foreign bodies.

5.4 In order to avoid the national administrative procedures which increase the level of risk and are at times time-consuming, it has been recommended that such matters be addressed at the level of the Energy Community whereby the decision for more intense and substantial coordinated regulatory activities can take place through the institutional process of the Ministerial Council of the
Energy Community, whereby the Ministerial Council can empower the ECRB, with the participation and contribution of the national Regulators, to undertake certain regulatory duties in connection with the activities of the SEE-CAO.

5.5 SERC, under certain conditions (see art. 9.1. below), can share information about ISO’s activities with other regulatory authorities. SERC cannot however share information that affects public interest or legitimate objectives such as military.

According to Art. 9.1 of the Law on Transmission of Electric Power, Regulator and System Operator of Bosnia and Herzegovina (Official Gazette of BiH 7/02), “SERC, the company for transmission of electric energy, the ISO and the Ministry may request from a generator, supplier, trader or distribution company data and information necessary for furtherance of this Law. SERC, the ISO, the company for transmission of electric energy and the Ministry shall maintain the confidentiality any such data and information that are deemed trade secret or confidential, except in so far as this Law or duties established under this Law requires that it report such data. Any party requested to provide such materials shall do so within a reasonable time, as determined by the requesting party. Data or information so obtained by SERC, the company for transmission of electric energy, the ISO or the Ministry can be used only for the purpose for which it is obtained. Any party which, in the performance of its duties, gains access to data or information that it knows to be of confidential character shall be obliged to maintain the confidentiality of such data or information, except in so far as this Law require that it report such data or information or the necessity to so report arises from its duties.”

In light of the above, the ability to share information is limited to that information which is not deemed “trade secret or confidential”.

C. **Croatia**

5.1 Croatian law does not provide for the ability of the Croatian Regulator to enter into binding agreements with other regulators for common monitoring of the SEE-CAO.

5.2 See reply above in item 5.1.
5.3 See reply above in item 5.1.

5.4 Regulatory coordination matters should be addressed at the level of the Energy Community.

5.5 The Croatian Regulator can share information with other regulatory authorities within the scope and framework of EC Regulation 1228/2003/EC.

D. former Yugoslav Republic of Macedonia

5.1 According to Energy Law, Art. 19(12) ERC “cooperates with other regulatory authorities so as to contribute to the development of regional energy markets;” However, this provision may not be sufficient for the ERC to enter into binding agreements with other Regulators for the common regulation of the SEE-CAO, because according to national administrative law and the law for the establishment of the ERC, the ERC is supervised by the national Assembly. Therefore, the ERC may require the prior approval of the national Assembly before entering into such agreements. In this case, although the ERC may have the power to cooperate with other regulatory authorities so as to contribute to the development of regional energy markets, it may require the prior approval of the national Assembly before entering into such agreements.

5.2 As concerns whether the ERC has the power to participate in an advisory body such as the Advisory Board of the SEE-CAO contemplated in the Business Plan provided by Terna and Verbund, our comments above apply accordingly.

5.3 There are no legal obstacles, with the exception of perhaps the administrative prerequisite of acquiring the approval of the national Assembly.

5.4 Alternatively, the issue of Regulatory coordination may be addressed at the level of the Energy Community, whereby the Ministerial Council can empower the ECRB, with the participation and contribution of the national Regulators, to undertake certain regulatory duties in connection with the activities of the SEE-CAO.

5.5 The ERC can share non confidential information about MEPSO with other regulatory authorities in order to ensure appropriate monitoring of the
coordinated auctions. According to Article 24, paragraph 2 of the Energy Law, documents, data and information classified as confidential must be used and maintained by the ERC in a manner to protect the confidentiality of such information. According to Article 120 of the Energy Law, MEPSO is obligated to ensure and guarantee confidentiality of the business data and information that has been gathered from the users during the period of pursuing the activity. The entities pursuing energy activities of public interest shall not misuse the business secrets and information that have been gathered from third persons in the pursuing of the activities due to acquiring business benefits, as well as for undertaking discriminatory activities on behalf of third parties. In light of the above, is restricted in sharing only non confidential information.

E. Montenegro

5.1 With the exception of Article 12 (2) (17) of the Montenegro Energy Law, which empowers the Energy Regulatory Agency to join international energy associations the Energy Law does not explicitly provide or prohibit the Energy Regulator from enter into legally binding agreements with other regulators to cooperate in the regulation or monitoring of the SEE-CAO. Given that there is also no precedence in this area, it is unlikely in practice that the Agency would be able to enter into such legally binding agreements.

5.2 Given that the SEE-CAO, contemplated in the Business Plan provided by Terna and Verbund, will not be set up as an international association, the regulatory agency may not have the power to participate in the Advisory Board of the SEE-CAO.

5.3 See above for legal restrictions. Financial restrictions could appear if it is too costly. As the budget of the Agency is approved by Parliament, such costs should be included, and if approved, there is neither financial restriction. Only in the case that such cost exceeds acceptable amount, there could be some restrictions.

5.4 As concerns whether the Montenegro regulatory authority can share information about its TSO’s activities with other regulatory authorities in order to ensure appropriate monitoring of the coordinated auctions, there is no
specific provision regarding the obligation of regulator to share the information with the other regulators regarding national TSO.

If providing any confidential information, TSO-EPCG is supposed to declare it. However, according to the Montenegro Regulator, it should be done the same way by all the regulators in order to avoid the situation that some regulators can, but the others can not provide some information.

5.5 The regulatory authority can share information about its TSO’s activities with other regulatory authorities in order to ensure appropriate monitoring of the coordinated auctions, according to article 12 (2.15), provided it is not commercially sensitive information.

F. Serbia

5.1 Although Article 20 of the Statute of the Energy Agency of the Republic of Serbia empowers the Agency to “…establish cooperation with relevant regulatory authorities of other states and organizations in the field of energy, organized on a European or regional level, with the goal of establishing and enhancing relations of mutual interest. The Agency may, in the implementation of the cooperation, join and be a member of international and other organizations for technical, scientific and other cooperation in the field energy, in compliance with laws and concluded international agreements and conventions.”, the Energy law does not provide AERS with the right to enter into legally binding agreements with other regulators and therefore, AERS would not be able to conclude such agreements.

On the other hand, the institutional framework of the Energy Community could be used in order for the ECRB to be set up as an institution of the Energy Community in which regulators cooperate. In this case, the Ministerial Council of the Energy Community may empower the ECRB to take legally binding decisions, which would in fact indirectly empower the national regulators (i.e. AERS) to deal with certain issues addressed by the Ministerial Council.

5.2 AERS would not be able to participate on the Advisory Board, because according to Article 20 of its Statute provides for “international and other organizations for technical, scientific and other cooperation in the field of
5.3 According to 5.1 and 5.2 above, AERS cannot participate in binding agreements with other regulators or on the Advisory Board of the SEE-CAO.

5.4 Given that AERS does not have the power to enter into binding legal agreements with other regulators or participate on advisory boards, alternatively, institutional solutions could be provided within the institutional framework of the Energy Community Treaty.

In particular, in order to resolve some of the cross border or regional issues related to the authority of the regulators to pursue such actions outside their jurisdictions, the Ministerial Council of the Energy Community via the ECRB could empower the regulators, within the Energy Community, to issue recommendations or issue legally binding decisions on issues regarding dispute resolution mechanisms, monitoring of the SEE-CAO, auditing the SEE-CAO’s books of account, etc.

5.5 According to Article 16 of the Energy Law, “The Agency is authorized to request from energy entities data and documents necessary for conducting its activities stipulated by this Law. Energy entities are obliged to deliver these data to the Agency within eight days from the date of request for data submission. Pursuant to the Law and other regulations, the Agency is obliged to keep as confidential commercial and other confidential business data, submitted to it for performing tasks within its competence.” Effectively, AERS could share only data that is not deemed confidential by EMS.

According to Article 38 of the Law on Commercial Entities, “Information on operations of a company determined by company’s Articles of Association, company agreement or by-laws, which would obviously result in significant damage to a company if known by a third party are considered to be business secrets. Information which is required to be disclosed by law or relates to violation of laws, good business practices and principles of business ethics, including information which is grounds for suspicion of corruption, will not be regarded as business secrets. Disclosure of such information is legal if its purpose is to protect the public interests.”

EMS determines what it considers to be a business secret, based on the
possible damage a company might suffer if such information were to be disclosed. The issue of business secrets does not represent a problem for AERS to obtain such information, since AERS has the right to request any information it deems necessary to perform its duties based on the mandatory provisions of the Serbian Energy Law. AERS, however, is restricted with respect to making such data known to third parties, such as other regulators. This can represent an obstacle in this respect.

Given that the companies are given some freedom to determine what can be considered as a “business secret” whilst respecting the conditions laid out in Article 38 of the Law on Commercial Entities, if AERS considers that something is not actually a business secret, although labeled as such by the companies, AERS has two options: (i) AERS could disclose the data on the grounds of protection of public interest in line with Art. 38, Para 2 of the Law on Commercial Entities (and possibly face an action for restitution of damages filed by the company); or (ii) initiate a procedure before the Serbian Constitutional Court in order to annul the part of the company’s act regulating the business secret on grounds of illegality, which is quite lengthy.

The issue of the regulators sharing information should be resolved within the institutional framework of the Energy Community in order to empower the AERS to share such information and thus deviate from national legislation.

G. UNMIK

5.1 The Law on Energy Regulator (Article 4.2) sets out that “The Energy Regulatory Office shall perform the tasks given to it under this law, other laws, and international agreements to which UNMIK is a party or an associated member”. Therefore, ERO could enter into binding agreements with other regulatory/supervisory authorities.

5.2 N/A

5.3 With regard to legal provisions or financial restrictions that either empower or prevent the regulator from entering into binding agreements with other regulators or from participating on advisory boards, there are no such provisions or restrictions in national legislation. See also 5.1.
5.4 Regarding whether there are other mechanisms for ERO to agree on such issues as allocation of congestion revenues from the auction of cross-border capacity, dispute resolution mechanisms, monitoring of the SEE-CAO, auditing the SEE-CAO’s books of account, etc, again see 5.1 which sets out the boundaries within which ERO can act.

5.5 Regarding sharing information and confidentiality obligations, the Law on Energy Regulator (Article 13.2) provides that “The Energy Regulatory Office shall make the final determination as to whether specific material constitutes confidential information in accordance with secondary legislation issued by the Energy Regulatory Office”. The Law on Energy Regulator (Article 13.3) also provides that “Information obtained that constitutes confidential information shall not be disclosed except to the judiciary and other public bodies as required by law”. The Law on Access to Officials Documents (Article 4.1) stipulates that institutions shall refuse access to document where disclosure would undermine the protection of public interest; public security; defence and military matters; international relations and the financial, monetary or economic policy of institutions of UNMIK.

H. Greece

5.1 The Greek Regulator has the power to enter into binding agreements with other regulators for common monitoring of the SEE-CAO, through the ad hoc legal basis of Art. 41, of Greek Law 3428: “RAE, contributing to the development of the internal energy market, may conclude contracts with institutions operating in the framework of the European Union, international organizations or other institutions provided for by international agreements and treaties, especially for the establishment and operation of the Energy Community of South-East Europe, aiming at the strengthening of security of supply, the protection of the consumer, the protection of the environment and the strengthening of competitiveness within the borders of South-East Europe regional market. For exercising its competencies pursuant to the preceding section RAE participates to committees and groups, meetings and assemblies of boards and institutions and pays any kind of expenditures that cover its relevant obligations

Moreover, according to article 5 of law 2773/1999, the Greek Regulator
contributes to the development of the internal electricity market and competition under equal terms and, to this effect, cooperates with the Regulators of other EU member states, especially within the framework of CEER, with International Organizations and with Regulators of third countries, especially in SEE.

5.2 RAE has the power to participate in an advisory body such as the Advisory Board of the SEE-CAO contemplated in the Business Plan provided by Terna and Verbund.

5.3 As concerns whether there are any legal obstacles or financial restrictions that may prevent RAE from entering into binding agreements, this will depend on the nature of the Agreement, but in principle there should not be any problem. In general, as far as the Regulator is concerned, the Energy Community Regulatory Board (ECRB) provides a developed institutional framework, where RAE fully participates and the appropriate transferal of competences has been completed. This allows for the conclusion of all the agreements mentioned here.

5.4 N/A

5.5 No response.

I. Hungary

5.1 HEO has the power to enter into binding agreements with other regulators for common monitoring of the SEE-CAO.

5.2 Until HEO knows more details of such kind of advisory body, it cannot confirm whether it can or cannot participate in that body.

5.3 In principle, HEO is empowered to enter into agreements with other regulatory authorities, depending always on the content of the agreement. (Electricity Act Section 164.)

5.4 N/A

5.5 It is not the HEO’s task to share information about Mavir’s activities with other
regulatory authorities. All the necessary information to ensure appropriate monitoring of the coordinated auctions shall have to take place within the SEE CAO, and the all the regulatory authorities shall ask directly or indirectly (through its TSOs) for any information concerning the coordinated auction.

J. Romania

5.1 ANRE has the power to enter into binding agreements with other regulators for common monitoring of the SEE-CAO. In particular, according to art. 11, item 2, (s) of the Romanian Energy Law no. 13 / 2007, ‘ANRE has the task and competency to Collaborate with the regulatory authorities of neighbouring countries with a view to harmonizing the regulatory framework for the development of the regional electricity market, including the cross-border exchanges of electricity and the rules regarding the management of interconnection capacities’. Moreover, according to art. 11, par. 3 of the same law, ANRE’s monitoring activity refers at Management regulations and interconnection allocation capacity, in cooperation with regulatory authorities from the countries with which the Romanian Power System is interconnected.’

5.2 ANRE has the power to participate in an advisory body such as the Advisory Board of the SEE-CAO contemplated in the Business Plan provided by Terna and Verbund.

5.3 There are no legal obstacles, but there are financial restrictions that may prevent ANRE from entering into binding agreements.

5.4 N/A

5.5 According to Transelectrica’s License nr. 161, Information that Transelectrica declares as confidential are exempt from being published and ANRE has to observe their confidentiality (conditions no. 95).

Moreover, the License provides in condition no. 99 that In order to provide compliance with the License conditions and applicable regulations, the Competent Authority (ANRE) may request, examine and copy under the Law any information, registrations and documents from Transelectrica, which it considers related in any way to its business and activities in the electricity sector. The requested information can contain state or business secrets. The
Competent Authority (ANRE) must use such information under the law only to the purpose it was supplied for and it will not reveal its content to any unauthorized person.

Furthermore, according to Art. 11 (3) (d) of the Romanian Energy Law no. 13/2007, “ANRE's monitoring activity refers mainly at publication by the transmission system operator of adequate information regarding interconnection capacities and allocated capacity, while preserving the confidentiality of the specific commercially sensitive information”

Additionally, according to Art. 53 of the Framework Contract approved by ANRE, Transelectrica must keep the provisions of the Contract signed with the Auction Participant strictly confidential as well as any other document and/or piece of information exchanged by the parties in connection to the Contract. An exception is provided in the case that the information is requested by authorities, according to Romanian legislation. As noted above, ANRE cannot reveal its content to any unauthorized person.

In light of the above, there are legal implications involved in ANRE being able to share confidential information about Translectrica’s activities with other regulatory authorities or information pertaining to business secrets or that are commercially sensitive in order to ensure appropriate monitoring of the coordinated auctions.

K. Slovenia

5.1 The Slovenian Energy Regulator does not have the power to enter into binding agreements with other regulators for common monitoring of the SEE-CAO. In order for this to happen, the Slovenian Ministry of foreign affairs must approve it according to the Foreign affairs act (national gazette nr. 113/2003). According to Slovenian practice, this procedure is too bureaucratic and time consuming and the results are uncertain.

5.2 In order for the Energy Regulator to participate in an advisory body such as the Advisory Board of the SEE-CAO contemplated in the Business Plan provided by Terna and Verbund, the Slovenian Ministry of Foreign Affairs must approve it. Our comments above apply respectively.
5.3 N/A - Our comments above apply respectively.

5.4 The issue of whether the Slovenian Energy Regulator participating in binding coordinated regulatory activities can be resolved in one of the two following ways:

- Following the implementation of the third energy package – which should enable the Slovenian regulator to monitor common auctions outside Slovenia.

- Through the implementation of regulatory powers provided to the ECRB by the Ministerial Council within the framework of the Energy Community.

5.5 As concerns whether the Slovenian Energy Regulatory Authority can share information about ELES’ activities with other regulatory authorities in order to ensure appropriate monitoring of the coordinated auctions, it is noted that the Regulator is obligated according to the “Classified information Act” (national gazette nr. 50/06, article 7) to provide information to the public and to other Regulators, with the exception of “confidential” information as noted below.

In particular, confidential information can be shared by the Regulator only under conditions set out in this act (article 22). Article 22 states that, “Permission to access classified information of the CONFIDENTIAL, SECRET and TOP SECRET levels shall be issued by the Ministry of the Interior, the Ministry of Defence and the Slovenian Intelligence and Security Agency (hereinafter: competent bodies). For persons who require access to classified information in order to discharge their function or tasks in another agency, permission shall be issued by the minister responsible for the interior or, if the performance of defence duties or military service is involved, the minister responsible for defence, at the proposal of the director of that agency. Notification of the issuing of permission shall be forwarded to the Office.”

Moreover, commercially sensitive data is also protected by the legislation governing commercial companies. This applies to all data which is provided to the Regulator and classified by the provider as “confidential”. This does not prevent the Regulator from proper monitoring of auctions. However, it does constitute a legal obstacle in allowing the Regulator to share information
classified by the provider as “confidential” with other regulatory authorities outside Slovenia.

L. Italy

5.1 The Italian Energy Regulator has the power to enter into binding agreements with other regulators for common monitoring of the SEE-CAO.

5.2 The Italian Energy Regulator has the power to participate in an advisory body such as the Advisory Board of the SEE-CAO contemplated in the Business Plan provided by Terna and Verbund.

5.3 There are no legal obstacles or financial restrictions that may prevent the Italian Energy Regulator from entering into binding agreements.

5.4 N/A

5.5 Some information involving third parties could be subject to “industrial secret protection” and may not be shared by the Italian Energy Regulator with other Regulators unless in an aggregated and/or anonymous form.

M. Bulgaria
6. Capacity Allocation Auction Rules

6.1 Regional Overview

As concerns the issues related to capacity allocation auction rules, we provide below a summary of the issues set out in the country review section:

1. The TSOs prepare the auction rules which are approved by the national Regulators throughout the 8th Region, with the exception of the Former Yugoslav Republic of Macedonia, whose Regulator does not approve the auction rules, according to the existing legislation (which is supposed to change by end of 2009). (please see below item 6.1 in the Country Review section for further details per jurisdiction)

2. In the event the SEE-CAO was used for undertaking the auctions, the coordinated auction rules would still have to be approved by each Regulator individually, until the regulatory issue is resolved on a regional institutional level. In the case of Albania in particular, it is not clear whether the coordinated auction rules would have to be approved by the Regulator. A similar issue arises with respect to the Macedonian Regulator. (please see below item 6.2 in the Country Review section for further details per jurisdiction)

3. The individual national legislations have some general similarities but specific differences regarding the issue of limitation of liability. Some jurisdictions have detailed provisions whereas others have general provisions. In general, TSOs are liable for damages caused by willful misconduct or gross negligence and often limit their liability for slight negligence and acts of force majeure or unforeseen extraordinary situations in the network (in the event of Serbia) or culpable dereliction of an essential duty (in the event of Italy). Moreover, in certain jurisdictions, the issue of the TSO’s liability may differ from one border to another, depending on the agreement with the neighboring TSOs. Furthermore, certain jurisdictions, as in the case of Hungary, the TSO’s liability does not include loss of profit, loss of business, or any other indirect incidental, special or consequential damages of any kind and is limited up to a yearly cap of €10,000 in total. (please see below item 6.3 in the Country Review section for further details per jurisdiction)
4. In all jurisdictions commercial differences between the TSO and the Auction Participant arising from the auction and the allocation of cross border capacity are filed and settled before the civil courts in the city where the TSO has its registered seat, unless the difference relates to issues of Third Party Access, in which case, it is resolved by the national Regulator. In the case of Croatia in particular, dissatisfied market participants submit complaints to the Croatian Energy Regulatory Agency regarding the work of HEP-OPS in relation to the implementation of the Croatian Auction Rules within 30 days from the day of the eventual irregularity committed (please see below item 6.4 in the Country Review section for further details per jurisdiction)

5. The TSOs use different definitions of “force majeure” and “emergency situation” of a varying degree and there is no one uniform definition or practice in this matter. (please see below item 6.5 – 6.6 in the Country Review section for further details per jurisdiction)

6. Each jurisdiction in the 8th Region has different requirements that Auction Participants must satisfy in order to be able to participate in the allocation of cross border capacity. Indicatively we note that some jurisdictions require that the Auction Participant be licensed by the national Regulator for participating in the procedure for cross border capacity allocation (e.g. Former Yugoslav Republic of Macedonia, Serbia, UNMIK), other jurisdictions require that a local company be used (e.g. Former Yugoslav Republic of Macedonia, Serbia, Slovenia for non EU participants), other jurisdictions require that the auction participant be a balance responsible party (BRP) or have signed a contract for settlement of imbalances with a BRP (e.g. Slovenia, Hungary) etc. (please see below item 6.7.1 – 6.7.3 in the Country Review section for further details per jurisdiction)

7. If the EWG of the ECRB agree on the issue of one standardized “traders license” which would be valid at least for “horizontal” movement throughout the region, this license would not be recognized in the majority of the jurisdictions in the 8th Region (with the exception of Slovenia and Italy which do not require licenses) based on the overall primary legislation and regime existing in each jurisdiction. (please see below item 6.7.4. in the Country Review section for further details per jurisdiction)
6.2 **Overall Conclusions**

As concerns whether the issues related to capacity allocation auction rules will constitute an obstacle and whether legal, regulatory and administrative requirements will be required in order for the local TSOs to participate in the SEE-CAO, we draw the following main conclusions:

1. In the event the SEE-CAO is used for undertaking the auctions on behalf of the TSOs, the coordinated auction rules would still have to be approved by each Regulator individually according to existing national legislation. This does not create any legal obstacle but rather an additional and fairly difficult administrative burden/requirement as the coordinated auction rules will need to be approved by 13 different regulators, each one with its own timeframe, rules and requirements.

2. The above administrative burden can be resolved on a regional institutional level within the framework of the Energy Community Treaty if the ECRB were to be empowered by the Ministerial Council to undertake the approval of the coordinated auction rules.

3. Until the matter is resolved on a regional level, the coordinated auction rules will still have to be approved by each Regulator individually. Given that there will be only one set of coordinated auction rules applicable in all 13 jurisdictions of the 8th Region (at least in the general terms and consitutions), there must be strong coordination efforts among all TSOs and Regulators in the beginning of the SEE-CAO set up in order for the coordinated auction rules to be approved by each Regulator individually. It should be noted that given that there are 13 jurisdictions with a highly varying degree of current regulation, the TSOs and Regulators must put forward from the very beginning particular provisions that will have to be included in the coordinated auction rules in order for the rules to be compliant with each of the 13 jurisdictions. If there are too many legal deviations brought forward due to national regulation, the auction rules will have to differentiate between general terms and conditions (applicable to all 13 jurisdictions) and special terms and conditions applicable to specific jurisdictions.
4. As noted in the country review section below, the individual national legislations, despite some general similarities, have specific differences regarding the issue of limitation of liability and the definition of “force majeure” and “emergency situation”. These differences constitute a legal obstacle in the TSOs’ efforts to create and operate efficiently the SEE-CAO and therefore it is imperative for the sake of certainty and clarity in the market that these issues be harmonized in the 13 jurisdictions.

5. In light of items 3 and 4 above, as concerns the auction model to be used, it should be noted that the differentiation of (i) special terms and conditions and (ii) the determination of each TSO’s culpability/liability and definitions of force majeure per jurisdiction: (i) may be possible in the event the SEE-CAO adopts the use of “coordinated bilateral NTC-based auctions”, which effectively constitutes, from a legal perspective, a triangular legal relationship between the SEE-CAO – the TSO – Auction Participant the object of which is the cross border allocation of capacity on one specific border; (ii) may not be possible in the event the SEE-CAO adopts the use of “coordinated explicit load-flow based auctions” because this mechanism presupposes a uniform internal market in the 8th Region with harmonized legal rules throughout the region.

6. Each jurisdiction in the 8th Region has different requirements of varying degree that Auction Participants must satisfy in order to be able to participate in the allocation of cross border capacity. The various requirements are related to the particular obligations existing in each jurisdiction arising from the subsequent scheduling and nomination of the capacity. It should be noted that the differentiation of requirements per jurisdiction may be possible in the event the TSOs choose “coordinated bilateral NTC-based auctions”. However, the differentiation of requirements will not be possible in the event the SEE-CAO adopts the use of “coordinated explicit load-flow based auctions”
7. In the event the SEE-CAO undertakes the auctioning of cross border capacity allocation as a separate contracting-invoicing company whereby a three party legal relationship arises between the SEE-CAO – the TSO – Auction Participant [i.e. there is a legal separation between the contracting party (i.e. the SEE-CAO) promising the capacity to the Auction Participant and the party carrying out the promise (i.e. the local TSOs) - see section I.4.6 (B)], the following legal issue regarding dispute settlement should be taken into consideration by the TSOs: Given that differences between the SEE-CAO and all Auction Participants will be settled before one foreign or international arbitration tribunal to be agreed by all TSOs in the coordinated auction rules, the corresponding dispute between the TSO and the Auction Participant on the one hand and the TSO and the SEE-CAO on the other hand regarding the same difference cannot be settled in a different court of law, pursuant to existing national civil or administrative procedures, because we may be faced with the possibility that the same dispute will end up in two different courts of law with the possibility of having two conflicting court decisions. Therefore, to avoid the above conflict, the TSOs must agree in the SLAs and the Inter-TSO agreement that disputes arising from the auctioning of cross border capacity between the SEE-CAO, the TSO and the Auction Participant will be settled in the same foreign or international arbitration tribunal to be agreed by all TSOs. According to section 9 of this report, the TSOs have the right, according to their national legislation to agree to foreign arbitration.

6.3 Country Reviews

A. Albania

6.1 OST prepares the auction rules and ERE approves them. The Albanian Market Model (Point 5.6, paragraph 2) stipulates: “The OST shall establish, with ERE’s approval, operating procedures that establish ‘gate closure’ for physical nominations and other rules required for OST to perform its dispatch and balancing functions”

6.2 In the event the SEE CAO undertook the auctioning, it is unclear whether approval of the auction rules should come from ERE.
6.3 There are no auction rules in place and therefore limitations of liability have neither been dealt with nor introduced.

6.4 Settlement of disputes arising from auctions may differ from one border to another, depending on the agreement with the neighboring TSOs. However, there are no Albanian auction rules in place nor is their introduction foreseen in the current Albanian Electricity Market Rules.

6.5 The definition of “Force Majeure” may differ from one border to another, depending on the agreement with the neighboring TSOs. In general:

According to Law No. 9072, dated 22.05.2003, “On Power Sector” (art. 3, point 40) and Attachment A “Terms and Definitions for the Albanian Market Rules and for the Grid Code, the Metering Code and the Distribution Code” of the Albanian Electricity Market Rules, “Force Majeure” is any natural or social act or event occurred in the country such as earthquakes, lightnings, cyclones, floods, volcanic eruptions, fires or wars, armed conflict, insurrection, terrorist or military action, which prevent the licensee from performing its obligations under the license or other acts or events that are beyond the reasonable control and not arising out of the fault of the licensee, and the licensee has been unable to overcome such act or event by the exercise of due diligence and reasonable efforts, skill and care.

6.6 What an “Emergency situation” stands for is not expressly defined, not least because there are auction rules in place.

6.7.1 In the absence of auction rules, no such provisions are in place, the requirements of a Trader in order to obtain a license to participate in auctions remain unclear

6.7.2 In the absence of auction rules, no provisions on financial guarantees are in place.

6.7.3 In the absence of auction rules, whether separate local legal vehicle is required to participate in the auction or not remains unclear.

6.7.4 If the EWG of the ECRB agree on the issue of one standardized “traders license” which, if issued by any jurisdiction in the SEE or by the SEE-CAO
would be valid at least for “horizontal” movement throughout the region, this license would not be recognized in Albania. ERE and OST hold the view that this option might become mature some time in the future.

B. Bosnia & Herzegovina

6.1 ISO prepares the auction rules. They are approved by the Regulator (SERC). Currently, BiH performs pro rata allocation at its borders. It is planned that a market based allocation scheme be introduced, fulfilling the provisions out of the Regulation (EC) No 1228/2003 by end of 2009.

6.2 Until the regulatory issue is resolved on a regional institutional level, the auction rules would have to be approved by SERC. We note that according to Art. 4.7 of Law on Transmission of Electric Power, Regulator and System Operator of Bosnia and Herzegovina, *SERC’s decision must be approved by unanimous vote of all 3 Commissioners. In the event that the Commissioners fail to agree unanimously, then, upon notice by any one Commissioner to the others, all disputes must proceed to arbitration.*

6.3 N/A. BiH does not hold auctions for the allocation of cross border transmission capacity.

6.4 N/A. BiH does not hold auctions for the allocation of cross border transmission capacity.

6.5 N/A. BiH does not hold auctions for the allocation of cross border transmission capacity.

6.6 N/A. BiH does not hold auctions for the allocation of cross border transmission capacity.

6.7.1 A Trader needs to have at least a license for international trade issued by the National regulator.

6.7.2 Having in mind that the ISO organizes allocation of cross border capacity on a pro-rata basis (generally free of charge) the ISO does not request any kind of financial guarantee.

In the proposed market based allocation scheme that will be introduced
(fulfilling the provisions out of the Regulation EC No 1228/2003) by end of 2009, the scheme does not directly address the issue of financial guarantees. However, in the Contract with the Auction Participant ISO will add protection mechanisms (advance payment or bank guarantee) according to best business practice.

6.7.3 According to section 3.13 of the License issued to NOS BiH by the State Energy Regulator (SERC), “The licensee shall be obligated to ensure that the participants in transactions which are performed or enabled by the licensee have adequate licenses issued by SERC, FERC (Regulatory Commission for Electricity in Federation of Bosnia and Herzegovina) and/or RSERC (Republika Srpska Electricity Regulatory Commission). The licensee shall not perform or enable transactions for market participants who do not have adequate license.”.

In light of the above, only licensed parties from BiH can participate in auctions in BiH, i.e. traders participating in ISO’s allocations have to be companies established/incorporated in BiH.

6.7.4 Existing BiH legislation does not contain provisions regarding the issue of one standardized “traders license” which, if issued by any jurisdiction in the SEE or by the SEE-CAO would be valid at least for “horizontal” movement throughout the region. In this case, the license would not be recognized. In order to have this recognized, BiH would need to amend existing legislation pertaining to the requirements for participating in the allocation of BiH cross border transmission capacity.

C. Croatia

6.1 HEP-OPS prepares the auction rules. The auction rules subject to approval of the Croatian Regulator according to the Croatian Electricity Market Act (article 16 par. 2) and the Rules on Allocation and Use of Cross Border Transfer Capacities.

6.2 In the event the SEE CAO undertook the auctioning, the auction rules would still need to be approved by the Croatian Regulator who must also be able to monitor their proper implementation, according to Croatian law.
6.3 According to the existing Auction Rules, HEP-OPS cannot be held liable for damages resulting from the limitation of use of allocated transfer capacity if Force Majeure was the cause of the limitation.

Moreover, according to article 31 b of the Energy Act, Energy undertakings (i.e. HEP-OPS), in carrying out their activities, shall not be held liable to users of services in the event of force majeure.

6.4 According to Article 20 of the Croatian Electricity Market Act, complaints of unsatisfied market participants regarding the operations of HEP-OPS must be filed with the HEP-OPS in written form. If HEP-OPS does not comply with the complaint concerning among other things rejection of a connection to the transmission grid, HEP-OPS must refer the matter for further procedure to the Croatian Regulator. The Croatian Regulator’s decision is final.

According to Art. 52 of the Croatian Auction Rules, a dissatisfied market participant can submit a complaint to the Croatian Energy Regulatory Agency regarding the work of HEP-OPS in relation to the implementation of the Croatian Auction Rules within 30 days from the day of the eventual irregularity committed.

6.5 According to the existing Auction Rules, “under the Force Majeure shall be considered all events and circumstances within the meaning of the Energy Treaty, which could not have been prevented, avoided or eliminated, and have consequently resulted in the inability for the Transmission System Operator to fulfill its obligations in accordance with the Croatian Auction Rules.”

Moreover, according to article 31 b of the Energy Act, events of force majeure include any events or circumstances which even if foreseeable cannot be prevented and which cannot be influenced, diminished, removed or rendered inactive. These are, in particular: natural disasters (earthquake, flood, lightning strike, storm, icing, etc.), epidemics, explosions, other than those caused by improper or careless handling, which are not foreseeable and are not due to wear and tear of materials or equipment, war, riot or sabotage as well as decisions of the Government of the Republic of Croatia and any other events or circumstances recognised and designated as force majeure by special arbitration.
6.6 According to Article 23 of the Croatian Energy Act, emergency situations are situations created by significant disturbance in the domestic market due to unexpected or continual shortage of energy, by immediate threat to the sovereignty and integrity of Croatia and serious natural catastrophe or technological catastrophe. In the event of emergency situations, the Croatian Government can (i) impose constraints on trading with specific energy sources, (ii) prescribe special trading conditions, (iii) limit exports or imports of energy, (iv) prescribe special conditions for exports or imports of energy, (v) obligatory energy generation, (vi) impose obligation of energy delivery to selected customers only.

6.7.1 According to Croatian Law and the auction rules, the main requirements to participate in auctions are the following:

- Regulatory Licence,
- Balancing Agreement with HEP-OPS,
- EIC Code,
- Agreement on allocation and use of cross-border transfer capacities,
- Deposit or Bank guarantee.

6.7.2 Financial guarantees in the form of deposits or bank guarantees are required by the market participants.

6.7.3 A separate Croatian legal vehicle is required to participate in the auction for allocation of cross border transmission capacity.

6.7.4 If the EWG of the ECRB agree on the issue of one standardized “traders license” which, if issued by any jurisdiction in the SEE or by the SEE-CAO would be valid at least for “horizontal” movement throughout the region, this license would not be recognized in Croatia based on overall primary legislation and regime.

In order for the above to materialize, provisions regarding energy trading and traders in Croatian primary and secondary legislation would need to be amended.
D. former Yugoslav Republic of Macedonia

6.1 MEPSO prepares the auction rules. According to current legislation, the auction rules are not approved by the Energy Regulator (ERC). We note that following the amendment of the Energy Law by end of 2009, the ERC should be empowered to approve the auction rules.

6.2 Until national legislation is amended, the coordinated auction rules would not have to be approved by the ERC.

6.3 MEPSO is not liable for any indemnity claims in the case of Force Majeure or unforeseen circumstances preventing provision and/or receiving and/or transmission of electricity. In such case, MEPSO is released from the obligation to provide, receive or transfer electricity in the framework and within the time of Force Majeure.

6.4 The competent court to settle any dispute between MEPSO and auction participants is the Principal Court Skopje 2 in Skopje.

6.5 Force Majeure means any unforeseen event relating to failure for normal operation of the transmission grid, unexpected disturbances in the power system including any event beyond the control of MEPSO and any decision by the authorities or institutions which could not foresee or avoid the events in reasonable manner, and was ignorant or could neither of the Parties assume at the moment of signing the Agreement.

6.6 No response.

6.7.1 Only Auction Participants supplying consumers of the R. Macedonia have the right to participate in auction related to allocation of transmission capacity. A prerequisite to participate in auctions is registration with MEPSO.

6.7.2 No financial guarantees are required by the market participants, as all payments are made prior to use of capacity.

6.7.3 A separate Macedonian legal vehicle is required to participate in the auction for allocation of cross border transmission capacity.

6.7.4 No response.
E. Montenegro

6.1 The auction rules are prepared by TSO-EPCG and approved by the Energy Regulator.

6.2 In the event the SEE CAO undertook the auctioning, the Energy Regulator would still need to approve the auctions according to current legislation.

According to the Montenegro Energy Regulator, a more realistic approach would be for ECRB unanimously to approve the auction rules, which is a more simplified approach from having the auction rules be approved by each regulator separately.

6.3 According to TSO-EPCG, the only limitation is emergency situations.

6.4 According to the CBC contract, the commercial court in Podgorica is the competent court for disputes.

6.5 Force Majeure is covered by the term “Emergency situation” (see item 6.6 below).

6.6 Emergency situation is defined as “any disturbance in power system that reduces reliability of power supply and consequently leads to possible interruptions of power supply to the consumers.”

6.7.1 In order to participate in auctions, only a valid EIC code is required and valid registration in one of the EU countries or in the SEE region. Moreover, the “Acceptance Statement for Allocation rules” has to be submitted with the TSO.

6.7.2 Trader’s obligations are defined by the CBC Contract:

- one can not redraw once submitted bid
- 24h emergency contact has to be provided for capacity curtailment cases
- strict following the payment instructions from the invoice
- no extra financial guarantees are required

6.7.3 A separate local legal vehicle is not required to participate in the auction for allocation of cross border transmission capacity.
6.7.4 Primarily, there is no trading license in Montenegro at a moment, ie. trading is absolutely free.

Secondly, all the licensing issues are in full responsibility of regulator, so if montenegrin regulator agrees at ECRB on standard license, there is nobody else who can raise any related question.

F. Serbia

6.1 Preliminary comment:

The Market Code has been drafted by EMS and has been submitted to AERS for approval. AERS is currently in the process of reviewing the Market Code. Series of meetings between AERS and EMS working groups is in progress in order to come up with a final version of the document that will be approved by the AERS and published by EMS. The adoption of the Market Code is envisaged by the end of 2009.

Until the adoption of the Market Code (expected end of 2009), allocation of interconnection capacity on Serbian borders is performed according to the Rules for Allocation of Available Cross-Border Transfer Capacity on Borders of Control Area of Republic of Serbia and Balancing of Market Participants Schedules from January 1, 2009 until December 31, 2009 issued by EMS. For its part of the capacity (ATC available to EMS) EMS applies the market-based explicit auctions for transfer capacities with “pay as bid” payment method on a monthly basis. The transfer capacities for the months and weeks are allocated in compliance with the deadlines published on the EMS web site (“Calendar of Allocation Procedures”). The market participant who was given the right to use the cross-border transfer capacity can transfer the right to use the capacity to another participant or to several other participants with the permission and consent of EMS with prerequisite that both participants (the participant – transferor of the right to use the capacity and the participant - transferee to whom the right to use the capacity is transferred) have signed “Contract on the right to use cross-border transfer capacity at borders of control area of the Republic of Serbia and on balancing of schedules”.

The auction rules are to be prepared by EMS as an integral part of the Market Code and approved by AERS. Until the Market Code is approved by AERS,
Rules for allocation of available cross-border transfer capacity, issued by JP EMS, will be in force.

6.2 In the event the SEE CAO undertook the auctioning, the auction rules would still need to be approved by AERS, according to Art. 15 (5) of the Energy Law.

6.3 According to the existing Auction Rules, EMS limits its liability with respect to its obligation to remunerate the auction participant of possible damage or return allocation procedure fees in the event the auction participant cannot accomplish its right to the cross-border transfer capacity in the event of force majeure or unforeseen extraordinary situations in the network.

6.4 Third Party Access issues are lodged with AERS according to Article 15 (6) of the Energy Law. All other differences with EMS must be filed with the Serbian civil courts in Belgrade.

6.5 According to the existing Auction Rules, the market participants accept in advance that the reserved cross-border capacity allocated in the yearly and/or monthly auctions is not guaranteed and that the auction participant cannot accomplish its right to the cross-border transfer capacity in the event of force majeure or unforeseen extraordinary situations in the network and that in such cases the participant shall not be entitled to any indemnification from EMS (no right to the remuneration of possible damage or return of allocation procedure fees).

According to the contracts signed by EMS, “Force Majeure shall mean any event or circumstances which could not be foreseen at the moment of the signing of this Contract, and in particular, natural disasters, fire, flood, earthquakes, states of emergency and warlike operations, as well as the measures of local state or national government authorities and organizations. In the event of Force Majeure, the Party affected by that event shall immediately notify the other Party by phone, e-mail or fax about the cause, type, scope and expected duration of the Force Majeure as well as about the undertaken measures and it will endeavor to remedy the causes of the Force Majeure within the shortest possible time. In the case of the Force Majeure which prevents the accomplishment of the rights to use cross border transfer capacity the Parties shall be relieved of the obligations related to a part of or
the whole claims for damages arising out of such events."

6.6 Emergency situation has been defined within the Grid Code.

6.7.1 According to the Serbian Energy Law and the auction rules, the main condition to participate in yearly and monthly auctions is that a market participant owns a valid license for electricity trading at the electricity market in the Republic of Serbia or the license for electricity trading for the purpose of the supply of tariff customers in the Republic of Serbia issued by AERS.

There must not be any outstanding financial obligations towards EMS.

In order to perform cross-border trade, trading licensees are obliged to obtain right to use transmission capacity on the interconnection from the TSO.

6.7.2 No financial guarantees are required by the market participants, as all payments are made prior to use of capacity.

6.7.3 A separate Serbian legal vehicle is required to participate in the auction for allocation of cross border transmission capacity.

License can be issued only to company which is registered in Serbia according to the Law on company registration.

6.7.4 If the EWG of the ECRB agree on the issue of one standardized “traders license” which, if issued by any jurisdiction in the SEE or by the SEE-CAO would be valid at least for “horizontal” movement throughout the region, this license would not be recognized in Serbia based on overall primary legislation and regime.

The issue related to the licensing is provided for in the auction rules and the grid code. With the adoption and approval of the common auction rules for the 8th Region, the restriction arising from the existing Serbian auction rules will be automatically resolved. However, the Grid Code provides for certain technical issues such as nomination and balancing requirements which require domestic companies and Serbian licensing. This issue can be resolved if the traders use Serbian licensed companies that will be responsible for the nomination and balancing requirements in Serbia. In order for it to be recognized the Serbian grid code, among other things, would need to be amended.
G. **UNMIK**

6.1 The Auction Rules (Procedures for Allocation of Transmission Interconnection Capacity) are prepared by KOSTT and approved by the Regulator.

6.2 In the event the SEE CAO undertook the auctioning, the auction rules should still need to be approved by the Regulator, although the Regulator has expressed the position that the auction rules should rather be approved regionally through Energy Community institutions.

6.3 The auction rules provide limitations to curtail capacity in normal system conditions.

6.4 Dispute settlement is one of ERO's mandates. However, depending on the dispute, the Market Rules and the Framework Contract provide for a framework of settlement.

6.5 Force Majeure is defined in chapter 10.6 of the Framework Contract

6.6 The Operational Procedure for the allocation of interconnection capacity (Article 5.4.2) highlights the rights of KOSTT in case of emergency situations, which is also defined in the Grid Code/Operation Code (Articles 3.5.3. 6.8).

6.7.1 Only market participants who are registered/licensed in the national electricity market (Market Operator register) may participate in auctions. A trader must be registered as an Interconnector Capacity Auction Participant and sign the relevant Framework Contract. The procedure is set out in the Procedures for Allocation of Transmission Interconnection Capacities (Article 4.2).

6.7.2 Rights and responsibilities of the traders are indicated in the Procedures for Allocation and Framework Contract (FC). Financial guaranties are required only for annual allocation (Article 8.2 of the FC). For monthly auctions, gees must be paid in advance before real time usage.

6.7.3 For local trading, a local legal vehicle is necessary. But if it is for participating in the auction, market participants do not need a local vehicle but only to licensed and properly registered with KOSTT.

6.7.4 Regional Associations/Institutions are in the process of discussing how “traders’ licenses” could be standardised. A regional agreement or any other
binding legal instrument will be necessary in order for these licenses to be recognized in UNMIK.

H. Greece

6.1 HTSO issues the auction rules according to the Greek Grid Code and Power Exchange Code and submits them to RAE for approval.

6.2 In the event the SEE CAO undertook the auctioning, the auction rules would still be approved by RAE, according to article 313 (3) of the Greek Grid Code and Power Exchange Code.

Notwithstanding the above, the Greek Regulator notes that all authorization procedures relating to the SEE-CAO should be transferred, inasmuch as possible, to the international level, i.e. the Energy Community. Otherwise, harmonisation of powers of national regulators and market rules would be necessary, any changes to Auction Rules proposed by SEE-CAO would require regulators' approval (this would still be necessary if the ECRB was empowered for regulatory approval. However single approval by the ECRB would ensure harmonised powers and timely convergence of powers adjustment). Approval of Auction Rules should assume that they are in compliance with national laws.

6.3 According to specific provisions included in the Auction Rules applied in each Interconnection, HTSO has limited liability towards a User or a third party for any damages resulting from a User's participating or not being able to participate in an Auction or in a PTR Transfer or in a PTR Resale, or from the results of the Auction and/or PTR Resale and/or PTR Transfer; or from an Auction not being held or cancelled and a User shall hold harmless and indemnify HTSO, in respect of claims regarding such damages from third parties. HTSO does not assume responsibility for the timely arrival of Bids and/or Transfer Notifications and/or Resale Notifications.

HTSO, as Auction Operator, is only liable for damage or loss incurred by Users or by third parties if it is the result of intent or gross negligence or culpable dereliction of an essential duty under the Auction Rules. In all the above cases, HTSO’s liability is limited to the direct (actual) and documented damages.
There is no HTSOs liability whatsoever for any consequential damages. HTSO can in no circumstances be held responsible or held liable to pay any compensation for damage suffered, due to the non-performance or faulty performance of all or part of its obligations, when such non-performance or faulty performance is due to a Force Majeure. The Party, which invokes Force Majeure, shall make the effort to limit the consequences and duration of the Force Majeure.

6.4 Disputes between HTSO and the auction Participant is regulated in the Auction Rules, applying in each interconnection.

In particular, as regards the Greek-Italian interconnection it is stated in the Auction Rules that: «all disputes arising out of the Auction Rules or related to their violation, termination or nullity shall be referred to and finally resolved by arbitration under the ICC rules. The number of arbitrators shall be three. The place of arbitration shall be Lugano (Switzerland). The language to be used in the arbitral proceedings shall be English. The Auction Rules and the Auctions are governed by Belgian law, Rome Convention on the law applicable to the contractual obligations dated June 19th 1980 is applied accordingly. The application of the UN Convention on Contracts for the International Sale of Goods (CISG) is excluded.»

As regards the north Interconnections of Greece it is mentioned in the Auction Rules that «Any dispute arising out of or in connection with the Auction Rules or in respect of the Auctions for the Allocation and Assignment of PTRs shall be settled by the Greek Regulatory Authority, as per article 24 of the Greek presidential decree 139/2001. The place of arbitration will be the offices of RAE in Greece. The language to be used in the arbitration proceedings shall be English. Any dispute arising out of or in connection with the Auction Rules or in respect of the Auctions for the Allocation and Assignment of PTRs or the Auctions that take place hereunder is governed exclusively by the Greek law. The application of the UN Convention on Contracts for the International Sale of Goods (CISG) is excluded.»

6.5 The definition of “Force Majeure” is included in the Auction Rules applying in each Greek Interconnection. Specifically {Force Majeure means any unforeseeable event or situation beyond the reasonable control of a Party, and
not due to a fault of such Party, which cannot reasonably be avoided or overcome, and which makes it impossible for such Party to fulfil temporarily or definitively, its obligations hereunder in accordance with the terms of the Auction Rules.

The Party, which invokes Force Majeure, must send the other Party notification describing the nature of Force Majeure and its probable duration.

The obligations, duties and rights of a Party subject to the Force Majeure, with the exception of confidentiality obligations, shall be suspended from the beginning of Force Majeure. The obligations, duties and rights shall be suspended for such period as it is reasonable having regard to the effect of the impediment on performance of the obligations, rights and duties under the Auction Rules.

If a Force Majeure lasts for more than thirty (30) Days and adversely affects the essential obligations of the Parties under the present Auction Rules, the Auction Operator may suspend entitlement of the User and/or the User may request the withdrawal of its entitlement by sending notification by registered mail with acknowledgement of receipt, with due explanation. The withdrawal or suspension of entitlement will take effect on the date of receipt of the said notification.

6.6 No response

6.7.1 In order to participate in the Auctions performed by HTSO any User should comply with the Registration Requirements mentioned in the Auction Rules applying for each interconnection as well as with the requirements in respect of its access to the Grid.

As regards the north interconnections of Greece it is mentioned in the section under the title «Participation Requirements» that In order to participate in the Auctions, the User must be a registered market participant in the Greek power market. The particular rights of registered market participants in the Greek power market are stipulated in the Grid code, article 312. The User has also the obligation to submit to HTSO the signed and completed statement of acceptance form given in ANNEX I. By signing the statement of acceptance, the User undertakes to comply with all the provisions contained in the Auction
Rules.

For registration purposes the User must submit to HTSO a Bank Guarantee for imports (per interconnection) and a Bank Guarantee for exports per interconnection. The minimum amount of the Bank Guarantee is Fifty thousand (50 000) Euros.

As regards the participation in the auctions held for assignment of PTRs in the Greek Italian Interconnection the applicant has to submit a completed and signed statement of acceptance form given in Annex I of the Auction Rules to the relevant Auction Operator. By signing the statement of acceptance, the User undertakes to comply with all the provisions contained in the Auction Rules and for the specific Interconnection and direction.

For registration purposes the User must submit to HTSO a Bank Guarantee, the minimum amount of which is Fifty thousand (50 000) Euros.

In order to participate in the yearly and monthly auctions the User must have a signed Dispatching Contract and to comply with the Congestion Management Rules on the Italian Interconnection and/or must be a registered market participant in the Greek power market and must have the same registered EIC code with both TSOs (ie the Greek and the Italian TSO).

In order to participate in the Daily Auctions, the User:

- for Daily Auctions in the direction from Italy to Greece must have signed a Dispatching Contract and be compliant with the Congestion Management Rules on the Italian Inter-connection published on TERNA website
- for Daily Auctions in the direction from Greece to Italy must be a registered market participant in the Greek power market and/or must have signed a Dispatching Contract and be compliant with the Congestion Management Rules on the Italian Interconnection published on TERNA website and
- must have the same registered EIC code with both TSOs.

6.7.2 For financial guarantees please see above.

6.7.3 A separate Greek legal vehicle is not required to participate in the auction for
allocation of cross border transmission capacity.

6.7.4 If the EWG of the ECRB agree on the issue of one standardized “traders license” which, if issued by any jurisdiction in the SEE or by the SEE-CAO would be valid at least for “horizontal” movement throughout the region, this license might be recognized in Greece if there was mutual recognition and agreement. Greek national legislation (essentially the interconnection rules) would have to be amended appropriately.

The Greek Regulator also noted the following:

One might also consider alternative options. One could imagine, for instance, a possible scheme, which is not based on mutual recognition, but facilitates the already developed institutional framework of the Energy Community.

Whoever is a trader (i.e. a licensee, according to the provisions of each national jurisdiction), could be, at the same time, eligible to obtain an interregional trading license. Such an interregional license could be probably issued by the ECRB. An involvement of the SEE-CAO undertaking in this process could be also seen as an option here. In such a case, the legal prerequisite would be, an appropriately construed Ministerial Council Procedural Act (which might be, by the way, the same MC Procedural Act empowering the ECRB to exercise monitoring over the CAO). The interregional license could hence the form of an ECRB Measure.

In such an event, (or in any other, to that) one could reasonably expect that, the Greek national legislation (essentially the interconnection rules) would be amended appropriately, in order to foresee such a prospect. This would happen mostly for reasons of legal certainty In any case, the administrative / legislative burden would be probably negligible.

I. Hungary

6.1 MAVIR Zrt, as the TSO, prepares the auction rules.

The auction rules are part of the Commercial Code. The amendments in the Commercial Code are first approved by the Commercial Code Commission established on the basis of section 70 of the Electricity Act and sections 48-49 of the implementing decree of the Electricity Act (Governmental Decree No
273/2007 (X.19). After the approval of the Commercial Code Commission, the request for the modification of the Commercial Code is issued to the Hungarian Energy Office (HEO). The modification enters into force once the HEO gives its approving resolution.

6.2 In the event the SEE CAO undertook the auctioning, the auction rules would be approved as per above item 6.1 above.

6.3 The issue of Mavir’s liability may differ from one border to another, depending on the agreement with the neighboring TSOs. In general:

Mavir is not liable for any damage caused by slight negligence. Claims for damages arising out or related to the Yearly and Monthly and Daily Auction Rules and/or the Contract are limited to the damages typical and foreseeable, unless Mavir has acted willfully or by gross negligence. In no event is Mavir liable for any loss of profit, loss of business, or any other indirect incidental, special or consequential damages of any kind. In any case the liability of Mavir for damages arising out or related to the Yearly and Monthly and Daily Auction Rules is limited to € 10,000.-- in total.

Mavir undertakes to carry out the provisions set out in the Yearly and Monthly and Daily Auction Rules with the diligence of a careful businessman and control area manager in compliance with the applicable regulations set out by European law, respectively by the EU-Regulation, Hungarian law and by the Hungarian Regulatory Authorities. Deviating from the Hungarian Civil Code the burden of establishing guilt is fully on the Auction Participant.

Liability for a breach of contract damaging life, physical well-being, or health that has been caused wilfully, by gross negligence, or by a felony offense cannot be validly excluded. Any contractual article shall be null and void if it beforehand limits or excludes liability for damage proceeding from willful or gross negligence; injury to life, physical well-being, or health; or the consequences of a crime.

6.4 Settlement of disputes arising from Auctions may differ from one border to another, depending on the agreement with the neighboring TSOs. In general:

The place of jurisdiction for all disputes arising from the auction processes concerning the monthly and yearly auctions is the competent Court at the
registered seat of the Auction Office.

In the case that court decisions rendered by the competent Hungarian Court cannot be executed and/or enforced in the jurisdiction of the opponent/adversary of Mavir, all disputes shall be finally settled under the Rules of Arbitration and Conciliation of the International Arbitral Centre of the Austrian Federal Economic Chamber in Vienna (Vienna Rules) (Vienna International Arbitral Centre, VIAC) by one or more arbitrators. The number of arbitrators shall be three. The substantive law of Austria shall be applicable. The language to be used in the arbitral proceedings shall be English.

According to Directive 2003/54/EC of the European Parliament and of the Council (Directive) any party having a complaint against the auction procedure may refer the complaint to the national Regulatory Authority which acting as dispute settlement authority till first working day after publishing auction results. Concerning the Directive in case of a complaint regarding cross border trade this complaint shall be submitted and resolved primarily by the affected national Regulator.

Regulators are allowed to supervise the yearly auction within 8 days after receiving complain(s). Respective Regulator shall submit this request to the Auction Office at latest on the working day following the disclosure of the publication of auction results. In case of violation of agreed Auction Rules the resolution of the Respective Regulator shall be conducted. Regulator of the affected country shall co-operate in the dispute settling process.

The place of performance of all obligations of the Auction Participants resulting from the yearly and monthly auctions held in accordance with the Yearly and Monthly Auction Rules and its Annexes is the registered seat of the Auction Office.

6.5 The definition of “Force Majeure” may differ from one border to another, depending on the agreement with the neighboring TSOs. In general: In general:

Mavir is not held liable for non-performance, defective performance or delayed performance of obligations arising from Yearly, Monthly and Daily Auction Rules if and to the extent that said non-performance, defective performance or delayed performance is due to circumstances over which the obliged party has
no influence, including but not limited to Force Majeure or other circumstances the relevant party is not responsible for and which cannot be solved by measures which, from a technical, financial and/or economic point of view, can reasonably be taken by Mavir.

6.6 “Emergency situation” is defined in section 139 of Electricity Act:

„An electricity supply emergency situation means a malfunction in electricity supply that does not yet qualify as a crisis or danger situation, as specified in specific other legislation, but directly endangers human life, property, nature and the environment, or supply to the majority of consumers. The following events, in particular, may lead to emergency situations:

a) long-term shortage of electricity from power plants or from cross-border imports,

b) long-term shortage of fuel,

c) environmental pollution or malfunction of lines producing a shortage lasting several days in the electricity supply of the country or part of the country,

d) malfunction in supply to customers.”

6.7.1 The requirements a Trader have in order to obtain a license to participate in auctions:

The Trader is obliged to be part of a balance group, according to section 21 of Electricity Act.

The Trader has to fill in a registration form.

Confirmation of the Registration Form creates a contract between the MAVIR and the Auction Participant for Auctions conducted by MAVIR. The valid relevant Auction Rules constitute the terms and conditions of the contract. Through the confirmation of the Registration Form, the Auction Participant is registered by MAVIR.

6.7.2 No financial guarantees are required by Auction Participants. The obligations of the Auction Participants are detailed in answer to question no. 6.7.1.

6.7.3 A separate local legal vehicle is not needed for participation in the auction. The requirements for participation are specified in question no. 6.7.1.
6.7.4 If the EWG of the ECRB agree on the issue of one standardized “traders license” which, if issued by any jurisdiction in the SEE or by the SEE-CAO would be valid at least for “horizontal” movement throughout the region, this license would not be recognized in Hungary. In order for it to be recognized the Electricity Act and the Commercial Code would need to be modified accordingly.

J. Romania

6.1 TSO issues the auction rules according to The Commercial Code and submits them to ANRE for approval

6.2 In the event the SEE CAO undertook the auctioning, the auction rules would be approved by ANRE, according to Art. 9.3.7.1 of the Romanian Commercial Code of the Wholesale Electricity Market which provides that, ‘In order to facilitate the achievement of a regional electricity market, the Competent Authority has the right to approve or issue packages of supplementary regulations and procedures for the use of the transfer capacities considered necessary and convened between TSO / Competent Authority, on one hand, and other TSOs / regulatory authorities from other countries, on the other hand.’.

6.3 According to Art. 55 of the Framework Contract approved by ANRE, Transelectrica is not liable for the loss or damages caused to the auction participant except for the situations in which it acted on purpose or carelessly. Moreover, Transelectrica is not liable for the non – fulfillment, totally or partially of its contractual obligations, if the non – fulfillment of the obligations was caused by a situation of Force Majeure.

6.4 According to Romanian law, disputes between Transelectrica and the auction Participant arising from their agreement for the allocation of cross border transmission capacity are settled in Romanian Civil Court at the seat of Transselectrica. On the other hand, the outcome of an auction can be appealed by the auction participant before ANRE if the Operational Procedure governing auctions are not fulfilled.
6.5 Romanian civil law does not include a definition of the force majeure. However, it is unanimously agreed in the legal doctrine and practice that force majeure consists in a de facto case, unexpected and unavoidable, which objectively and without being in default prevents the contractor from exercising his contractually assumed assignment. A force majeure may consists in a natural or other event, such as: a natural catastrophe, earthquake, floods, heavy rain, catastrophic fire, embargo.

Moreover, according to Art. 52(1) of the Framework Contract approved by ANRE, “Force Majeure circumstances are the ones that may occur as a result of unpredictable events, such as acts of God, war, embargo, which were unpredictable by the parties on concluding any agreement and are beyond the parties will or control.”

6.6 According to the Romanian Technical Transmission Grid Code, Emergency Situation is any unusual event in the operation of the Power System that requires immediate automatic or manual remedies in order to prevent or restrict the situations that might impact the system or the electricity supply to consumers. Emergency Situation is an exceptional and non-military event, which by its wideness and intensity strengthens the people’s life and health, the environment and important material and cultural values.

6.7.1 According to the current Romanian Operational Procedure, the precondition for participation in tenders for transfer capacity allocation is the successful registration as a tender participant. Tender participant status is conferred to Romanian and foreign producers and suppliers who have been assigned an EIC code. In the case of foreign legal entities without an EIC code, they must hold a license issued by the Competent Authority or by their national regulatory authority, which must be recognized by both.

Any applicant intending to take part in the tenders for transfer capacity allocation has to prove that he has not failed to pay the transfer capacity invoice in full and on time during previous allocation periods.

By submitting the Application for Registration to Transelectrica, the applicant party confirms that it has accepted the provisions of the Romanian Operational Procedure (i.e. Auction Rules), as well as the regulations in force.
If the data provided by the applicant is verified, Transelectrica approves an application for registration as Tender Participant within ten (10) days after receiving the application and it updates the Tender Register – an electronic database containing the necessary information about the technical and commercial details of auction participants.

6.7.2 For monthly and yearly auctions, financial guarantees are not provided given that all payments must be effected before use of the capacity.

6.7.3 A separate Romanian legal vehicle is not required to participate in the auction for allocation of cross border transmission capacity, neither for suppliers, nor for traders.

6.7.4

**K. Slovenia**

6.1 Auction rules are prepared by ELES and approved by the Regulator.

6.2 From already existing practice, in case of coordinated auctions between ELES and neighbouring TSOs, the Auction Rules (ARs) are prepared by the two involved (neighboring) TSOs. Once the ARs are agreed between the TSOs, the document is sent to the Regulators of the involved countries for approval. In the case of Slovenia, the ARs have to be published in the Official Gazette in the Slovenian language. This means that the whole approval process can take up to two (2) months.

In the event of the SEE-CAO, the above procedure would apply without any change in the national legislation (Energy Act). One could foresee that at least the approval process by Regulators could be done on the “regional” level.

In addition to the time element, it must be noted that a legal issue arises with respect to the translation of the AR and the prevailing language in the event of a dispute. In particular, in the event of an interpretative difference between the English version of the AR and the Slovenian version, the latter will prevail and not the English version, according to Slovenian law.

6.3 In general, ELES is liable only in case of gross negligence and willful misconduct. The liability issue is described in detail in the relevant Auction
Rules, on a case by case basis. In general, ELES follows the following rules regarding liability:

- ELES is not liable to a PTR holder for any damages resulting from a PTR holder participating or not being able to participate in an Auction or from the results of the Auction or from an Auction not being held. ELES is not liable for any loss of profit, loss of business, or any other indirect incidental, special or consequential damages of any kind.

- ELES undertakes to carry out Auctions with the diligence of a careful businessman and control area manager in compliance with the applicable regulations set out by European law, respectively by the EU-Regulation, Slovenian law and regulations set out by the Slovenian Authorities.

- ELES is not held liable for non-performance, defective performance or delayed performance of obligations arising from the Auction if and to the extent that said non-performance, defective performance or delayed performance is due to circumstances over which the obliged party has no influence, including but not limited to Force Majeure or other circumstances the relevant party is not responsible for and which cannot be solved by measures which, from a technical, financial and/or economic point of view, can reasonably be taken by ELES.

6.4 According to the Slovenian Energy Act, all disputes between ELES and network users are handled by the Slovenian Regulator. Nevertheless if a dispute arises ELES tries to solve it first on the level TSO-auction participant. If it is not successful the next step would be the Regulator.

6.5 Slovenia has more or less the same definition regarding “force majeure” in all documents. The following definition comes from the Auction Rules on Slovenian-Austrian border:

“Operational conditions and/or events and/or circumstances which are beyond the reasonable control of ELES, and which cannot be pre-vented or overcome with reasonable foresight and diligence, such as, but not limited to, international superimposed Loop Flows, if ELES is only able to counteract them by endangering the security of supply, and/or which cannot be solved by measures which are from a technical, financial and/or economic point of view.
reasonably possible for ELES.”

6.6 The issue of curtailment is dealt differently from border to border. On the Slovenian-Italian border the firmness of capacities is guaranteed, meaning that after the nomination of capacities by auction participant the capacity cannot be taken away (curtailed) even in the emergency cases. In order to guarantee firmness ELES has concluded different agreements with the TSOs in the CSE region. For the Slovenian-Austrian and Slovenian-Croatian border TSOs have the right to curtail capacities in the emergency cases also after the nomination.

6.7.1 On borders where coordinated auctions are performed (border with Italy and Austria) the auction participant has to fulfill at least conditions on one side of the border. On Slovenian side the auction participant has to be a balance responsible party (BRP) or he has to sign Contract for Settlement of Imbalances with a BRP in Slovenia. Similar principles are used also on the other side of the mentioned borders.

For Slovenian-Croatian border the auction participant has to be a balance responsible party (BRP) or he has to sign Contract for Settlement of Imbalances with a BRP in Slovenia. For the nomination of capacities (usage) the auction participant has to find on the other side of the border a counterparty that fulfils requirements of the local electricity market (mentioned above).

Licenses are not required.

6.7.2 For long term auctions held by ELES no financial guarantees are required since the method of advanced payment is used to cover all the risks. The auction participant has to pay the relevant invoice before the next auction where a TSO could once again allocate those same capacities. Meaning that if an invoice for monthly auction is not paid in due time the capacity is taken away by TSO and once again allocated on daily auction.

For daily auctions the auction participant has to deposit money on its sub-account opened by TSO in the name of the auction participant. The level of deposit for individual auction participant is than checked real time during the auction (deposit – (bid price*bid volume)). At the end of an auction TSO is paid
directly from that sub-account (marginal price*bid volume). Alternatively, the auction participant may provide ELES with a Bank Guarantee covering all outstanding debts resulting from the daily auctions, the minimum amount of which is EUR 50,000.

6.7.3 For EU companies separate local legal vehicle is not necessary. For non EU countries separate local legal vehicle is necessary.

6.7.4 According to Slovenian legislation, trade is exempt from a license so a new type of license is completely irrelevant for trading electricity in Slovenia. Legislation does not require amendment, since the license will not be necessary for trade. It is not the aim of the Slovenian Energy Regulator to re-introduce licenses for trade. This has been removed from the law. The re-introduction of licenses would require a modification of the Energy Act.

L. Italy

6.1 The auction rules for the Italian borders are prepared jointly by the relevant TSOs. The rules are then approved by a decision of the Italian energy regulator.

6.2 In the event the SEE CAO undertook the auctioning, the coordinated auction rules would be approved by a decision of the Italian energy regulator as above in section 6.1.

6.3 Terna limits its liability in the existing Auction Rules as follows:

- Terna’s liability is limited only for those damages or losses incurred as a result of intent or gross negligence or culpable dereliction of an essential duty. In these cases, Terna’s liability is limited to the direct (actual) and documented damages. There is no liability for any consequential damages.

- Terna provides the PTRs awarded subject to the technical possibility of transmitting electricity, which can be affected by Force Majeure, unexpected external influences (e.g. extreme load flow changes) or other serious operational conditions (e.g. power plant outages on an unexpected scale).
• Yearly and Monthly PTRs are offered on a firm basis except for cases where curtailments are necessary due to circumstances (i) that constitute “Force Majeure” or (ii) that are due to network security reasons and only after all other available measures have been taken. Daily PTRs are offered on a firm basis except only for cases where curtailments are necessary due to “Force Majeure”.

• Terna, as the TSO, guarantees the realisation of the Exchange Schedules corresponding to firmly Assigned PTRs, except for cases of “Force Majeure”.

• Terna can in no circumstances be held responsible or held liable to pay any compensation for damage suffered, due to the non-performance or faulty performance of all or part of its obligations, when such non-performance or faulty performance is due to a Force Majeure.

• Terna is not held liable for any damages resulting from a User’s participating or not being able to participate in any Auction or in a PTR Transfer or Resale, or from the results of the Auction and/or PTR Resale and/or PTR Transfer;

6.4 According to the existing Auction Rules, Terna treats all information disclosed to it as “confidential” and Terna refrains from disclosing such information to any third party without the prior consent of the User concerned. Confidential information includes all information delivered in writing and designated as “Confidential”, or commercially sensitive information disclosed other than in writing but expressly mentioned as “Confidential”.

The above “confidentiality” obligations do not apply in the case of disclosure to European Union institutions, governmental, regulatory authorities, courts having jurisdiction, on the above matters insofar as such disclosure is mandatory or ordered by a court or an arbitrator.

The above “confidentiality” obligations do not apply to any information disclosed if:

a) before such disclosure it was public knowledge or, after such disclosure, becomes public knowledge through no fault of Terna;

b) it was known to Terna before the disclosure and was not covered by an
obligation of secrecy;

c) after that disclosure the same information is received by Terna from a third party owing no obligation of secrecy in respect to the “confidentiality” information.

6.5 All disputes arising out of auctions are resolved by arbitration under the ICC rules. The place of arbitration is Lugano (Switzerland), the language used in the arbitral proceedings is English and the number of arbitrators is three.

The auctions are governed by Belgian law and the Rome Convention on the law applicable to the contractual obligations dated June 19th 1980. The UN Convention on Contracts for the International Sale of Goods (CISG) is not applicable.

6.6 “Force Majeure” means any unforeseeable event or situation beyond the reasonable control of any Party, and not due to a fault of such Party, which cannot reasonably be avoided or overcome, and which makes it impossible for such Party to fulfil temporarily or definitively, its obligations.”

6.7.1 In order to participate in auctions conducted by Terna for the allocation of cross border capacity on the Italian borders, no license is required. The participants must comply with the following:

- have an EIC code;
- submit a statement of acceptance;
- provide a bank guarantee;
- have not been convicted, according to Directive 2004/18/EC for participation in a criminal organization, corruption, fraud or money laundering.

6.7.2 Auction Participants have to sign a contract with Terna providing the requested guarantee based on its trading volumes. In particular, Auction Participants are required to provide TERNA with a Bank Guarantee covering all outstanding debts resulting from the Auctions conducted by Terna. The Bank Guarantee must be subject to Italian law and issued by a bank with a registered office located in a member state of the European Union having a subsidiary duly established in Italy. The minimum amount of the Bank Guarantee is Fifty thousand (50 000) Euros. The amount of the Bank Guarantee of a PTR Holder
has to cover 1/12 of all outstanding debts resulting from Yearly Auctions and all outstanding debts resulting from Monthly Auctions and all outstanding debts resulting from Daily Auctions on a monthly base. If the amount is not sufficient to cover outstanding debts, TERNA asks the PTR Holder to increase the amount of the bank guarantee.

6.7.3 Local legal vehicles are not necessary for participating in the auctions.

6.7.4 If one standardized “traders license” is issued by any jurisdiction in the SEE or by the SEE-CAO for at least for “horizontal” movement throughout the region, this would not create any problems in Italy because according to Italian law, Auction Participants are not required to have a particular license. According to Italian law, the SEE CAO itself should issue the rules to participate in the auctions (also from a financial point of view). Where specific auction rules are adopted Terna may impose specific derogations. Licensing is not such an issue.

M. Bulgaria
7. **Accounting and Taxes**

7.1 **Regional Overview**

As concerns the issues related to accounting and taxes, we provide below a summary of the issues set out in the country review section:

1. The current national rules concerning payment conditions and dispute of the invoice vary from one jurisdiction to another. However, these differences should not create any obstacles in the operation of the SEE-CAO given that the TSOs do not seem to have any national legal obstacle in agreeing different payment conditions and invoice dispute deadlines from the ones currently applied. *(please see below item 7.2 and 7.3 in the Country Review section for further details per jurisdiction)*

2. According to VAT law in the EU member states (which is uniformly applicable in 6 of the 13 jurisdictions in the 8th Region), the following rules apply with respect to VAT on invoices issued by TSO in the EU for congestion income received for the allocation of cross border interconnection capacity to Auction Participants within the same EU country, to Auction Participants in other EU countries and to Auction Participants outside the EU as follows:
   
   a. for Auction Participants within the same EU country, local VAT is due;
   
   b. for Auction Participants from other EU countries, local VAT is not due, as this is charged in the EU country where the recipient of the service is registered (“reverse charge” mechanism);
   
   c. for Auction Participants outside the EU, the invoices are exempt of local VAT. *(please see below item 7.5 in the Country Review section for further details per jurisdiction)*

3. According to the VAT law in the non EU member states, the general rule is that invoices issued by local TSOs to Auction Participants in the same country are subject to local VAT. Invoices issued to companies outside the jurisdiction are not subject to local VAT. *(please see below item 7.5 in the Country Review section for further details per jurisdiction)*
4. If the EU or non EU TSOs charge (i.e. issue invoices) the SEE-CAO (in case it is registered outside the jurisdiction of the TSO), the VAT rules set out above in items 2 and 3 would apply accordingly. (*please see below item 7.5 in the Country Review section for further details per jurisdiction*)

7.2 **Overall Conclusions**

As concerns whether the issues related to accounting and taxes will constitute an obstacle and whether legal, regulatory and administrative requirements will be required in order for the local TSOs to participate in the SEE-CAO, we draw the following main conclusions:

5. With the exception of Albania, according to national accounting rules, there are no accounting restrictions or limitations that would prevent or prohibit the SEE-CAO from being used as a contracting-invoicing company, and in particular for the SEE-CAO to issue invoices to the Auction Participants for the allocation of cross border capacity and after that for the TSOs to issue a second invoice to the SEE-CAO with the equal amount. No legislative or administrative measures are required on a national level to facilitate such an invoicing – contracting structure. In Albania in particular, this matter requires further investigation with local accounting rules.

6. As concerns whether the SEE-CAO must charge VAT to the Auction Participants for congestion income it allocated on behalf of local TSOs (the “TSO”), according to the VAT laws of the TSO, we note the following (for EU TSOs)

   d. In the event the SEE-CAO issues invoices for the allocation of cross border capacity on behalf of an EU TSO, according to local EU VAT law and practice, if the SEE-CAO were from an EU member state, the SEE-CAO would not be subject to the TSO’s VAT laws and therefore its invoices would not have to charge the EU TSO’s VAT (the SEE-CAO would be subject to its own EU VAT laws and it would have to charge VAT according to its EU VAT laws).
e. This scenario has been tested, as it is currently in operation in several coordinated auctions on EU borders. In particular, the TSO from a neighbouring EU member state issues invoices to Auction Participants for the allocation of cross border capacity on an EU border subject to its own VAT laws (this invoice is not subject to the TSOs VAT laws and it does not include local VAT). Thereafter, the TSO issues an invoice to the other TSO from the neighbouring EU member state. The TSO’s invoice is subject to local VAT laws. However, no actual local VAT is actually charged because the reverse charge mechanism applies.

f. On the basis of the above, there does not seem to be a problem with respect to TSOs from other EU member states invoicing on behalf of local EU TSOs. However, there is no relevant VAT experience in similar situations when the SEE-CAO undertaking auctioning activities on behalf of an EU TSO is not from a neighbouring EU member state (i.e. if the SEE-CAO is from Montenegro).

g. In particular, by using a foreign vehicle (i.e. the SEE-CAO in Montenegro), the SEE-CAO when charging Auction Participants in the TSO’s country will not charge local VAT and when the TSO charges the SEE-CAO (for charging the local Auction Participant), this invoice will also not have local VAT, although if this were done without the use of the SEE-CAO, the transaction would have had local VAT. This problem is even more acute when we take into consideration the fact that the SEE-CAO will be invoicing on behalf of the local TSO.

h. Our view is that since the restructuring is being effected for genuine business purposes and not for tax avoidance purposes, the rules set out above in section 7.1 (2) should apply irrespective of the overall tax effect the restructuring will have with respect to EU VAT (see item d above).
i. Notwithstanding the above, given that this matter affects all countries and the EU in particular because by using a company outside the EU, VAT which would have been otherwise charged on congestion income earned by EU TSOs may be reduced considerably, the VAT issue needs to be examined carefully and a question must be filed with the national EU Ministries of Finance or the EU Commission enquiring whether the SEE-CAO duly established and operating out of Montenegro must appoint a local fiscal representative in order to deal with local EU VAT.

j. The above VAT issues may also apply accordingly to non EU member states. BiH provides for a scenario where the SEE-CAO may have to invoice in gross (including the local VAT of the country in which the TSO is registered). The Croatian stakeholders may also have to submit a request with their national Ministry of Finance to enquire the position of their Ministry. The Serbian TSO on the other hand, has taken the position that If EMS agrees that the SEE-CAO will issue invoices to the Market Participants and EMS will issue invoices to SEE-CAO, the invoice of the SEE-CAO to the Market Participants will not be subject to Serbian VAT law. Only Serbian resident companies are subject to Serbian VAT. The key issue is not the service itself, “but the company performing the service”. It should be noted that the matter of VAT will need to be examined separately for each non EU country.

7.3 Country Reviews

A. Albania

7.1 The Auction Price together with the VAT is invoiced to the PTR Holder by OST

7.2 In the absence of auction rules to provide for them, there are no detailed payment terms, Yet, the Albanian Electricity Market Rules (Chapter X, point X.1.20) provide that “All interconnection capacity allocation rights purchased will be paid in advance, according to the provisions set by OST.

7.3 Regarding the deadline for disputing the invoice, there are no specific rules. There are some definitions of disputing invoices (Article XII.4. Disputes on Invoices and Payments of the Albanian Market Rules), which, however, are not
closely related to auctions for interconnections capacity.

7.4.1 As concerns whether there are any restrictions or limitations that would prevent or prohibit the SEE-CAO from issuing invoices to Traders for the payment of the Dues and if so what are they, there are no provisions in local legislation and the matter is open to discussion.

7.4.2 Regarding how invoicing could take place between the TSOs, the SEE-CAO and the Traders, same comments as 7.5.1.

7.4.3 If the SEE-CAO is to issue invoices (on behalf of the TSOs) to Traders for the payment of the Dues, what legislative or administrative measures would need to be taken? The matter is still unresolved.

7.5 On the Auction Price OST charges only VAT and the ITC charges.

7.6 The VAT is an indirect tax, it has to be paid by the final consumer, and it is collected through OST.

7.7 The SEE-CAO may be allowed to collect taxes, if the SEE CAO has the needed empowerments and agreements and local provisions are also introduced.

7.8

B. Bosnia & Herzegovina

7.1 N/A. BiH does not hold auctions for the allocation of cross border transmission capacity.

7.2 N/A. BiH does not hold auctions for the allocation of cross border transmission capacity.

7.3 N/A. BiH does not hold auctions for the allocation of cross border transmission capacity.

7.4.1 A reply is not possible until the structure is precisely agreed by the parties.

7.4.2 There are two ways:
(i) The first one is to consider SEE-CAO as an administrator (similar as data administrator in ITC) where TSO and traders would mutually make out invoices and the founders of SEE-CAO would cover its work expenses.

(ii) The second way is that SEE-CAO makes out invoices and collects all the revenue which would then be distributed to the founders according to previously agreed way of distribution.

7.4.3 If the SEE-CAO is to issue invoices (on behalf of ISO) to Traders for the payment of congestion income, there are no legislative or administrative measures that need to be taken. Everything could be resolved contractually between the founders.

7.5 N/A. BiH does not invoice for allocation of cross border transmission capacity.

7.6 N/A. BiH does not invoice for allocation of cross border transmission capacity.

7.7 The SEE-CAO may not be allowed to collect taxes.

7.8 If SEE-CAO will issue invoices to the Market Participants and ISO issues invoices to SEE-CAO, the following options arise:

In case that SEE CAO performs only data gathering and performs calculation of capacities and delivers the settlement to the owners of SEE CAO, then the owners of SEE CAO can deliver invoices with VAT included according to legislative of their own country.

In case that SEE CAO performs only data gathering and calculation, and that the owners deliver invoices without VAT to those who bought capacities, then each of them would afterwards (on its own burden) calculate VAT according to regulations of its country. This way of calculation and invoicing has already been used in the process of ITC.

In case that the SEE-CAO except gathering data and performing calculation also performs invoicing to those who buy capacities, then it does the invoicing in the gross which means that it includes VAT of each country – an owner of SEE CAO and its VAT if it is tributary to VAT in a country of its registration. On the other hand, each country – owner of SEE CAO delivers invoices with VAT according to regulations of its country. According to this option, SEE CAO
would at the same time gather assets from the payments and would pay out those assets to the taxpayers.

C. Croatia

7.1 The Auction Price together with the VAT is invoiced to the PTR Holder by HEP-OPS.

7.2 Invoice must be settled 8 days from the issue of the invoice.

7.3 There is a 2 day deadline for disputing the invoice.

7.4.1 There are no restrictions or limitations that would prevent or prohibit the SEE-CAO from issuing invoices (on behalf of HEP-OPS) to Traders for the payment of the Dues, subject to Croatian regulatory approval.

HEP-OPS currently applies a similar structure with Mavir for the performance of coordinated auctions on the Croatian-Hungarian borders, pursuant to the individual auction procedures are held by MAVIR. No accounting issues arise from this agreement.

7.4.2 As concerns how the Croatian stakeholders would envisage the invoicing to take place between HEP-OPS, the SEE-CAO and the Traders, in the event the auctions are conducted by the SEE-CAO on behalf of HEP-OPS, two ways are possible (depending on the regional level of harmonization, that would not to be achieved):

- SEE CAO is used as an invoicing vehicle which would invoices traders on HEP-OPS’ behalf and HEP-OPS would invoice the SEE-CAO, or

- or the SEE-CAO would be used only as a service provider invoicing HEP-OPS for the supply of administrative functions and HEP-OPS would invoice the traders directly.

7.4.3 If the SEE-CAO is to issue invoices (on behalf of the TSOs) to Traders for the payment of the Dues, there are no legislative or administrative measures that would need to be taken in Croatia.

Notwithstanding the above, if the SEE-CAO is to issue invoices (on behalf of the TSOs) to Traders for the payment of the Dues a VAT issue may arise if the
SEE-CAO issues invoices on behalf of HEP-OPS since the SEE-CAO may have to comply with Croatia’s VAT laws. The Croatian stakeholders will have to submit a question with the Croatian Ministry of finance to provide legal instruction concerning tax and VAT issues particularly for the sake of SEE CAO functioning.

7.5 Invoices issued by HEP-OPS to Croatian companies are subject to Croatian VAT at a rate of 22%.

7.6 HEP-OPS collects the taxes.

7.7 The SEE-CAO may not be allowed to collect taxes according to Croatia’s primary and secondary legislation in case it is a foreign company,

7.8 If HEP-OPS agrees that the SEE-CAO will issue invoices to the Market Participants and HEP-OPS will issue invoices to SEE-CAO, according to Value Added Tax Act there is no difference between service connected to electricity (e.g. auctions) and any other service. Coordinated allocation of capacities, if conducted by the SEE-CAO office, is considered as service done outside the tax jurisdiction of Croatia in which event no Croatian VAT should be imposed on the SEE-CAO’s invoices.

Notwithstanding the above, the Croatian stakeholders will have to submit a question with the Croatian Ministry of finance to provide legal instruction concerning tax and VAT issues particularly for the sake of SEE CAO functioning.

D. former Yugoslav Republic of Macedonia

7.1 MEPSO issues the invoice to the User.

7.2 After the expiry of the allocated period in accordance with the timing in the Calendar for the year Y, MEPSO submits to the User the information on the price of allocated capacity and invoice, which must be paid prior to starting the use of the obtained capacity. The sum in the invoice shall be expressed in EURO inclusive VAT of 18%. The User shall effect the payment with firms registered in the R. Macedonia in Denars equivalent at the exchange rate of NBM on the day of billing.
7.3 There is no deadline for disputing the invoice.

7.4.1 No response

7.4.2 No response

7.4.3 No response

7.5 The sum in the invoice shall be expressed in EURO inclusive VAT of 18%.

7.6 No response

7.7 No response

7.8 No response

E. Montenegro

7.1 The Auction Price together with the VAT is invoiced by TSO-EPCG.

7.2 The payment conditions, according to the auction rules, is that payment must be effected by the 20th day of the following month.

7.3 The deadline for disputing the invoice is 5 days from the date of the invoice delivery.

7.4.1 There are no restrictions or limitations that would prevent or prohibit the SEE-CAO from issuing invoices (on behalf of TSO-EPCG) to Traders for the payment of the Dues.

7.4.2 On the basis of the existing legislation, the SEE – CAO will conduct invoicing on behalf of TSO-EPCG. It has to be defined in contract between CAO and TSOs.

7.4.3 SEE-CAO is to issue invoices (on behalf of the TSOs) to Traders for the payment of the Dues, no particular legislative or administrative measures would need to be taken.

7.5 Invoices issued by TSO-EPCG to Montenegro companies are subject to Montenegro VAT at a rate of 17%. Invoices issued to companies outside
Montenegro are not subject to Montenegro VAT.

7.6 State and state owned institutions collect taxes in Montenegro.

7.7 If established in Montenegro, the SEE-CAO should pay all of these taxes for domestic employees, and part of it for foreigners (Montenegro signed double taxation avoiding contracts with most of the countries)

7.8 N/A

F. Serbia

7.1 The Auction Price together with the VAT is invoiced to the PTR Holder by EMS.

7.2 In the yearly auction for 2009, the cross border congestion fee is invoiced to the participant in the relevant proforma invoice issued on a monthly basis, not later than the 8th day prior to the commencement of the month when the allocated capacity will be used. In monthly auctions during 2009, the CBCRF fee is invoiced to the participant in the relevant pro-forma invoice issued on a monthly basis not later than the 8th day prior to the commencement of the month in which the allocated capacity will be used. In weekly auctions during 2009, the CBCRF fee is invoiced to the participant in the relevant invoice issued on a monthly basis after all executed auctions in that month.

The monthly and yearly fee must be paid in advance prior to the commencement of the use of right to allocated capacity, according to the proforma invoice/invoice issued by EMS.

The weekly fee is paid in the month following the month in which weekly capacity rights were used.

7.3 There is no deadline for disputing the invoice.

7.4.1 As concerns whether there are any restrictions or limitations that would prevent or prohibit the SEE-CAO from issuing invoices (on behalf of EMS) to Traders for the payment of the Dues, EMS supports the “service provider” structure whereby EMS will enter into a service agreement with SEE-CAO for the latter to provide services in connection with the auctioning of available cross border
transfer capacity in the name of EMS. In this case, the invoicing to the Auction Participant would be effected by EMS directly.

7.4.2 On the basis of the existing legislation, EMS only supports the “service provider” model, whereby SEE-CAO does not invoice the Auction Participants for the allocation of cross border capacity. The contractual relationship for the allocation of cross border capacity will be directly between EMS and the Auction Participant and therefore, EMS will issue the invoice directly to the Auction Participant for this allocation (not by the SEE-CAO). The SEE-CAO will invoice EMS for the supply of services on a cost basis.

7.4.3 If the SEE-CAO is to issue invoices (on behalf of the TSOs) to Traders for the payment of the Dues, there are no legislative or administrative measures that would need to be taken in Serbia.

7.5 Invoices issued by EMS to Serbian companies are subject to Serbian VAT at a rate of 18%. Invoices issued to companies outside Serbia are not subject to Serbian VAT. If EMS charges (i.e. issues an invoice) SEE-CAO (in case it is registered as company outside Serbia), EMS’ invoice will not have Serbian VAT. This is true in case that SEE-CAO is not registered company in Serbia. In case SEE-CAO is Serbian company, EMS’ invoice will have Serbian VAT.

7.6 EMS collects the taxes.

7.7 The SEE-CAO may not be allowed to collect taxes according to Serbia’s primary and secondary legislation in case it is a foreign company, Yes – if it is registered in Serbia.

7.8 If EMS agrees that the SEE-CAO will issue invoices to the Market Participants and EMS will issue invoices to SEE-CAO, the invoice of the SEE-CAO to the Market Participants will not be subject to Serbian VAT law. Only Serbian resident companies are subject to Serbian VAT. The key issue is not the service itself, but the company performing the service.

G. UNMIK

7.1 KOSTT invoices the Dues in its capacity as a Market Operator too.
7.2 If the sum of the requested capacities is smaller than the available transfer capacity, then all the bids are accepted and the price for capacity allocation in the case of electricity transfer is zero. For annual allocation, a bank guarantee is required, while for monthly allocation payment is made in advance of real use for the entire month (i.e. no bank guarantee is required).

7.3 Invoices are issued two days after the auction, while the deadline for disputing the invoice is 5 days after receiving the invoice.

7.4.1 As concerns whether there are any restrictions or limitations that would prevent or prohibit the SEE-CAO from issuing invoices to Traders for the payment of the Dues and if so what are they, there are no such provisions/restrictions in local legislation and the matter is open to discussion.

7.4.2 CAO should issue invoices to traders. Afterwards CAO and KOSTT should settle according to a pre-agreed distribution revenue arrangement, as indicated in a Multilateral Agreement between regional TSOs.

7.4.3 A regional, multilateral agreement could solve various difficulties at local level.

7.5 As of January 2009, fees charged by KOSTT include VAT at 16%.

7.6 Taxes are collected and administered by the Tax Administration of UNMIK, a separate authority within Ministry of Economy and Finance. For import/export trade, taxes are assessed and collected by the Custom Service on behalf of the Tax Administration.

7.7 There is no specific provision, but there could be complications. First, CAO will not be registered in UNMIK, which means that its invoices will not be subject to VAT. Second, CAO will be the service provider of a local product (service) that is being charged and apparently should be subject to VAT. Congestion incomes are subject to VAT and therefore Market Participants should pay VAT to CAO. Other issues may also influence this process such as the content of invoices issued to Market Participants (will it be invoiced aggregated or will separate values of congestion incomes belonging to each TSO for certain allocation be charged?), the revenue distribution mechanism, etc. Given the ambiguity, ERO and KOSTT maintain that political decision at regional level, preferably by the Ministerial Council of the Energy Community, might be necessary.

7.8
H. **Greece**

7.1 The Auction Price together with the VAT is invoiced by HTSO.

7.2 Within five (5) days from the date of results publication, HTSO issues an invoice for capacity utilisation. The invoices for any allocated transfer capacity must be paid in full before use of capacity.

7.3 The deadline for disputing the invoice issued by HTSO is 7 days from the date the invoice is issued.

7.4.1 There are no restrictions or limitations that would prevent or prohibit the SEE-CAO from issuing invoices (on behalf of HTSO) to Traders for the payment of the Dues.

7.4.2 On the basis of the existing legislation the invoicing could take place between the TSOs, the SEE-CAO and the Traders upon the following model:

   - The SEE-CAO could issue invoices on Auction Price to the Traders and upon this invoice the Traders should pay the Auction Price directly to SEE-CAO.

7.4.3 It is possible for the SEE-CAO to issue invoices (on behalf of HTSO) to Traders for the payment of the Dues. No legislative or administrative measures are needed.

7.5 HTSO issues invoices for congestion income to Greek, EU and non EU companies.

   - for Greek resident companies, the invoices include the VAT of 19%, according to the Greek VAT code.
   - for EU companies, VAT is charged in the jurisdiction of the Auction Participant, which is recorded as “reverse charge”.
   - For non EU resident companies, no VAT is charged as export of service.

7.6 HTSO collects the taxes.

7.7 The SEE-CAO may not be allowed to collect taxes.
7.8 In the event the SEE-CAO issues invoices for the allocation of cross border capacity on behalf of HTSO, a question regarding Greek VAT may arise. In particular, if the SEE-CAO were from an EU member state, the SEE-CAO would not be subject to Greek VAT laws and therefore its invoices would not have to charge Greek VAT.

There may be a problem with respect to companies from non EU member states invoicing on behalf of HTSO. There is no relevant VAT experience in similar situations when the TSO or any other company undertaking auctioning activities on behalf of HTSO is not from an EU member state.

It must be examined carefully and a question must be filed with the Greek Ministry of Finance enquiring whether the SEE-CAO duly established and operating out of Montenegro must appoint a Greek fiscal representative in order to deal with possible Greek VAT.

I. Hungary

7.1 The Auction Price together with the VAT is invoiced to the PTR Holder by Mavir.

7.2 According to the Commercial Code of the Hungarian Electricity System (Commercial Code), the Auction Price for the capacities obtained at the yearly auction has to be paid 2 month in advance until 20 of each month. The Auction Prices for January and February are invoiced together in one invoice.

According to the Commercial Code, the Auction Price for the capacities obtained at the monthly auction has to be paid 1 month in advance until 20 of each month.

The Commercial Code has no general rules for the payment of the Auction Price for the capacities obtained at the daily auction, this is regulated separately for the cross border sections of each neighbouring county and this varies from country to country.

The invoice has to be settled within 8 days (in case of yearly and monthly auction). The invoice according to Hungarian and European tax rules contains VAT, and this is indicated separately on the invoice.
7.3 The Business Code of MAVIR (IV./1.14.) regulates generally the deadline for disputing the invoice. The invoice can be disputed within 4 working days after the receipts of the invoice. The deadline for not controversial items of the invoice will not change. Within 2 days after receipts of the dispute the parties should check the controversial data.

7.4.1 As concerns whether there are any restrictions or limitations that would prevent or prohibit the SEE-CAO from issuing invoices (on behalf of Mavir) to Traders for the payment of the Dues and if so what are they:

It has to be cleared what does mean exactly “issuing invoices (on behalf of the TSOs) to Traders”, because different interpretations are possible. On the one hand it is possible that the SEE-CAO issues the invoices and makes the administration tasks in connection with this, but the entitled will remain the TSO and upon the invoice the amount has to be paid by the Trader to the TSOs. In this case there can be an obstacle that a guideline of the MAVIR prescribes, that commercial businesses can be accounted only by MAVIR. On the other hand it is possible that the SEE-CAO issues the invoice on the Auction Price to the Trader and after that the TSOs issue a second invoice to the SEE-CAO with the equal amount. In this case from invoicing point of view there is no special obstacle that would prohibit the SEE-CAO from issuing invoices on behalf of the MAVIR. The services offered by the SEE-CAO to TSOs could be invoiced separately.

7.4.2 On the basis of the existing legislation the invoicing could take place between the TSOs, the SEE-CAO and the Traders upon the following model:

The SEE-CAO should issue invoices on Auction Price to the Traders and upon this invoice the Traders should pay the Auction Price directly to SEE-CAO. In the next step the SEE-CAO and the TSOs should settle those payments among them. The invoicing could take place in every month (or two times in a month), in this case the Auction Prices could be aggregated in one invoice.

7.4.3 If the SEE-CAO is to issue invoices (on behalf of the TSOs) to Traders for the payment of the Dues, what legislative or administrative measures would need to be taken?

By implementing the above described model (see 7.4.2) the SEE-CAO should
ensure that the different amounts paid by Traders in connection with the auctioning of cross border capacities of one TSO should be booked on a separate account. The usage of this method enables the parties to facilitate the settlement of different payments among them.

### 7.5 On the Auction Price

MAVIR charges only VAT. The normal rate is 20%. The VAT is charged depending on the seat of the Trader according to the Act CXXVII of 2007 on Value Added Tax. If the issuer of the invoice is a Hungarian taxable entity, and the recipient of the invoice is

- a Hungarian taxable entity: the invoice is made out with a VAT inclusive amount.
- an EU taxable entity: VAT is not included in the invoice, the invoice is made out in net amount. Place of performance is outside Hungarian tax jurisdiction. (Law on VAT, Section 34(1)(b), Section 46(1)(a), Section 12(2)(d), Section 176(2)(b), Section 176(1)(c), Section 159(2)(c).)
- a Non-EU taxable entity: VAT is not included in the invoice, the invoice is made out in net amount. Place of performance is outside Hungarian tax jurisdiction. (Law on VAT, Section 34(1)(b), Section 46(1)(b), Section 12(2)(d), Section 176(2)(b), Section 176(1)(c), Section 159(2)(c).)

### 7.6 VAT is an indirect tax, it has to be paid by the final consumer, and it is collected through the marketing chain by the national Tax Authority (APEH).

### 7.7 The SEE-CAO may be allowed to collect taxes according to Hungary’s primary and secondary legislation, if the SEE CAO has the needed empowerments and agreements.

### 7.8 In the event the SEE-CAO is used as an invoicing vehicle, the following tax issues should be taken into account:

- If the issuer of the invoice is an EU taxable entity (not Hungarian) and the recipient of the invoice is a Hungarian taxable entity: VAT is not included in the invoice, the invoice is made out in net amount. In case of electricity import: electricity import is tax-free. (Law on VAT, Section 91(1)(b).) In case of service rendered by a EU taxable entity if it is
utilized for activities subject to taxation: the settlement of tax payable on the basis of national VAT rate is mandatory, however it may be included as deductible tax only in case of compliance with the necessary conditions. (Law on VAT, Section 140(b), Section 143(1), Section 120(b).)

- If the issuer of the invoice is a Non-EU taxable entity (i.e. Montenegro), and the recipient of the invoice is a Hungarian taxable entity VAT should not be included in the invoice, the invoice is made out in net amount. In case of electricity import: electricity import is tax-free. (Law on VAT, Section 93(1)(m).) In case of import service, if it is utilized for activities subject to taxation: the settlement of tax payable on the basis of national VAT rate is mandatory, however it may be included as deductible tax only in case of compliance with the necessary conditions. (Law on VAT, Section 140(b), Section 145(1), Section 120(c).)

J. Romania

7.1 The Auction Price together with the VAT is invoiced to the PTR Holder by Transelectrica.

7.2 According to art. 6.7.10, 6.7.12 and 6.7.13 of the Romanian Operational Procedure, within two (2) days from the date of results publication on the website (5 days for yearly auctions), Transelectrica issues an invoice for capacity utilisation. The invoices for any allocated transfer capacity must be paid in full within seven (7) working days after receipt, regardless of the power delivery schedules.

7.3 According to art. 36 of the Framework Allocation Contract, the invoice has to be paid in full and any legal contest should be made within 5 working days from the invoice reception date. The TSO examines the received claim and sends its reply within 5 working days from its reception date.

7.4.1 There are no restrictions or limitations that would prevent or prohibit the SEE-CAO from issuing invoices (on behalf of Transselectrica) to Traders for the payment of the Dues.
7.4.2 On the basis of the existing legislation the invoicing could take place between the TSOs, the SEE-CAO and the Traders upon the following model:

The SEE-CAO should issue invoices on Auction Price to the Traders and upon this invoice the Traders should pay the Auction Price directly to SEE-CAO.

7.4.3 It is possible for the SEE-CAO to issue invoices (on behalf of Translectrica) to Traders for the payment of the Dues. No legislative or administrative measures are needed.

7.5 TSO issues invoices for the services delivered related to the allocation of the interconnection capacities to the resident firms in Romania, in EU or outside EU.

- for the resident firms in Romania, the invoices include the VAT of 19%, as per the Art. 133, par. 2, letter g, par. 9 and Art. 155, par.5, letter n in the Fiscal Code;
- for the EU or outside EU residents the invoices do not include the VAT, having the mention “reverse charge” as per Art. 133, par. 2, letter g, par.9 and Art. 155, par.5, letter n, in the Fiscal Code;

7.6 The Romanian TSO collects the taxes and pays them to the Romanian Ministry of Finance.

7.7 The SEE-CAO may not be allowed to collect taxes.

7.8 In the event the SEE-CAO issues invoices for the allocation of cross border capacity on behalf of Transelectrica, according to Romanian VAT law and practice, if the SEE-CAO were from an EU member state, the SEE-CAO would not be subject to Romanian VAT laws and therefore its invoices would not have to charge Romanian VAT (the SEE-CAO would be subject to its VAT laws and it would have to charge VAT according to its VAT laws). This scenario has been tested, as it is currently in operation with Romania’s border with other EU member states. In particular, the TSO from a neighbouring member state issues invoices to Auction Participants for the allocation of cross border capacity on the Romanian border subject to its VAT laws (this invoice is not subject to Romanian VAT laws and it does not include Romanian VAT). Thereafter, Transelectrica issues an invoice to the TSO from the neighbouring
member state. Transelectrica’s invoice is subject to Romanian VAT laws. However, no actual Romanian VAT is actually charged because the reverse charge mechanism applies.

On the basis of the above, there does not seem to be a problem with respect to companies from other EU member states invoicing on behalf of Transelectrica. However, there is no relevant VAT experience in similar situations when the TSO or any other company undertaking auctioning activities on behalf of Transelectrica is not from a neighbouring EU member state (i.e. if the SEE-CAO is from Montenegro).

On the basis of the above, it must be examined carefully and a question must be filed with the Romanian Ministry of Finance enquiring whether the SEE-CAO duly established and operating out of Montenegro must appoint a Romanian fiscal representative in order to deal with Romanian VAT. In particular, by using a foreign vehicle (i.e. the SEE-CAO in Montenegro), the SEE-CAO when charging Auction Participants in Romania will not charge Romanian VAT and when Transelectrica charges the SEE-CAO (for charging the Romanian Auction Participant), this invoice will also not have Romanian VAT, although if this were done without the use of the SEE-CAO, the transaction would have had Romanian VAT. This problem is even more acute when we take into consideration the fact that the SEE-CAO will be invoicing on behalf of Transelectrica.

It should be accentuated that this matter affects all countries and the EU in particular because by using a company outside the EU, VAT which would have been otherwise charged on congestion income earned by EU TSOs may be reduced considerably.

Moreover, Montenegro VAT may be charged on invoices issued by the SEE-CAO, according to Montenegro VAT laws.

K. Slovenia

7.1 The Auction Price together with the VAT is invoiced by ELES.

7.2 The auction participant has to pay the relevant invoice before the next auction where ELES could once again allocate those same capacities. According to
the Auction Rules, the invoice has to be paid at least two (2) days prior to the publication of ATC for the relevant auction where ELES could once again allocate those same capacities (related to risk management – advanced payment).

7.3 The deadline for disputing the invoice is five (5) working days.

7.4.1 Based on current practice, there does not seem to be any restrictions or limitations that would prevent or prohibit the SEE-CAO from issuing invoices (on behalf of ELES).

7.4.2 Currently, ELES has very little experience with the invoicing procedures with partners from countries outside the EU. Especially in case of capacities allocation that kind of experience is practically nonexistent. Based on today’s knowledge the only problems that we can see are the different VAT rates in connection to the inability to apply the reverse charge mechanism which ELES uses with its “EU” partners.

7.4.3 If the SEE-CAO is to issue invoices (on behalf of ELES) to Traders for the payment of congestion income, the only thing that has to be secured is the separation of congestion revenue from the normal operation of the SEE-CAO. Meaning that congestion revenue invoiced by the SEE-CAO in the name of ELES has to be secured in a sense that the money cannot be used for covering liabilities of the SEE-CAO towards third parties, bankruptcy, etc… In order to secure this proper agreements have to be signed between TSOs (Inter-TSO agreement) and the TSOs with the SEE-CAO.

7.5 As concerns invoices issued by ELES for congestion income, the following rules apply:

- for the resident companies in Slovenia, the invoices include the VAT of 20%;
- for EU resident companies the invoices do not include Slovenian VAT, as this is charged in the EU country where the recipient of the service is registered.
- For non EU resident companies, the invoices are exempt of Slovenian VAT.
7.6 ELES collects the taxes and pays them to the tax administrator.

7.7 The SEE-CAO may not be allowed to collect taxes.

7.8 As concerns the VAT question as to whether SEE-CAO will be required to charge Slovenian VAT on the invoices it will issue to Auction Participants for the allocation of cross border capacity on the Slovenian borders, there is no precedence and this matter will require careful attention.

According to current state of issuing invoices between ELES and APG, APG issues invoices to traders according to Austrian VAT laws and then ELES issues an invoice to APG for 50% of income without VAT (i.e. reverse charge mechanism). Looking at this from the Slovenian side, ELES issues invoices (according to Slovenian VAT law) to traders with the legal person in Slovenia with VAT and to traders outside Slovenia without VAT. APG issues the invoice for the 50% of collected amount without Slovenian VAT.

Due to the lack of experience when doing business with companies outside the EU, ELES is not sure that the above-mentioned procedure (with APG) is also applicable for non-EU companies especially in cases where a third (non EU) company (SEE-CAO) would be involved.

L. Italy

M. Bulgaria
8. Market Data – Publication and Confidentiality

8.1 Regional Overview

As concerns the issues related to market data – reporting and confidentiality, we provide below a summary of the issues set out in the country review section:

1. The majority of the jurisdictions in the 8th Region have, to a greater or smaller degree, extensive “confidentiality” obligations and very rigid administrative rules with respect to the TSO’s and the Regulator’s ability to share information classified as “confidential” by national laws. The majority of jurisdictions provide for the ability to divulge information only to national state authorities, organizations and institutions under certain conditions. (please see below item 8.1 in the Country Review section for further details per jurisdiction)

2. The data published by the national TSOs may differ slightly from jurisdiction to jurisdiction, although there is a degree of convergence due to the TSOs involvement in UCTE and ETSO. (please see below item 8.2 in the Country Review section for further details per jurisdiction)

3. The national laws in the 13 jurisdictions also have different criteria and rules for classifying information as “confidential”, which constitutes a legal obstacle for determining common rules for sharing of information. (please see below item 8.3 in the Country Review section for further details per jurisdiction)

4. In the legal order of EU member states, public wholesalers and suppliers with public service obligations (“PSOs”) do not receive preferential access to “reserved” cross border transmission capacity, known as “already allocated capacity” (“AAC”). AAC exists in non EU jurisdictions of the 8th Region, with different rules. In general AAC is provided to legal entities with public service obligations and in most cases to only one legal entity that has PSOs. The legal entity that has PSOs is not required to bid for congested capacity or pay the congestion fee paid by winning bidders for any capacity set aside for it. (please see below item 8.4 in the Country Review section for further details per jurisdiction)
8.2 Overall Conclusions

As concerns whether the issues related to market data – reporting and confidentiality will constitute an obstacle and whether legal, regulatory and administrative requirements will be required in order for the local TSOs to participate in the SEE-CAO, we draw the following main conclusions:

1. One of the legal obstacles in creating an “integrated Internal Electricity Trading Market” in the 8th Region through the proper operation of a SEE-CAO and the effective monitoring of the SEE-CAO by the Regulators (which pre-supposes transparency and free flow of information among all TSOs, Regulators and the SEE-CAO) is the existing national legal obligations regarding “confidentiality” and the rigid administrative rules preventing the TSOs and the Regulators from effectively sharing “confidential” information. The majority of jurisdictions provide for the ability to divulge information only to national state authorities, organizations and institutions under certain conditions.

2. A possible solution to the above “confidentiality” issue may be for national legislation in the jurisdictions of the 8th Region, following agreement among all national TSOs and Regulators, to provide specifically (lex specialis) the power to the TSOs on the one hand to be able to share information classified as “confidential” with the SEE-CAO (given that the SEE-CAO operates as an “agent” for the TSO and the TSO is a shareholder and a member of the SEE-CAO’s supervisory board), and to the Regulators on the other hand to share such information among themselves and/or in the framework of a particular regional regulatory institution (i.e. the ECRB). In order for this to be effective, the following legal conditions would need to apply:

   a. the sharing of information among Regulators on the one hand and the TSOs and the SEE-CAO on the other hand would have to be conditional on the principle of “reciprocity” (i.e. all national laws in the 13 jurisdictions must provide for the same obligations, powers, rights and procedures) which could and should be provided in national laws;

   b. the national laws would have to include provisions obliging the recipient SEE-CAO, Regulators and TSOs to take such measures ensuring that the information received will remain “confidential” and will be used solely for the purposes provided; and
c. the entities providing information to national TSOs classified as “confidential” will have to be informed that this information could be shared with the SEE-CAO and other regulators.

3. Another obstacle in achieving the above objective is the differentiation of criteria and rules that each jurisdiction has for classifying information as “confidential”. Following agreement among all TSOs and Regulators, the national laws in the 13 jurisdictions should adopt in their national legislation special and uniform rules (lex specialis) regarding what criteria constitutes information as “confidential” for the electricity sector thus allowing for a fair and equal sharing of information within the market. The three requirements noted above in item 2 apply respectively.

4. The degree of harmonization of national legislation in each of the 13 jurisdictions with respect to (i) the criteria to be used to classify information as “confidential” and (ii) the national legal obligations and administrative rules regarding the sharing of “confidentiality” information by all TSOs and Regulators is dependent highly on the capacity allocation mechanism that will be selected by the TSOs to undertake the auctions (i.e. “coordinated explicit load-flow based auctions” vs “coordinated bilateral NTC-based auctions”). The use of “coordinated explicit load-flow based auctions”, presupposes a uniform internal market with a higher degree of cooperation and transparency among stakeholders than in the case of “coordinated bilateral NTC-based auctions”. In order for the TSOs to choose for the SEE-CAO to allocate cross border capacity through “coordinated explicit load-flow based auctions”, it is necessary for the national legislation in each of the 13 jurisdictions to be harmonized with respect to the criteria to be used to classify information as “confidential” and the national legal obligations and administrative rules regarding the sharing of “confidentiality” information by all TSOs and Regulators (our comments regarding the three requirements noted above in item 2 apply respectively). Until special and uniform rules are provided in national legislation regarding “confidential” information, the SEE-CAO should initially operate with “coordinated bilateral NTC-based auctions” as the initial capacity allocation mechanism and an intermediate stepping stone to “coordinated explicit load-flow based auctions”.
5. The data published by the national TSOs may differ slightly from jurisdiction to jurisdiction, although there is a degree of convergence due to the TSOs involvement in UCTE and ETSO. However, until full convergence of data published by the TSOs is achieved, our comments above with respect to using “coordinated bilateral NTC-based auctions” as the initial capacity allocation mechanism and an intermediate stepping stone to “coordinated explicit load-flow based auctions” apply accordingly.

6. In the legal order of EU member states, public wholesalers and suppliers with public service obligations (“PSOs”) do not receive preferential access to “reserved” cross border transmission capacity, known as “already allocated capacity” (“AAC”). AAC exists in non EU jurisdictions of the 8th Region, with different rules. The existence of AAC is a legal obstacle to achieving full integration of the electricity market and even more so when it is provided without payment. The national legislations of the non EU jurisdictions of the 8th Region must gradually eliminate AAC in their market.

8.3 Country Reviews

A. Albania

8.1 Confidentiality obligations may differ from one border to another, depending on the agreement with the neighboring TSOs. In general: OST (Market Operator) will keep confidential all prices offered and volumes requested under each bid whether the bid is successful or not. OST, however, may let ERE have access to all information relating to annual and monthly capacity auctions (see Albanian Electricity Market Rules, Chapter X, point X.1.15).

The Albanian Electricity Market Rules (Chapter XVII.1.1) provide that OST shall make available to any market participants any information concerning the operation of the electricity market which is not defined as confidential or commercially sensitive and may charge a reasonable fee to cover the cost of providing such information. Should, however, such information be indicated as confidential this binds OST not to reveal it to any third party. No definition on confidentiality exists.

The Albanian Electricity Market Rules (Chapter XVII, point XVII.3.2) provide that OST is responsible for preserving the confidentiality of data collected for
assessments and for operational purposes. This data may be commercially sensitive and confidentiality will be respected. No definition on confidentiality exists.

The Albanian Electricity Market Rules (Chapter X, point X.1.15) provide that OST, in its capacity as Market Operator, will keep confidential all prices offered and volumes requested under each bid whether the bid is successful or not. Yet it is free to communicate to ERE all information relating to annual and monthly capacity auctions.

8.2 According to the Albanian Electricity Market Rules Chapter XVII.1:

"XVII.1.1 OST shall make available to any market participants any information concerning the operation of the electricity market, which is not defined as confidential or commercially sensitive and may charge a reasonable fee to cover the cost of providing such information.

XVII.1.2 Market information may be held by a range of parties, for example by OST, DSO or the Wholesale Public Supplier, who will hold a range of technical information as a result of their system operation responsibilities, including, for instance, demand forecast data, generation availability (both planned and unplanned), network and interconnection availability, load and future investment.

XVII.1.3 The format and the framework-content of the market offers, as well as the scaling of offers will be established by OST and approved by the ERE. This information will be made available by OST to all interested parties."

The Albanian Electricity Market Rules (Chapter XVII, point XVII.3.1) provide that OST must use its reasonable efforts to ensure that it provides to all parties sufficient information. It will publish on its website present and future electricity system assessments with sufficient details and at intervals that will be agreed with ERE in order to ensure that all parties are properly informed.

8.3 No definition on confidential data is available. OST intends to provide such definition in future acts it will prepare.

8.4.1 Public wholesalers and suppliers with public service obligations ("PSOs") receive preferential access to “reserved” cross border transmission capacity,
known as “already allocated capacity” (“AAC”).

8.4.2 The Albanian Electricity Market Rules (Chapter X, point X.1.2) provide that OST shall reserve a capacity of 25% for the Wholesale Public Supplier and 50% for the DSO. ERE may review these quota every November.

The Albanian Electricity Market Rules (Chapter XVII, point XVII.1.2) provide that market information may be held by parties such as OST, DSO or the Wholesale Public Supplier, who are entitled to hold a range of technical information to meet their system operation responsibilities (e.g.: demand forecast data, generation availability (both planned and unplanned), network and interconnection availability, load and future investment).

8.4.3 It is still unclear whether all entities that would like to perform cross-border electricity trading transmission need to bid for congested capacity, or get the cross-border capacity usage right by assignment from an entity, who already won a cross-border capacity usage right on the auction.

8.4.4 IST is required to publish a standard set of information regarding AAC. The remains of Interconnection Capacity are allocated in three categories: annually, monthly and daily. OST will notify the market ahead of the allocation of each of the three and particularly on how much capacity will be available (see Albanian Electricity Market Rules (Chapter X, point X.1.3)

On the annual and monthly auction date the OST Market Operator will sort all accepted interconnection auction bids according to route and into descending order of price and will then award the interconnection rights in the requested volume to the party with the highest interconnection bid price and then to the party with the next highest interconnection bid and so on until there is no further capacity available in the specified route (Albanian Electricity Market Rules (Chapter X, point X.1.12)

8.4.5 No such definition exists, but it can be drawn from the definitions given for the Wholesale Public Supplier, Retail Public Supplier and DSO found in the Albanian Electricity Market Rules (Chapter II, point II.2.5, 6, 7) or the definitions given in the Market (Model Point 3).
B. Bosnia & Herzegovina

8.1 Pursuant to Article 13 and 23 of the Law of Establishing Independent System Operator for the Transmission System in Bosnia and Herzegovina (Official Gazette BH number: 35/04) and Articles 26 and 28, of the Statute of the ISO, the Management Board of the ISO issued extensive and binding Rules of Confidential Information Protection ("Confidentiality Rules"). We set out below ISO’s confidential obligations.

- ISO cannot, without authorization, provide confidential information for sight or use to any other person, nor can it give any statements related to the confidential information.

- ISO working on the creation, development, copying of confidential documents and information, is obligated to destroy any traces of concepts, respectively keep the documents in a safe manner i.e. protect program (document) on the computer as well as any other material which may reveal the content of confidential information.

- Providing confidential information to the BiH Council of Ministers or other authorized institutions, through an approved report from ISO, will not be considered as disclosing confidential information. ISO will take the required steps so that the parties which provide those sort of information and further treats it as confidential.

- Confidential information to third parties can be communicated by the Managing Director of ISO BH, respectively also employees of ISO BH, through specific written authorization of the Managing Director of ISO BH. In the event of communication of confidential information, the person from Paragraph 1 of this Article is required to announce that the information is confidential then warn the person that the information is being communicated to, in regard to protecting the confidential information and the consequences in the case of disclosure.

- It is not be considered violation of the obligation to protect confidentiality of information if the information is communicated to any natural or legal persons to whom such information may or must be communicated: a) in accordance with the law and other regulations b) pursuant to the powers ensuing from the duties performed by those
persons, their positions or workplace of employment. It shall not be considered violation of the obligation to protect confidentiality of information if the information is communicated during the sessions of the Management Board of ISO BH, if such communication is necessary for performance of the tasks while it is in accordance with the Statue of ISO BH.

Confidential information to third parties can be communicated by the Managing Director of ISO, through specific written authorization of the Managing Director of ISO. In the event of communication of confidential information, it is required to be announced that the information is confidential then warn the person receiving the confidential information that the information is being communicated to in regard to protecting the confidential information and the consequences in the case of disclosure.

8.2 N/A. BiH does not hold auctions for the allocation of cross border transmission capacity.

8.3 Confidential information, in terms of Art. 2 of the Confidentiality Rules, is the information which is determined as confidential by Law, other regulations, general Act or other Acts of ISO or any other competent body pursuant to the Law, determined to be confidential and whose disclosure may harm the interests or integrity of ISO, other natural or legal persons.

According to Art. 3 of the Confidentiality Rules, there are two types of confidential information, “official secrets” and “business secrets”. Official secret implies to be confidential information which is gathered and utilized for the use of ISO, which by law or by other regulations or by the general Act of ISO is adopted on the basis of the Law which classifies it to be official secret. Business secret implies to be confidential information which as business secret is determined by the Law, other regulations or by general Act of economic associations, organisation or other legal entities, which represent the production of the secret, results of the researched or constructed work, as well as other information whose disclosure to competent bodies may have a damaging effect to economical interest.

In addition to the above, Confidential Information particularly includes the following examples (Art. 4 of the Confidentiality Rules):
a) information which ISO labels as “official secret”;

b) information which ISO, pursuant to valid Laws and regulations, confirms to be “confidential”;

c) information which contains elements of offer or request for participating in the proceeding of award of contract for acquisition to declaring results of proceedings of award of contract of acquisition;

d) information about contracts of technical business collaborations;

e) information from concluded contracts with business partners;

f) information about financial material business;

g) information about the ability to pay obligations;

h) information regarding the status of claims and debts;

i) other information whose disclosure to competent bodies, due to its nature, importance and character would be against the interest of ISO BH or other natural or legal body

8.4.1 Public wholesalers and suppliers with public service obligations (“PSOs”) receive preferential access to “reserved” cross border transmission capacity, known as “already allocated capacity” (“AAC”), according to the existing rules on cross border capacities allocation.

8.4.2 Pro rata is applied and information is transparent.

8.4.3 PSOs are not required to bid for congested capacity because BiH does not hold auctions.

8.4.4 ISO publishes information regarding AAC (e.g. the quantity of capacity allocated, the amount actually used, the period of allocation, and the name of the capacity holder).

8.4.5

C. Croatia

8.1 According to art. 6 of the Croatian Electricity Act, HEP-OPS is obliged to keep confidential data and information received from other energy undertakings and
customers if such data are private and confidential, unless they are not authorized or obligated to make them public or to submit them to the competent government bodies according to special legislation.

8.2 HEP-OPS is obliged to publish all data prescribed in EC Regulation 1228/2003/EC and the Congestion Management Guidelines.

8.3 As concerns the criteria Croatia uses to define specific data as “confidential” preventing the sharing of information with other regulators and/or TSOs or providing the information or the general public and the market, these are defined in the Croatian Law on confidentiality of data.

8.4.1 Croatia does not provide for AAC in its legislation.

8.4.2 N/A

8.4.3 Entities with PSO are required to bid for congested capacity.

8.4.4 HEP-OPS is required to publish information regarding AAC, but, according to the national stakeholders there is no AAC in Croatia.

8.4.5 The definition of public service obligations is referenced in the Croatian Electricyt Market Act.

D. former Yugoslav Republic of Macedonia

8.1 By signing the relevant agreement form for the allocation of cross border capacity, MEPSO agrees that the obligations and information provided in the agreement form are considered confidential and cannot be disclosed to any third party or made public during the validity of the agreement. If any information is necessary to become public upon a request of the governmental authorities or execution bodies of competent international organizations in which the Republic of Macedonia or MEPSO are members, either Party shall prior to disclosing any information request consent in writing from the other Party.

In light of the above, disclosure of such information is allowed in the event international organizations in which the Republic of Macedonia (i.e. the Energy Community) is a member. On the other hand, the SEE-CAO, in which MEPSO
will be a member, is not considered an international organization and therefore disclosure of such information will not be possible.

Entities pursuing energy activities of public interest shall not misuse the business secrets and information that have been gathered from third persons in the pursuing of the activities due to acquiring business benefits, as well as for undertaking discriminatory activities on behalf of third parties.

8.2 No response

8.3 According to paragraph 2, Article 24 of the Energy Law, documents, data, and information classified as confidential shall be used and maintained by the Energy Regulatory Commission, in a manner to protect the confidentiality of such information. According to Article 120 of the Energy Law, the entities pursuing energy activities of public interest shall be obligated to ensure and guarantee confidentiality of the business data and information that have been gathered from the users during the period of pursuing the activity. The obligation for ensuring confidentiality of the information referred to in paragraph 1 of the present article pertains to the following:

- information that are not publicly disclosed,
- information for which there is a written consent from the person concerned by the information,
- information that the license holder shall provide pursuant to the license, decision by the competent court or upon request by a state body,
- information that is required in the fulfillment of the obligations that arise from this license.

8.4.1 No response

8.4.2 No response

8.4.3 No response

8.4.4 No response

8.4.5 According to Article 6 of the Energy Law, entities performing the following activities have public service obligations imposed by Macedonian Law:
generation of electricity for tariff consumers; transmission of electricity; operation of the electricity transmission system; organization and operation of the electricity market; wholesale supply of electricity for tariff customers; retail supply of electricity for tariff customers.

E. Montenegro

8.1 According to TSO-EPCG, there are no limitations on the authority or capacity of TSO-EPCG to provide information to the SEE-CAO or any third party, including but not limited to the provision of, operational data, financial information and commercially sensitive information (including the names of the winning bidders of auctions).

8.2 TSO-EPCG publishes NTC and ATC, as far as all the data covered by the ETSO VISTA project.

8.3 According to TSO-EPCG, Montenegro does not use any specific criteria to define specific data as “confidential” which prevents the national regulator and/or the TSO and/or the appropriate Ministry from sharing such information with other regulators and/or TSOs or providing the information or the general public and the market.

8.4.1 As concerns whether public wholesalers and suppliers with public service obligations receive preferential access to “reserved” cross border transmission capacity, there is no capacity reserved for the PSOs (except for the long-term contract on the Serbia-Montenegro border) but in the sorting procedure their offers are firstly accepted.

8.4.2 The PSOs do not avoid payment on the congested directions.

8.4.3 As concerns whether entities with PSOs are required to bid for congested capacity in the auctions conducted by the SEE-CAO or pay the congestion fee paid by winning bidders for any capacity set aside for them, currently this is not practice, but in the future, TSO-EPCG is expecting to precise payment the congestion fee paid by winning bidders for any capacity set aside for them, in contract defining such payment criteria.
8.4.4 TSO-EPCG is required to publish a standard set of information regarding AAC (e.g. the quantity of capacity allocated, the amount actually used, the period of allocation, and the name of the capacity holder).

8.4.5 According to TSO-EPCG, there is no definition of what constitutes a “public service obligation”.

F. Serbia

8.1 The obligations stipulated in the contract between EMS and the trader and the information given therein is considered confidential. EMS is not entitled to divulge to any third party nor publish any information. If it is necessary to provide such information to state authorities, organizations and institutions, namely the authorities of the competent international organizations whose members are the Republic of Serbia or EMS, EMS must inform in writing the trader prior to any such furnishing of the information.

In accordance with the Energy Law (Art. 97), EMS is obliged to preserve the confidentiality of commercial and business data of energy entities and energy customers, as well as other data accessible to it while performing its activities. In this event, the Serbian Energy law should provide for the right of EMS to provide such information to third parties who provide services to EMS, such as SEE-CAO.

8.2 After the completion of yearly, monthly and weekly auctions, EMS publishes the following information (for each participant separately):

- auction identification number,
- designation of border/direction and auction period to which it relates,
- identification number of auction bid,
- available transfer capacity ATC (MW),
- value of requested capacity from auction bid (MW) and binding bid price (EUR/MWh),
- value of allocated capacity (MW),
- auction bid price for accepted bid (EUR/MWh),
• status of bid (accepted, partially accepted or rejected),
• total requested transfer capacity,
• total allocated transfer capacity,
• number of participants who submitted the request for allocation of transfer capacity at that border and direction,
• number of participants who obtained transfer capacity at that border and direction,
• total number of auction bids at that border and direction.

8.3 As concerns the criteria Serbia uses to define specific data as “confidential” preventing the sharing of information with other regulators and/or TSOs or providing the information or the general public and the market, according to the standard contract, EMS and the Auction Participants agree that “the obligations and information given in the Contract shall be deemed confidential and that they shall not divulge to any third party nor publish in the course of the validity of this Contract. If it is necessary to provide such information to state authorities, organizations and institutions, namely the authorities of the competent international organizations whose members are the Republic of Serbia or EMS, each Party shall inform in writing the other party thereof prior to any such furnishing of the information.”

The general rule is provided in Art 38 of the Company Law which states that, “Information on operations of a company determined by company’s Articles of Association, company agreement or by-laws, which would obviously result in significant damage to a company if known by a third party are considered to be business secrets. Information which is required to be disclosed by law or relates to violation of laws, good business practices and principles of business ethics, including information which is grounds for suspicion of corruption, will not be regarded as business secrets. Disclosure of such information is legal if its purpose is to protect the public interests.”

8.4.1 According to section 4 of the Auction Rules, EMS may allocate in advance as a priority (as AAC) a part of or the entire transfer capacity which is available to it at any border and for any direction for the purpose of supplying the tariff consumers in the Republic of Serbia, i.e. accomplishment of the Energy
balance of the Republic of Serbia which is adopted by the Government of the Republic of Serbia. In practice, AAC is provided only for import of electricity into Serbia when the consumption of tariff customers cannot be satisfied by local production which has obligation to supply tariff consumers according to the Energy Law (Art. 81).

8.4.2 Only Public Enterprise Elektroprivreda Srbije (EPS) has public service obligations (PSOs) in Serbia. EPS is provided AAC only in case supply can not be accomplished from EPS production. This is effected either by a foreign company importing electricity into Serbia and EPS acquiring at the border or by a Serbian company importing the electricity into Serbia and selling it to EPS. These transactions are conducted based on the Serbian public procurement process. EPS informs EMS ahead of time of its PSOs and the amount of capacity it will require in the form of AAC based on the concluded supply contracts. The AAC is published on the EMS website.

8.4.3 EPS is not required to bid for congested capacity or pay the congestion fee paid by winning bidders for any capacity set aside for it.

8.4.4 EMS publishes the quantity of capacity allocated, the period of allocation and the name of the capacity holder (which is always EPS). It does not publish the amount of capacity actually used.

8.4.5 The legal framework for the implementation of PSO in the Serbian energy sector consists of two major laws: The Law on Public Enterprises and Conducting Activities of Public Interest and the Energy Law. The Law on Public Enterprises and Conducting Activities of Public Interest sets out the framework for conducting activities of public interest and implementing PSOs, as defined in Directive 54, while the details are provided in the Energy law (Art. 41). The Law on Public Enterprises and Conducting Activities of Public Interest defines activities of public interest as activities which are determined as such by laws governing the following fields: production, transmission, and distribution of electricity production …" (Art.2 thereof). These activities can be performed either by Public Enterprises established by the State or other legal forms of companies, but only if empowered by the State (via a contract or a concession).
G. UNMIK

8.1 Publication and confidentiality are treated in the TSO and MO license, as well as the in the Market Rules and Procedures for allocation. TSO’s License (Article 9, “Availability and Maintenance of Data” and Article 18, “Restriction on Use of Certain Information”) is the most important of all.

8.2 Data to be published include load (hourly) forecast, hourly load, available interconnection capacity, auction result, and real flow over interconnections.

8.3 According to national legislation, confidential Information is considered: (a) the information that is commercially sensitive; (b) disclosure of information that would inflict harm on the competitive interests of the licensee or other parties requesting confidentiality; (c) information for which the requesting party has made a reasonable effort to maintain secrecy or confidentiality, and (d) information for which the potential harm from disclosure outweighs the public interests in disclosure. This definition is provided in the “Rule on Confidentiality”, Article 3.

The Law on Access to Officials Documents (Article 4.1) provides that institutions shall refuse access to a document if disclosure would undermine the protection of: public interest; public security; defence and military matters; international relations and the financial, monetary or economic policy of the institutions of UNMIK.

The Law on Energy Regulator (Article) 3 defines “confidential information” as the data, documents or other information, whether commercial or technical, relating to the design, rehabilitation, insurance, operation, maintenance, and financing of energy related operations or activities which is not already in the public domain and may endanger the commercial interest of applicants and licensees if disclosed.

In the Rule on Confidentiality of Information (Article 2.1), “Confidential information” means the information relating to the data, documents or other information, whether commercial or technical, relating to the design, rehabilitation, insurance, operation, maintenance, and financing of energy related operations or activities, which is not already in the public domain and the disclosure of which may endanger the commercial interest of applicants and/or licensees”.

Study on the Identification of Legal Requirements to the Establishment and Operation of and the Participation in a Coordinated Auction Office in South Eastern Europe
8.4.1 KOSTT’s procedures do not differentiate between public supplier and other suppliers/traders. Entities with public service obligation are also obliged to participate and bid for PTR.

8.4.2 If PTR have been allocated on yearly auctions, monthly auctions refer to AAC.

8.4.3 According to national legislation/procedures for allocation, the entities with PSOs are required to place their bids as all other trading parties.

8.4.4 Article 11.2 of the MO License issued to KOSTT (Interconnector Trading and Nomination) indicates that “The Licensee shall advertise all necessary and appropriate information for carrying out annual and monthly capacity auctions and for the allocation of Interconnector capacity on a daily basis, according to the Market Rules”. See Operational Procedure for Interconnector Capacity Auction and Cross-Border Capacity Nomination issued by KOSTT.

8.4.5 PSOs are imposed by ERO through a licensing process on enterprises that carry out public services and relate to the security and reliability of supply, the regularity, quality and price of the supply, and the protection of the environment. Such obligations must be clearly defined, and also be non-discriminatory, verifiable, and consistent with the directives of the European Union. (definition from Law on Energy, Article 17). The Law on the Energy Regulator (Article 3) defines that “public service obligations” are duties imposed upon energy enterprises entrusted with the operation of services of general economic interest, which takes into account general social, economic and environmental factors.

The Law on Energy Regulator (Article 51.3) also provides that “The Energy Regulatory Office shall impose public service obligations on enterprises carrying out public services. Such obligations shall be clearly defined, non-discriminatory, and verifiable and shall be dictated by the general economic interest. The obligations shall relate to the security, regularity, quality and price of supply and to environmental protection”.

H. Greece

8.1 HTSO and any other TSO applying the Auction Rules must treat all information disclosed pursuant to the Auction Rules as confidential and must refrain from disclosing such information to any third party without the prior consent of the
User concerned.

HTSO is not bound by confidentiality obligations with respect to any information disclosed to HTSO if:

a) before such disclosure it was public knowledge or, after such disclosure, becomes public knowledge through no fault of HTSO;

b) it was known to HTSO before that disclosure and was not covered by an obligation of secrecy;

c) after that disclosure the same information is received by HTSO from a third party owing no obligation of secrecy to the respective User in respect to such information.

8.2 HTSO publishes the following on its website:

- the names of capacity holders,
- quantities allocated and
- auction clearing price for each group of interconnection lines, destination (export/import) and period.

8.3 Confidential information includes all information delivered in writing and designated as “Confidential”, or commercially sensitive information disclosed other than in writing but expressly mentioned as “Confidential”. The above obligation does not apply to disclosure of information to the European Union institutions, governmental, regulatory authorities and court having jurisdiction on such matters insofar as such disclosure is mandatory, nor to the disclosure of information to a court-of-law or an arbitrator insofar as such disclosure is ordered by the court or the arbitrator or is necessary for supporting a claim or defending the Auction Operator against a claim.

8.4.1 No response

8.4.2 No response

8.4.3 No response

8.4.4 No response

8.4.5 No response

Study on the Identification of Legal Requirements to the Establishment and Operation of and the Participation in a Coordinated Auction Office in South Eastern Europe

Kelemenis & Co.
Law firm
I. Hungary

8.1 Confidentiality obligations may differ from one border to another, depending on the agreement with the neighboring TSOs. In general:

By operation and performance under Yearly and Monthly and Daily Auction Rules, Mavir and its affiliates, if any, may receive or have access to Auction Participant 's confidential information. Confidential information shall include all information delivered in writing and designated as “Confidential”, or disclosed other than in writing, information as to which the person to whom such information is disclosed, prior to or essentially concurrent with such disclosure, is made aware that confidential information may be or is being disclosed. Mavir agrees to hold the confidential information in confidence and not to disclose or make such confidential information available, in any form, to any third person or to use such confidential information for any purpose other than the contemplation of the provisions of the Yearly and Monthly and Daily Auction Rules except to public authorities.

The provisions of the Confidentiality article shall not apply to any information disclosed to Mavir as contemplated by said article if:

- before such disclosure, it was public knowledge or, after such disclosure, becomes public knowledge through no fault of MAVIR;
- it was known to Mavir before that disclosure;

after that disclosure the same information is received by Mavir from a third party owing no obligation of secrecy to the respective Auction Participant in respect to such information.

The protection of commercially sensitive or confidential information and business secrets is a fundamental obligation of Mavir. However, if the agreement with a third Party insures and guarantees the protection of the confidential information, then under this agreement the provision of the needed information is possible to the extent it is necessary for the third party for performing its contractual obligations under the agreement.

The obligation protection of sensitive information and business secrets is based partly on the Data Protection Act No: LXIII. of year 1992, partly on the

8.2 Mavir publishes the following data:

- The prognosis on the Available Transfer Capacity (ATC) on each interconnection regarding the next 12 months in accordance with the regulations of the Grid Operation Code.
- The Total Transfer Capacity and the Available Transfer Capacity on each interconnections in the time and form as defined in M4 schedule of the Commercial Code
- The sent bids to the capacity auctions (in division of directions, amount, price) without identification of the bidders, indicating whether the bid has been accepted or not, in the time and form as defined in M4 schedule of the Commercial Code
- The auction price in the time and form as defined in M4 schedule of the Commercial Code.

8.3 The criteria used by Hungary to define specific data as “confidential” which prevents the national regulator and/or the TSO and/or the appropriate Ministry from sharing such information with other regulators and/or TSOs or providing the information to the general public and the market is the following:

According to subsections 2 and 3 of section 81 of the Hungarian Civil Code (Act 4 of year 1954): Business secrets shall comprise all of the facts, information, conclusions or data pertaining to economic activities that, if published or released to or used by unauthorized persons, are likely to imperil the rightful financial, economic or market interest of the owner of such secrets, provided the owner has taken all of the necessary steps to keep such information confidential.

Any data that is related to the central budget; the budget of a local government; the appropriation of moneys received from the European Communities; any subsidies and allowances in which the budget is involved; the management, control, use and appropriation and encumbrance of central and local government assets; and the acquisition of any rights in connection
with such assets shall not be deemed business secrets, nor shall any data that specific other legislation, in the public interest, prescribes as public information. Such publication, however, shall not include any data pertaining to technological procedures, technical solutions, manufacturing processes, work organization, logistical methods or know-how that, if made public, would be unreasonably detrimental for the business operation to which it is related, provided that withholding such information shall not interfere with the publication of public information in the public interest.

8.4.1 Public wholesalers and suppliers with public service obligations ("PSOs") do not receive preferential access to “reserved” cross border transmission capacity, known as “already allocated capacity” ("AAC").

8.4.2 In yearly auctions there is no AAC defined from the Hungarian side. In monthly/daily auctions the capacity already allocated in the yearly/monthly auction is defined and regarded as AAC.

8.4.3 All entities that would like to perform cross-border electricity trading transmission need to bid for congested capacity, or get the cross-border capacity usage right by assignment from an entity, who already won a cross-border capacity usage right on the auction.

8.4.4 Mavir is required to publish a standard set of information regarding AAC (e.g. the quantity of capacity allocated, the amount actually used, the period of allocation, and the name of the capacity holder).

8.4.5 In Hungary the electricity market is fully liberalized, the system of “public service” is not applicable any more.

J. Romania

8.1 According to section 6.7.22 of the Romanian Operational Procedure, Transelectrica must maintain the confidentiality of the data contained in the offers submitted by tender participants.

According to Art. 53 of the Framework Contract approved by ANRE, Transelectrica must keep the provisions of the Contract signed with the Auction Participant strictly confidential as well as any other document and/or piece of
information exchanged by the parties in connection to the Contract. An exception is provided in the case that the information is requested by authorities, according to Romanian legislation.

The limitation on the authority or capacity of the TSO to provide information consists in keeping the confidentiality of data.

Starting with August 29th, 2006, the Romanian TSO was listed on Bucharest Stock Exchange, in first category. Due to this fact, Transelectrica has some transparency obligations for the capital market (both institutions and investors) and is required to announce the capital market, previous to anyone else, any information that could have an influence on the Company shares’ price (“price-sensitive information”). Therefore, principally the financial information and the operational data have to be disclosed to the capital market at some fixed moments, earlier defined in an Annual Corporate Financial Calendar.

8.2 The data that Transelectrica is obliged to publish for the capital market are the financial statements (for first and third quarter, first semester and for the financial year) at the same time with the report of the Administration Board that have to include the operational explanation for the obtained financial figures.

Furthermore, in compliance with Romanian energy legislation, the TSO must publish on the website (www.ope.ro):

- the yearly and monthly values of TTC, TRM, NTC, AAC and ATC (for each group of interconnection lines, for export/ import and for each auctioning period) and
- the auctions results and information about registered participants (Name of Participant, ETSO Identification Code -EIC and Registration Date).

The auctions results reveal:

- the names of capacity holders,
- quantities allocated and
- auction clearing price for each group of interconnection lines, destination (export/import) and period.

The Operational Procedure of The Allocation of the National Power System
Transfer Capacity to the Neighbouring Power Systems is also available on the website (www.ope.ro), in English.

8.3 Transelectrica disseminates to the public relevant information on electricity market, in an aggregated form, keeping the confidentiality of data related to “commercial and financial activities, whose publication may affect the fair competition principle”.

8.4.1 According to the Romanian Operational Procedure regarding the Allocation of the National Power System Transfer Capacity to Neighbouring Power Systems, there are no reserved capacity provided to public wholesalers and suppliers with public service obligations (PSOs).

8.4.2 N/A

8.4.3 N/A

8.4.4 Regarding AAC, the TSO publishes for each group of interconnection lines and destination (export/import): the quantity of capacity allocated, total capacity used, level of usage of transfer capacity, period of allocation, the name of capacity holder, quantities allocated and auction clearing price.

8.4.5 According to Art.18. of the Energy Law 13/2007, “(1) In developing their activities, the establishment authorisation and the license holders shall observe the public service obligations regarding safety, quality, continuity of supply, energy efficiency and environment protection as well as the provisions in the direct contracts signed with the customers. (2) The competent authority, through licenses or authorisations granted and through specific regulations, sets the public service obligations for each activity in the electricity sector.”

K. Slovenia

8.1 In general the provisions regarding confidentiality are the same in all auction rules relevant for Slovenian borders. The relevant provision quote from the Auction Rules on Slovenian-Austrian border is the following:

“By operation and performance under Auction Rules ELES and/or APG and its affiliates, if any, may receive or have access to Auction Participant’s
confidential information. Confidential information shall include all information delivered in writing and designated as “Confidential”, or disclosed other than in writing, information as to which the person to whom such information is disclosed, prior to or essentially concurrent with such disclosure, is made aware that confidential information may be or is being disclosed. ELES and APG agree to hold the confidential information in confidence and not to disclose without the prior consent of the Auction Participant, or make such confidential information available, in any form, to any third person or to use such confidential information for any purpose other than the contemplation of the provisions of these Auction Rules except to public authorities.”

ELES follows the requirements of the European legislation when it comes to the publication of different data related to ELES operation, especially but not limited to CM guidelines. According to the Auction Rules the only authorities that have “unlimited” access the mentioned data are the Energy Regulator and the Courts.

8.2 What concerns the results of the daily auctions, ELES publishes the marginal price per MW, the allocated quantity in MW, the offered capacity in MW, the requested capacity in MW, the number of active participants and the number of PTR holders.

8.3 Any data labeled as “business secret” or any data (not labeled as a business secret) that is obvious to ELES that its disclosure would inflict serious damage if revealed to an unauthorized person is the criteria used in Slovenia to define specific data as “confidential” which prevents the national regulator and/or ELES from sharing such information with other regulators.

8.4.1 There is no reserved capacity provided to public wholesalers and suppliers with public service obligations (PSOs).

8.4.2 N/A

8.4.3 N/A

8.4.4 N/A

8.4.5 N/A
L. Italy

M. Bulgaria
9. **Antitrust and Competition**

9.1 **Regional Overview**

As concerns the issues related to antitrust and competition, we provide below a summary of the issues set out in the country review section:

1. According to the responses received from the national TSO and Regulators, some jurisdictions specify that the participation of their TSO in the SEE CAO may create an obligation for notifications or approval from the national Competition Authority whereas other jurisdictions clarify that since the TSO will not be ceding any licensed rights regarding the allocation of cross border transmission capacity on its borders but that the SEE-CAO will only be involved in the carrying out of the auctioning operations (as an administrative function), the participation of the TSO in the SEE-CAO should not create any obligation for notifications or approval from the national Competition Authority. *(please see below item 9.1 in the Country Review section for further details per jurisdiction)*

2. As concerns the EU countries, if the SEE CAO received approval from the European Commission for Competition this should relieve the EU TSOs and Regulators from their obligation to notify or acquire approval from their national Competition Authorities. *(please see below item 9.2 in the Country Review section for further details per jurisdiction)*

9.2 **Overall Conclusions**

As concerns whether the issues related to antitrust and competition will constitute an obstacle and whether legal, regulatory and administrative requirements will be required in order for the local TSOs to participate in the SEE-CAO, we draw the following main conclusions:

1. Preliminarly we note that it is not possible to assess with a definitive “yes” or “no” answer whether the possible involvement of the national competition authorities in each of the 13 jurisdictions will be required, the duration of their proceedings and the outcome of their findings, given that in most of the jurisdictions there is no precedence that can be used with respect to the particular structuring (i.e. SEE-CAO). Moreover, the particular legal relationship between SEE-CAO and the TSOs (i.e. “agent” vs “service provider”) will also play a decisive role.
2. Some jurisdictions (i.e. BiH, Croatia, UNMIK, Hungary, Romania, Italy) will likely have to file notifications with their national Competition Authorities, without being able to prejudge the duration of the proceedings or the outcome of the notification process. However, taking into consideration our comments below under item 3, it could be concluded that even in the event that these jurisdictions will be required to notify or receive the approval of their national Competition Authorities, this should not be perceived as a legal obstacle but rather an additional administrative requirement because the risk of receiving a refusal is very low and only some time delay in the implementation process may be encountered.

3. In attempting to provide a response on the likelihood of the national stakeholders requiring to notify the national competition authorities, which would create an additional administrative procedure, the following should first be taken into consideration:

   a. It is understood among all TSOs and Regulators that the TSOs will not be ceding any control over their transmission systems to the SEE-CAO. The SEE-CAO will merely be carrying out the purely administrative function required in order for the national TSOs to be able to perform their licensed duty which is the allocation of cross border capacity.

   b. According to the model, the SEE-CAO may take the role of either (i) the “service provider” whereby it will provide the TSOs with a service without undertaking and contracting-invoicing role vis a vis the Auction Participants, or (ii) the “contracting-invoicing” party, whereby it will actually conclude contracts directly with the Auction Participants assuming the “promise” to instruct the TSOs to allocate the cross border capacity they won in the auction, in accordance with the coordinated auction rules and the agreement between the SEE-CAO and the TSOs. In the latter case, the allocation of the cross border transmission capacity is undertaken only by the TSOs.

   c. In light of the above clarifications with respect to the SEE-CAO’s possible roles in the allocation of cross border transmission capacity, the SEE-CAO will not be exercising monopoly control over cross border capacity neither in the event the SEE-CAO assumes the role of the “contracting-invoicing” party nor in the event the SEE-CAO assumes the role of simply the “contracting-invoicing” party.
d. The assumption that the SEE-CAO “controls” cross border capacity presupposes that the SEE-CAO will acquire either an ownership interest in the cross border capacity (i.e. in the event it is considered that it is buying it and freely allocating it) or operational control over the CBC. In fact, neither is the case. The SEE-CAO will not own any cross border capacity and this is evidenced by the fact that the TSOs will have the final word and responsibility for allocating cross border capacity. The SEE-CAO does not have any commercial or regulatory right on the cross border capacity.

e. Moreover, the SEE-CAO will be acting on behalf and in the account of the TSOs and will not acquire any ownership interest in the CBC or operational control over the transmission grids. The TSOs’ responsibility for the operation of their transmission grids and their obligation to ensure system reliability remains the same after implementation of the SEE-CAO, as it was before the creation of the SEE-CAO.

4. Unlike in the European Union, there is no single Directorate General from which to seek a ruling on the anti-competitive effects of establishing a centralized coordinated auction office. Therefore, where necessary in the non EU countries, notifications with the national competition authorities may be required.

### 9.3 Country Reviews

#### A. Albania

9.1 It is unlikely that the establishment of a full functioning joint venture might qualify as a concentration.

9.2 In the event the SEE CAO receives approval from the European Commission for Competition, it is unclear whether this would relieve OST from its obligation to notify or acquire approval from the its competition authority.

#### B. Bosnia & Herzegovina

9.1 The participation of the ISO in the SEE CAO may create an obligation for notifications or approval from the BiH Competition Commission. However, it is not possible to know this in advance.
9.2 In the event the SEE CAO receives approval from the European Commission for Competition this should relieve ISO from its obligation to notify or acquire approval from the BiH competition authority.

C. Croatia

9.1 According to Art. 10 of the Act on the Regulation of Energy Activities for matters relating to the carrying out of energy activities on the market, which are not regulated by the Act and which relate to prevention, restriction or distortion of market competition, it is necessary to apply the Act on Protection of Market Competition, and the Croatian Regulator is obligated to provide technical assistance in the form of professional opinions and analyses to the Agency for Protection of Market Competition.

In the opinion of the Croatian Regulator, the participation of HEP-OPS in SEE CAO should not in itself require notification for approval from the Croatian Competition Agency. However, this matter requires further review once the parties agree on the structure of the SEE-CAO and the legal relationship between HEP-OPS, the SEE-CAO and the auction participants.

9.2 In the event the SEE CAO receives approval from the European Commission for Competition, this will not relieve the national TSO from any possible obligation to notify or acquire approval from the national competition authority, because as noted above in 9.1, Croatia is still not a member of the EU and thus it still does not apply Articles 81 and 82 of the EC Treaty directly. However the Croatian Competition Agency would take into account decision of the EC and probably it would come to same conclusions, but if it would deem necessary, the Agency would still conduct its own proceeding.

D. former Yugoslav Republic of Macedonia

E. Montenegro

9.1 Although the law provides for it, national competition authority does not exist yet in Montenegro. Therefore, TSO-EPCG will not need to submit any file for notification or approval with any competition authority regarding this issue.
F. **Serbia**

9.1 There is a mechanism defined by the Law on Protection of Competition, applied to the energy sector, but with the limitation that this law is not applied to the enterprises, business entities and entrepreneurs performing the activities of general interest if its application would prevent the performing the activities of general interest, namely the performing of the activities entrusted to them. The energy sector activities are of general interest as determined by the law on Public enterprises and the Energy Law.

Although in the Energy Law it is stipulated that one of the main tasks of the Energy Regulatory Agency is “to execute the activities for improvement and determination of the electric energy market on the principles of non-discrimination and efficient competition”, this role has not been precisely defined. It may be accordingly concluded that the issues of competition and anti-monopoly behavior at the electric energy market is substantially regulated by the specially harmonized Law on Protection of Competition having in mind the limitations resulting from the fact that the energy activities are mainly defined as the activities of general interest, as well as the fact that the potentially competitive activity of electricity generation is regulated (as per the Energy Law) in the important segment of the market which relates to tariff buyers.

In light of the above, the participation of EMS in SEE CAO should not create any obligation for notifications or approval from the Serbian competition authority.

9.2 In the event the SEE CAO receives approval from the European Commission for Competition this will not relieve EMS.

In any case, this is irrelevant because the participation of EMS in SEE CAO should not create any obligation for notifications or approval from the Serbian competition authority.

G. **UNMIK**
There is only one designated and licensed TSO, which means that nationally there is already a monopoly that performs a regulated and strictly monitored business. Capacity allocation is required to be allocated through a market-based mechanism, which will also be done by CAO. The Law on Competition establishes the Competition Commission which is responsible for granting exemption in circumstances that restrict competition (Chapter II of the Law on Competition).

Approval from the European Commission would help because UNMIK is a contracting party to the Energy Community Treaty and is set to implement the Acquis Communautaire in competition.

**H. Greece**

According to article 1 (1) of Law 703/1977, agreements or practices that lead to the obstruction, restriction or falsification of competition are prohibited. The law provides in particular certain indicative examples such as agreements or practices that directly or indirectly: (i) determine prices or terms and conditions, (ii) reduce or control production, disposal, technological development or investments, (iii) the distribution of the market and (iv) the application of unequal commercial terms for similar supplies thus restricting competition.

Notwithstanding the above, agreements and practices that fall within the above cases if the following conditions apply cumulatively: (i) there is benefit for consumers, improvement in production or disposal, (ii) they do not restrict the companies in excess of what is reasonable acceptable, (iii) the companies parties to the agreements or the practices do not abolish competition.

The Hellenic Competition Commission (HCC) and in particular the Competition Protection Committee (CPC) is the appropriate body to file notifications for such agreements and practices, as envisaged by the SEE-CAO. The CPC may work closely and cooperate with other Greek regulators and bodies (i.e. RAE), according to article 8f of Law 703/1977. The HCC may issue negative certificates, according to article 11 of Law 703/1977 following an application filed by any interested company (i.e. HTSO), certifying that the interested company (i.e. HTSO) is not in violation of Greek competition rules in connection with a particular agreement or practice (i.e. the SEE-CAO).
certificate is issued within 2 months from the filing of the application.

On the basis of the above, we believe that HTSO, in its participation in the SEE-CAO, will not be in violation of Greek competition rules. However, for sake of clarity and in order to be compliant with Greek laws, HTSO may file an application with HCC asking that the CPC certify that it is not in violation of Greek competition rules in connection with a particular agreement or practice (i.e. the SEE-CAO). In order to do this, the TSOs will have to have concluded their agreement on the terms and conditions of the agreements they will sign in order for HTSO to be able to file these documents with the HCC.

9.2 From the aspect of competition law, the surveillance of the market is performed by the Commission either independently (e.g. in regard to state aid) or jointly with the national Competition authorities (supervision of abuse of dominating position). This mainly concerns multi national issues as well as measures taken by a Member State under Article 86 or 87 EC. The Commission also has the responsibility for ensuring that the Member States implement the legislation of the EU. It has the possibility of bringing an action before the ECJ according to Article 226 EC against the states that fail to implement the EU legal acts. The National Competition Authorities are however responsible for enforcing the Commissions decisions against private subjects under national law. The frame rules for the responsibilities of the Commission and the cooperation between them and the National Authorities within the field are laid down in the Regulation (EC) 1/2003. The same Regulation, , sets out the network for the cooperation among the competition authorities, the European Competition Network, which deals on an ad hoc basis with mergers in the energy sector. Any future CAO issues will be probably dealt within that same framework.

I. Hungary

9.1 The establishment of a full functioning joint venture may qualify as a concentration and, thus, be subject to notification to the European Commission. Therefore, if (i) the SEE CAO performs “on a lasting basis all the functions of an autonomous economic entity” (i.e. qualifies as a full function joint venture); and (ii) the concentration has a Community dimension; it must be notified to the European Commission. (Articles 3 (4), 1 (2) and (3) and 21
(2) of Regulation 139/2004 of 20 January 2004, “EMCR”)

If the SEE-CAO qualifies as a full functioning joint venture but does not have a Community dimension, its foundation may still be subject to the Hungarian NCA’s (Hungarian Competition Authority) prior approval if the legislative threshold is met.

If, however, the SEE CAO does not qualify as a full functioning joint venture, the establishment of the SEE-CAO is not deemed a concentration but may qualify as a restrictive agreement under EC and Hungarian competition law.

9.2 In the event the SEE CAO receives approval from the European Commission for Competition this will relieve Mavir from its obligation to notify or acquire approval from the Hungarian competition authority, under Article 24 (2) and (3) of the EMCR and under Article 16 of Regulation 1/2003 of 16 December 2002.

J. Romania

9.1 The participation of the TSO in the SEE CAO may create an obligation for notifications or approval from the Romanian Competition Commission, according to Law no. 21/1996 on competition.

In this event, the Romanian Competition Commission will request all relevant data and documentation to examine. Thereafter it will decide. There is no relevant timeframe within this procedure may be finalized.

9.2 In the event the SEE CAO receives approval from the European Commission for Competition this should relieve Transelectrica from its obligation to notify or acquire approval from the Romanian competition authority.

K. Slovenia

9.1 Given that ELES will not be ceding any licensed rights regarding the allocation of cross border transmission capacity on its borders but that the SEE-CAO will only be involved in the carrying out of the auctioning functions as a service provider, the participation of ELES in the SEE CAO should not create any obligation for notifications or approval from the Slovenian Competition Commission. The Regulator concurs with this assessment.
9.2 In the event the SEE CAO receives approval from the European Commission for Competition this should relieve ELES from any possible obligation to notify or acquire approval from the Slovenian competition authority.

L. Italy

9.1 The answer to whether Terna’s participation in the SEE CAO will create any obligation for notifications or approval from the national competition authority is not straight forward and will depend on the particular nature of the relationship between Terna and the SEE-CAO (to be decided) and the specific terms and conditions of the Inter-TSO agreement and the SLAs to be signed among the TSOs and the SEE-CAO (to be agreed). Depending on the above, Terna may have the obligation for notification or approval from the Italian competition authority, according to Italian Law n. 287/90.

9.2 Depending on the characteristics of the SEE-CAO and if Italian Law n. 287/90 is applicable, the approval from the European Commission for Competition could relieve Terna from its obligation to notify or acquire approval from the Italian competition authority, unless it pertains to matters that are strictly national (art.1. of n. 287/90)

M. Bulgaria
10. **Dispute Settlement**

10.1 **Regional Overview**

As concerns the issue related dispute settlement, we provide below a summary of the issues set out in the country review section:

1. As concerns whether there are any constitutional or other legal barriers that would prevent national Regulators from agreeing to arbitration by a panel of experts as a means of resolving disputes with other regulatory authorities, some jurisdictions have clear provisions preventing such agreement (i.e. Croatia, Serbia, Italy) whereas in some other jurisdictions it is likely that the Regulators would not be able to agree to an arbitration panel as there are no provisions under national law envisaging this possibility (i.e. BiH, Montenegro, Hungary). In order for this to be feasible, amendments to national laws would be required. *(please see below item 10.1 in the Country Review section for further details per jurisdiction)*

2. All the TSOs can agree to be subject to a foreign governing law and a foreign court or arbitration, with the exception of cases of mandatory national legislation that does not allow deviation. *(please see below item 10.2 in the Country Review section for further details per jurisdiction)*

10.2 **Overall Conclusions**

As concerns whether the issue related to dispute settlement will constitute an obstacle and whether legal, regulatory and administrative requirements will be required in order for the local TSOs to participate in the SEE-CAO, we draw the following main conclusions:

1. There is a legal obstacle in the majority of jurisdictions in the 8th Region preventing their Regulators from agreeing to arbitration by a panel of experts as a means of resolving disputes with other regulatory authorities. In order for this to be feasible, amendments to national laws would be required and in some jurisdictions amendments to the Constitution (Italy). A possible mechanism available for resolution of disputes between regulators could be to use the framework of the Energy Community and the dispute resolution mechanism envisaged under the ECRB Art. 90-93.
2. There are no legal obstacles for the TSOs to agree to be subject to a foreign governing law and a foreign court or arbitration, with the exception of cases of mandatory national legislation that does not allow deviation. In the case of Croatia it should be noted that, although the TSO can agree to foreign arbitration, the Electricity Market Act (art. 20) provides that complaints must be filed with the Croatian Regulator. For sake of clarity, an amendment or clarification to this provision in the Croatian Electricity Act should be provided.

3. As concerns the TSOs agreeing to be subject to a foreign governing law and a foreign court or arbitration, we note the following:

   e. International arbitration should be the dispute resolution mechanism of choice among TSOs. In order to avoid any possible bias on the part of local courts in favor of a national TSO litigant, international arbitration may be used. Moreover, local courts may not be trained in commercial law principles and cannot be relied upon to handle commercial disputes to the high standard expected by the international trading community.

   f. All agreements to be signed among the TSOs (Agreement for Syndication, SLAs, Inter-TSO Agreements, Coordinated Auction Rules etc.) which will govern the relations between the TSOs, the Auction Participants and the SEE-CAO should have provisions stipulating the same governing law and the same arbitration tribunal in the event of any dispute among the contracting parties.

   g. The TSOs can elect to arbitrate almost any issue (subject to some public policy restrictions in certain countries) and can elect the law to be used to interpret the contract, even if there is no connection between the substance of the contract and the law elected. They can decide what procedural rules govern the dispute resolution, who resolves dispute, where resolution takes place, and the choice of law.
h. With regards to the type of arbitration selected, the TSOs can choose to use “ad hoc” rules or the rules of UNCITRAL or arbitral institutions such as the International Court of Arbitration established by the International Chamber of Commerce in Paris, the London Court of International Arbitration, the Arbitration Institute of Stockholm Chamber of Commerce. All potential SEE-CAO countries are parties to Convention on the Recognition and Enforcement of Foreign Arbitral Awards (known as the “New York Convention”), with a reservation for the Republic of Macedonia, which we were not able to find in the registrar.

i. Notwithstanding the above, a restriction on the choice-of-law clause is that parties cannot avoid otherwise applicable mandatory national laws and lex loci arbitri (local procedural laws). For example, corporate disputes among the TSOs as shareholders of the SEE-CAO (i.e. Articles of Association of the SEE-CAO) must be governed by the local law where the SEE-CAO will be established and settled by local courts or arbitration. Moreover, TPA differences must be filed with national regulators (In cross-border disputes, the deciding regulatory authority is the authority that has jurisdiction over the TSO which refuses use of, or access to the system - Art 23 para 10 of the Electricity Directive).

j. In light of the above, the TSOs should elect to use the law of a neutral third country with a well-developed commercial legal system to govern the commercial relationships of the TSOs and dispute resolutions and arbitrations.

10.3 Country Reviews

A. Albania

10.1.1 The Albanian Regulator (ERE) has the right to agree to arbitration by a panel of experts as a means of resolving disputes with other regulatory authorities, whose decision would be final and irrevocable that cannot be appealed before local courts.

10.1.2 There is no other possible and viable dispute resolution mechanism available for resolution of disputes between regulators concerning the SEE-CAO, or
between a regulator and the SEE-CAO.

10.2.1 OST can agree to be subject to a foreign governing law and a foreign court or arbitration, if the subject matter of the dispute is not within the scope of the exclusive jurisdiction of Albania.

10.2.2 In accordance with the Albanian Electricity Market Rules Chapter XVIII – Dispute Resolution, disputes are resolved as following:

XVIII.1 General Procedure

XVIII.1.1 In case of a dispute between the parties in relation to the Market Rules and the Grid Code as defined in these documents the parties will attempt to, in good faith, to resolve a dispute in relation to issues concerning the Market Rules and the Grid Code.

XVIII.1.2 In the case that the parties fail to agree to resolve the dispute, the same will be resolved in accordance to the Power Sector Law, the Market Rules and the Grid Code by ERE.

XVIII.2 Notice of Dispute

XVIII.2.1 ERE shall accept any written request to resolve a dispute arising directly or indirectly out of non-transparent and discriminatory behavior of parties active in the electricity market and which ERE is authorized by the Power Sector Law to resolve.

XVIII.3 Dispute Resolution Process

XVIII.3.1 Any dispute between the parties will be processed in accordance with ERE’s Dispute Resolution Procedure.

XVIII.3.2 ERE should reserve the right to nominate a special committee of experts and/or hire experts to address specific matters.

XVIII.4 Dispute Relating to Settlement

XVIII.4.1 In case of a dispute, the participant is obliged to pay the corresponding amount in accordance to instructions for issuance of invoices issued by OST. After a final decision of the dispute is reached, the correction of the invoice will be made, if necessary.

XVIII.4.2 Appeals against the content of the trade confirmations are accepted
only in the case of errors resulted from the actions of OST.

\textit{XVIII.4.3} Any appeal against the content of a trade confirmation must be submitted to OST not later than two (2) trading days after the transmittal of that trade confirmation by OST.

\textit{XVIII.4.4} OST will inform the electricity participant about the acceptance or rejection of the respective appeal not later than two (2) trading days after the deadline specified in the previous paragraph. In the case of acceptance, OST will transmit an adjusted trade confirmation to the electricity market participant.

\textit{XVIII.4.5} If, during the time interval specified in previous paragraphs, an electricity market participant does not submit any appeal against the trade confirmations received, then these are considered accepted.

\textit{XVIII.4.6} Any submitted appeal does not exonerate the respective electricity market participant from fulfilling the obligations resulting from the disputed transactions.

10.2.3 In the event of a dispute among local traders, the national TSO and/or the SEE CAO, Albanian legislation does not seem to provide for any limitations or obligations in connection as to the manner in which such disputes must be settled.

B. Bosnia & Herzegovina

10.1.1 As concerns whether there are any constitutional or other legal barriers that would prevent the regulatory authority from agreeing to arbitration by a panel of experts as a means of resolving disputes with other regulatory authorities, whose decision would be final and irrevocable, albeit there is no precedence, albeit there is no precedence, the State Regulator does not consider that there are constitutional or other legal barriers. However, more careful investigation would be required.

10.1.2 N/A

10.2.1 The ISO can agree to be subject to a foreign governing law and a foreign court or arbitration. However, the Agreement must provide adequate legal protection for ISO.
10.2.2 Disputes between traders and ISO are settled by the Regulator (SERC) in accordance with Article 8. of the Law on ISO.

10.2.3 In the event of a dispute among local traders, the national TSO and/or the SEE CAO, there do not seem to be any limitations in BiH legislation as to the manner in which such disputes must be settled. This can be agreed freely between the parties. However, the Agreement must provide adequate legal protection for ISO.

C. Croatia

10.1.1 As concerns whether there are any constitutional or other legal barriers in Serbia that would prevent AERS from agreeing to arbitration by a panel of experts as a means of resolving disputes with other regulatory authorities, whose decision would be final and irrevocable that cannot be appealed before local courts, it is noted that it is not possible for the Croatian Regulator to agree to an arbitration panel.

10.1.2 There are no perceived mechanisms available for resolution of disputes between regulators concerning the SEE-CAO, or between the Croatian Regulator and the SEE-CAO.

10.2.1 HEP-OPS can agree to be subject to a foreign governing law and a foreign court or arbitration based on the following laws:

- Croatian Law on Arbitration OG 88/2001;
- Croatian Law on Conciliation OG 163/2003
- Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958
- 1965 Washington Convention (Convention on the Settlement of Investment Disputes between States and Nationals of Other States)

10.2.2 According to Article 20 of the Croatian Electricity Market Act, the Croatian Regulator resolves disputes. The Regulator's decisions may be challenged at the Administrative court, Supreme Court and Constitutional Court of Croatia.
10.2.3 In the event of a dispute among local traders, EMS and/or the SEE CAO, the disputes would have to be settled as above.

D. former Yugoslav Republic of Macedonia

E. Montenegro

10.1.1 As concerns whether there are any constitutional or other legal barriers in Montenegro that would prevent the Energy Regulatory Agency from agreeing to arbitration by a panel of experts as a means of resolving disputes with other regulatory authorities, whose decision would be final and irrevocable that cannot be appealed before local courts, it is noted that Montenegro legislation does not provide for such either explicitly allowing it or prohibiting it. In this case, there does not seem to be any legal limitations to the Regulator’s ability to agree to arbitration by a panel of experts as a means of resolving disputes. However, further examination of the national legal implications for the Regulator would be required once the scope of the disputes between the regulators and the framework of the arbitration is finalized.

10.1.2 No other mechanisms is available for resolution of disputes between regulators concerning the SEE-CAO.

10.2.1 TSO-EPCG can agree to be subject to a foreign governing law and a foreign court or arbitration, with the exception of cases of mandatory Montenegro legislation that does not allow deviation.

10.2.2 As concerns disputes between traders and/or between traders and TSO-EPCG, if the dispute is of an administrative nature, the dispute is brought before the Energy Regulatory Agency. However, its decision can be appealed before the national Administrative Courts. If the dispute is of any other nature (i.e. commercial), it is appealed and settled before the national Commercial Courts directly.

10.2.3 See above 10.2.2
F. **Serbia**

10.1.1 As concerns whether there are any constitutional or other legal barriers in Serbia that would prevent AERS from agreeing to arbitration by a panel of experts as a means of resolving disputes with other regulatory authorities, whose decision would be final and irrevocable that cannot be appealed before local courts, it is noted that it is not possible for AERS to agree to an arbitration panel as there are no provisions under Serbian law envisaging this possibility.

All decisions passed by AERS are subject to an appeals process before administrative procedure in accordance with the Law on General Administrative Procedure. The decisions can be contested before the appellate body in line with the Law on General Administrative Procedure (for licensing – the appellate body is the Ministry of Mining and Energy), while in the case that the decisions of AERS are stipulated by the Energy Law as being final, such decisions can be contested before the competent courts by filing an action in line with the Law on Administrative Litigation. These two laws do not provide for the possibility of AERS agreeing to arbitration. In fact, using the mechanisms of arbitration or mediation is possible only in terms of civil or commercial disputes that are, as a rule, settled by regular or commercial courts.

10.1.2 As concerns whether there are other mechanisms available for resolution of disputes between regulators concerning the SEE-CAO, or between AERS and the SEE-CAO, a possible solution that may be acceptable in Serbia would be to use the framework of the Energy Community to avoid such problems when it comes down to disputes among regulatory authorities, by using the dispute resolution mechanism envisaged under the ECRB, or setting up a specific mechanism which would result in legally binding dispute resolution under the framework of the Energy Community.

10.2.1 EMS can agree to be subject to a foreign governing law and a foreign court or arbitration, with the exception of cases of mandatory Serbian legislation that does not allow deviation.

10.2.2 As concerns disputes between traders and/or between traders and EMS, with the exception of refusal of TPA issues that are settled before AERS, all other
disputes are settled in Serbian civil courts.

10.2.3 In the event of a dispute among local traders, EMS and/or the SEE CAO, the question as to whether Serbian legislation provides for any limitations or obligations in connection as to the manner in which such disputes must be settled, the answer depends on the type of dispute. For refusal of access to the transmission system the affected party can appeal to the Serbian Regulator (AERS). In case of civil disputes between companies, the relevant Trade Courts are competent. Disputes between the TSO and SEE CAO as a foreign entity, as disputes with a foreign element, could fall under arbitration clauses, but the specificity in this case is that it would be a dispute between one of the shareholders and the SEE-CAO, and this in itself gives way to numerous ways of resolving disputes.

G. UNMIK

10.1.1 There are no any constitutional or other legal barriers that would prevent the regulatory authority from agreeing to arbitration by a panel of experts as a means of resolving disputes with other regulatory authorities. The Law on Arbitration (Article 5) stipulates that “One dispute can be settled by arbitration only if a relative clause exists in the parties’ agreement, whereby they accept the dispute to be settled by arbitration”. Previously there was no such provision for arbitration.

10.1.2 Arbitration is the only viable and realistic mechanism. There are no other suggestions or options locally.

10.2.1 KOSTT may agree to be subject to a foreign governing law and a foreign court or arbitration, as long as there is an arbitration agreement or arbitration clause in an existing agreement.

10.2.2 The Law on Energy Regulator (Article 17) provides that “The Energy Regulatory Office shall establish procedures for resolving disputes in the energy sector, including complaints: a) by customers against licensees concerning the services provided; b) by licensees against other licensees related to the performance of the licensed activity; c) regarding third party access to the transmission or distribution electricity or natural gas networks
and cross border transmission of electricity or natural gas.

The Rule on Dispute Settlement Procedure, as adopted by ERO, (Article 2.1) also sets out that the following complaints (disputes) are subject to resolution by ERO: a) by customers against licensees concerning the service provided; b) by licensees against other licensees related to the performance of the licensed activity; c) regarding third party access to the transmission or distribution electricity or natural gas networks and cross border transmission of electricity or natural gas, and regarding third party access to the heat distribution system.

10.2.3 With regard to a national TSO, the Rule on Dispute Settlement is applicable, whereas UNMIK’s legislation is silent concerning disputes where an entity such as CAO is involved, unless CAO would also be “licensed” by ERO and the complaint was submitted to ERO.

H. Greece

10.1.1 As far as the Greek Regulator is concerned, any dispute should be dealt amicably, within the current framework of regulatory cooperation in Europe (voluntary cooperation between European Commission, Member States, National Regulatory Authorities (NRAs), and TSOs), as well as the future framework (see especially the establishment of the Agency for the Cooperation of Energy Regulators (ACER), which will function as a body in charge of taking binding decisions on cross-border issues, equipped with monitoring, enforcement ands dispute resolution powers).

In particular, as to the last point, according to the first para. 1 of Art 8 of the new ACER Regulation:

[Article 8 : Tasks as regards terms and conditions for access to and operational security of cross-border infrastructure]

1. For cross-border infrastructure, the Agency shall decide upon those regulatory issues that fall within the competence of national regulatory authorities, which may include the terms and conditions for access and operational security, only:
   (a) where the competent national regulatory authorities have not been able to reach an agreement within a period of six months from when the case was referred to the last of those regulatory authorities; or
   (b) upon a joint request from the competent national regulatory authorities. […]

As far as the Energy Community member-states are concerned (as regards disputes involving the SEE-CAO and the regulatory authorities, or disputes
between regulatory authorities), the dispute mechanisms of the Energy Community are fully applicable to RAE.

There are no constitutional or other barriers in that respect.

10.1.2 Two potential arbitration fora (also depending on the nature of the dispute) could be the ECRB, as well as RAE itself: The permanent arbitration of RAE was organized pursuant to Article 24 of RAE’s Internal Administration and Operation Regulation (Presidential Decree 139/2001).

10.2.1 The Greek TSO (HTSO) may be subject to foreign laws and foreign courts of arbitration if the parties agreed in this contract.

10.2.2 According to Greek law, disputes between HTSO and the auction Participant arising from their agreement for the allocation of cross border transmission capacity are settled as follows:

Each party to the Energy Transactions Contract may notify to the other party an invitation to amicable settlement of disputes. Within three (3) days from receipt of such invitation, the Parties shall appoint and mutually notify their Representatives for the purpose of the settlement of disputes. The results of such negotiations are reflected in a report signed by the Representatives and binding upon the parties. The dispute settlement procedure must be completed within thirty (30) days from the dispatch of the invitation to amicable settlement. The procedure for the Amicable Settlement of Disputes is carried out in Greek.

If the dispute is not settled using the Amicable Dispute Settlement procedure, the parties take their dispute to RAE for arbitral expertise relating to the technical issues and the real incidents leading to the dispute, as well as for the sum corresponding to the services due and losses to be determined in accordance with the provisions of Article 371 of the Civil Code. The arbitration procedure is conducted in Greek and in accordance with the provisions on arbitration of the Internal Operation and Management Regulation of RAE. The conclusion of RAE reached on the arbitration expertise is subject to judicial control in accordance with Greek law.

If the dispute is not settled through the procedure for Amicable Dispute Settlement, and if the parties agree, such dispute may be subjected to
arbitration by RAE, in accordance with its Internal Operation and Management Regulation. RAE alone decides on all issues falling within the scope of its arbitration competency. The arbitration is conducted in Greek.

10.2.3 In the event of a dispute among local traders, the national HTSO and/or the SEE CAO, Greek law does not seem to provide for any limitations or obligations in connection as to the manner in which such disputes must be settled.

I. Hungary

10.1.1 Due to a lack of precedence, HEO is not certain if it has the right to agree to arbitration by a panel of experts as a means of resolving disputes with other regulatory authorities, whose decision would be final and irrevocable that cannot be appealed before local courts. HEO's opinion or feeling is that in case of disputes among the regulatory authorities, ERGEG or even the European Commission should be this body.

10.1.2 Given that the HEO has legal power to supervise and monitor any action related to the Hungarian electricity market, for this reason it has legal competence to ask for any information from any market participant operating in Hungary. Therefore, HEO has legal power only over the Hungarian TSO.

In light of the above, the HEO's view is that the dispute resolution mechanism can be held between the SEE-CAO and HEO through the Hungarian TSO (the SEE CAO will not be a licensed company in Hungary). For this reason. It is vital that the HEO approves the agreements among the TSOs and between the SEE-CAO and the TSOs. And of course, it is necessary that these agreements give the HEO the guarantee to perform its obligations according to the national and EU legislation.

10.2.1 Mavir can agree to be subject to a foreign governing law and a foreign court or arbitration, if the subject matter of the dispute is not within the scope of the exclusive jurisdiction of the Hungarian Courts according to 13th Decree-law/1979 on International Private Law.

Please note, however, that under the relevant legislation, parties may agree on a non-Hungarian law as governing law if there is a so-called foreign element
(person, object or right) in their legal relationship. In the present case, since the SEE CAO would be a foreign person, this would not raise any concerns.

10.2.2 Disputes between traders and/or between traders and Mavir are settled in several ways for dispute resolution. They may turn to Hungarian ordinary courts or to a Hungarian (or foreign) arbitration tribunal. Further, Section 169 of the Electricity Act establishes the Permanent Energy Arbitration Tribunal, which may also be agreed upon the parties as the dispute resolution forum.

10.2.3 In the event of a dispute among local traders, the national TSO and/or the SEE CAO, Hungarian legislation does not seem to provide for any limitations or obligations in connection as to the manner in which such disputes must be settled.

J. Romania

10.1.1 According to ANRE, there does not seem to be any legal impediment for it to agree to arbitration by a panel of experts as a means of resolving disputes with other regulatory authorities. ANRE has not been involved in any Arbitration Convention thus far and therefore there is no precedence on this issue.

10.1.2 ANRE is not in the position to suggest any other possible and viable dispute resolution mechanism available for resolution of disputes between regulators concerning the SEE-CAO, or between a regulator and the SEE-CAO.

10.2.1 Transelectrica may be subject to foreign laws and foreign courts of arbitration if the parties agreed in this contract. Usually, if the two parties located in different states apply the law that makes performance parts relevant.

10.2.2 According to Romanian law, disputes between Transelectrica and the auction Participant arising from their agreement for the allocation of cross border transmission capacity are settled in Romanian Civil Court at the seat of Translectrica. On the other hand, the outcome of an auction can be appealed by the auction participant before ANRE if the Operational Procedure governing auctions are not fulfilled.

10.2.3 In the event of a dispute between local, national TSO and/or SEE-CAO, there are between the parties freedom of contract. If reports of private international law, according to Art. 73 of Law no. 105/1992, the contract may be subject to
the law chosen by consensus by the parties.

K. Slovenia

10.1.1 According to the Slovenian Energy Regulator, there does not seem to be any legal impediment for it to agree to arbitration by a panel of experts as a means of resolving disputes with other regulatory authorities.

10.1.2 The Slovenian Energy Regulator suggested as a possible arbitration panel the International Court of Justice (UN) in The Hague. However, this would need further perusal and elaboration.

10.2.1 ELES may be subject to foreign laws and foreign courts of arbitration if the parties agreed in this contract.

L. Italy

10.1.1 As concerns disputes involving the SEE-CAO and the regulatory authorities, or disputes between regulatory authorities, it is prevented by art. 102 of the Italian Constitution for the Italian Energy Regulator to agree to an arbitration panel as a means of resolving disputes, whose decisions would be final and irrevocable and that cannot be appealed before local courts.

10.1.2 There is no other mechanism available for resolution of disputes between regulators concerning the SEE-CAO, or between a regulator and the SEE-CAO.

10.2.1 Terna can agree to be subject to a foreign governing law and foreign court of arbitration as concerning disputes involving TSOs and the SEE-CAO. In particular, it should be noted that according to its existing auction rules for 2009, Terna has agreed to the following:

- disputes arising from auctions are resolved by arbitration under the ICC
rules The place of arbitration is Lugano (Switzerland).

- auctions are governed by Belgian law and the Rome Convention on the law applicable to the contractual obligations dated June 19th 1980. The UN Convention on Contracts for the International Sale of Goods (CISG) is not applicable.

10.2.2 As concerns the manner in which disputes between traders and Terna are settled, reference is made to question 10.2.1 above.

10.2.3 According to Italian law, in the event of a dispute among local traders, Terna and/or the SEE CAO, Italian legislation does not provide for any limitations or obligations in connection as to the manner in which such disputes must be settled.

M. Bulgaria
Annex I – Structure of the Legal Study

1. Harmonization of EU Legislation

1.1 Has local legislation been harmonized with the EC Regulation 1228/2003 on conditions for access to the network for cross border exchanges in electricity (the “Regulation”) and the Congestion Management Guidelines (CMGs), as adopted by Commission Decision of 9 November 2006, amending the Annex to the Regulation?

2. Issues related to the TSO participating in the SEE CAO

2.1 What is the corporate, organizational or governmental form of the TSO and what are the main founding and management bodies?

2.1.1 Are there any provisions in the founding act of the TSO that would prevent or restrict the TSO from participating in the SEE-CAO?\(^1\)

2.1.2 What corporate or organizational decisions according to its founding act are required in order for the TSO to participate in the SEE CAO?

2.2 Are there any conditions in the TSO’s current license, local laws applicable to the TSO’s activities, the market rules, grid codes, power exchange codes, orders and regulations that would prevent or restrict the TSO from participating in the SEE-CAO;

2.3 In particular, are there any conditions in the TSO’s current license, local laws applicable to the TSO’s activities, the market rules, grid codes, power exchange codes, orders and regulations that give the TSO the right or prevent or restrict the TSO from doing the following:

2.3.1 assigning, transferring or outsourcing this License to the SEE CAO?

2.3.2 entering into an agency or brokerage agreement for the SEE CAO to carry out auctions on behalf of the TSO?

\(^1\) When reference is made to the TSO participating in the SEE-CAO this includes being a shareholder of the SEE-CAO and concluding contracts for syndication, multilateral agreements with other TSOs or bilateral agreement with the SEE-CAO according to which the SEE-CAO would be allowed in any way to carry out auctions on behalf of the TSOs
2.3.3 allowing in any other way the SEE-CAO to (i) carry out auctions for cross-border capacity allocations using a coordinated flow-based capacity allocation system, (ii) perform front office activities and (iii) facilitate secondary market activities on its behalf, on the basis of its License?

2.4 What decisions and/or approvals are required, if any, for the TSO to participate in the SEE-CAO?

2.4.1 What factors does the regulatory authority, the appropriate Ministry or any other governmental institution or agency look at in deciding whether to give its approval?

2.4.2 What is the procedure to be followed by the TSO in connection with the formation and ownership of the SEE-CAO and what regulatory filings must it make?

2.4.3 Can the regulatory authority, the appropriate Ministry or any other governmental institution or agency condition its approval of the TSOs acquisition of an ownership interest in the SEE-CAO and make it a condition that the SEE-CAO has to report to the regulatory authority?

2.5 Are there any loan agreements or other documents which might require consent, or result in a default, as a consequence of the TSO participating in the SEE-CAO and are there any on-going or threatened litigation, administrative proceedings, governmental investigations or other disputes in which the TSO is involved which could affect the TSO’s participation in the SEE-CAO?

2.6 Is the TSO a party to any agreement and are there any powers granted to a third party which could be used to object to the TSO participating in the SEE-CAO?

2.7 Can the Regulatory Authority, the appropriate Ministry or any other governmental institution or agency which is responsible for issuing the TSO’s licence to make it a condition of the licence that the TSO participates in the SEE-CAO (i.e. forcing the TSO to participate in the SEE-CAO), or would the TSO still need additional approvals or can the TSO be compelled by any other authority (including its shareholder) to participate in the SEE-CAO, and, where applicable, please provide details?

2.8 Has the TSO previously entered into any agreements similar to those mentioned above? If so, please provide details of any legal or practical difficulties encountered and, where applicable, suggestions for dealing with the issues?
2.9 According to local legislation, are contractual arrangements void if entered into by the TSO beyond the scope of its authority?

2.10 Is there a requirement for that the Government hold a “golden share” in any company in which the TSO has an ownership share? If so, what is this percentage?

3. “License” for performing Auctions

3.1 On the basis of which existing Ministerial, Regulatory or State decision/approval/license etc. (the “License”) is the TSO authorized to conduct auctions of allocated capacity?

3.2 According to the terms and conditions of the “License”,

3.2.1 which state body or authority issues the “License” for carrying out the auctions and which state body or authority exercises supervision over the TSO with respect to the conducting auctions?

3.2.2 what obligations does the TSO have that are directly or indirectly related to the performance of auctions (including the obligation for reporting) to the state bodies or authorities referenced in item 3.2.1 above?

3.2.3 what rights does the TSO have that are directly or indirectly related to the performance of auctions?

3.2.4 what powers does the issuing authority and/or the state body or authority that exercises supervision over the TSO have on the TSO, according to the License?

3.3 According to all relevant local primary and secondary legislation, does the SEE-CAO require a separate license and to be regulated by any national authorities in order to (i) conduct auctions for cross-border capacity allocations using a coordinated flow-based capacity allocation system, (ii) perform front office activities and (iii) facilitate secondary market activities?
4. **Supervisory/Regulatory Authority over the performance of Auctions**

4.1 Please confirm whether the Regulatory Authority, the appropriate Ministry or any other governmental institution or agency (jointly or separately) is required to approve, take any action and/or supervise any or all the following, and if so, what action must be taken and what procedure must be followed:

4.1.1 the carrying out and conclusion of auctions for cross-border capacity allocations?

4.1.2 the methodology adopted by the TSO to allocate congested transmission capacity at cross-border interfaces?

4.1.3 the reservation of capacity by the TSOs to serve entities having public service obligations?

4.1.4 the imposition of restrictions on capacity allocations and if so what criteria is used for the imposition of such restrictions?

4.1.5 ex ante and/or ex post reporting obligations the TSO has with respect to the performance of auctions?

4.1.6 other obligations the TSO has with respect to the performance of auctions?

4.1.7 the use to which the TSO puts revenues received from the allocation of its transmission capacity?

4.1.8 agreements on cooperation or adoption of common procedures between the TSO and other national TSOs?

4.1.9 loan agreements and recourse agreements executed by the TSO with commercial lenders or multilateral banks such as the EBRD?

4.1.10 sharing of technical, operational, or commercial information by the TSO with other TSOs or organizations inside or outside your jurisdiction?

4.2 In the event the auction of capacity is performed by the SEE CAO, what legal, administrative and regulatory issues/problems would arise with respect to the right and ability of the Regulatory Authority, the appropriate Ministry or any other governmental institution or agency to approve, take action and/or supervise/monitor the issues raised in section 4.1 above? How could these issues/problems be addressed and/or resolved?
4.3 Assuming the SEE-CAO is not physically located within the regulatory authority’s jurisdiction and is not incorporated under local law, does the regulatory authority have the power to supervise or monitor the SEE-CAO (i) if it is acting as an agent of the local TSO, (ii) if a subsidiary company of the TSO is the shareholder in the SEE-CAO or (iii) through any other mechanism?

5. **Cooperation among Regulators/Supervisory Authorities**

The creation of the SEE-CAO may require the regulatory and/or supervisory authorities to enter into a binding agreement with other regulatory and/or supervisory authorities in the SEE region for implementing the SEE-CAO.

5.1 Does the regulatory authority have the power to enter into a binding agreement with other regulators for common monitoring of the SEE-CAO?

5.2 Please confirm whether the regulatory authority has the power to participate in an advisory body such as the Advisory Board of the SEE-CAO contemplated in the Business Plan provided by Terna and Verbund?

5.3 Are there legal provisions or financial restrictions that either empower or prevent the regulator from entering into binding agreements with other regulators or from participating on advisory boards?

5.4 If you do not believe that the regulatory authority has the power to enter into binding legal agreements with other regulators or participate on advisory boards, please indicate whether you believe that other mechanism are available for the regulatory authority to agree on such issues as allocation of congestion revenues from the auction of cross-border capacity, dispute resolution mechanisms, monitoring of the SEE-CAO, auditing the SEE-CAO’s books of account, etc.

5.5 Can the regulatory authority share information about its TSO’s activities with other regulatory authorities in order to ensure appropriate monitoring of the coordinated auctions? Please indicate if there any requirements under the national laws that would prevent the regulatory authority from sharing information deemed to be “confidential” with other regulatory authorities?
6. **Capacity Allocation Auction Rules (Auction Rules)**

6.1 Who prepares the auction rules? Are the auction rules subject to approval or a decision of a government body or other authority?

6.2 In the event the SEE CAO undertook the auctioning, how would the auction rules be approved?

6.3 What limitations of liability do the auction rules provide for the TSO?

6.4 How are disputes from differences arising from the Auction settled?

6.5 How is “Force Majeure” defined?

6.6 How is “Emergency situation” defined?

6.7 As concerns Traders’ participation in Auctions:

6.7.1 What requirements must a Trader have in order to obtain a license to participate in auctions?

6.7.2 What obligations does a Trader have and what financial guarantees must be provided?

6.7.3 Is a separate local legal vehicle required to participate in the auction for allocation of cross border transmission capacity?

6.7.4 If the EWG of the ECRB agree on the issue of one standardized “traders license” which, if issued by any jurisdiction in the SEE or by the SEE-CAO would be valid at least for “horizontal” movement throughout the region, would this license be recognized in your jurisdiction according to your existing legislation? If not, what legislative and administrative steps would need to be taken?

7. **Accounting and Taxes**

7.1 Who invoices the Dues to the PTR Holder?

7.2 What are the payment conditions, according to the auction rules?

7.3 What is the deadline for disputing the invoice?

7.4 As concerns the issue of invoices by the SEE-CAO:
7.4.1 Are there any restrictions or limitations that would prevent or prohibit the SEE-CAO from issuing invoices (on behalf of the TSOs) to Traders for the payment of the Dues and if so what are they?

7.4.2 On the basis of the existing legislation, how would you envisage the invoicing to take place between the TSO, the SEE-CAO and the Traders, in the event the auctions are conducted by the SEE-CAO on behalf of the TSOs?

7.4.3 If the SEE-CAO is to issue invoices (on behalf of the TSOs) to Traders for the payment of the Dues, what legislative or administrative measures would need to be taken?

7.5 What taxes are due on the Fees charged by the TSO (VAT, duties, etc.)?

7.6 Who collects the taxes?

7.7 Is the SEE-CAO allowed to collect such taxes according to your primary and secondary legislation?

7.8 If the SEE-CAO issues invoices to the Auction Participants and the TSO issues invoices to the SEE-CAO: (a) will the invoice of the SEE-CAO to the Auction Participants be subject to the TSO’s national VAT law given that the SEE-CAO is effectively invoicing Auction Participants for congestion income on the national borders and (b) if the answer above is yes, how would the SEE-CAO charge the TSO’s national VAT to the Auction Participants according to the national applicable VAT law?

8. Market Data – Publication and Confidentiality

8.1 What confidentiality obligations apply for the TSO and advise whether there are any limitations on the authority or capacity of the TSO to provide information to the SEE-CAO or any third party, including but not limited to the provision of operational data, financial information and/or commercially sensitive information (including the names of the winning bidders of auctions).

8.2 What data is the TSO obliged to publish?

8.3 What criteria does your territory use to define specific data as “confidential” which prevents the national regulator and/or the TSO and/or the appropriate Ministry from sharing such information with other regulators and/or TSOs or providing the information or the general public and the market?
8.4 Reserved capacity, known as “already allocated capacity” (“AAC”), provided to public wholesalers and suppliers with public service obligations (“PSOs”) significantly reduces the amount of transmission capacity available for auctioning by the SEECAO. Moreover, pre-allocation of such capacity violates the requirement that congested capacity be allocated using market-based methods. The lack of transparency concerning AAC is a further concern. As concerns AAC, please confirm the following:

8.4.1 Do public wholesalers and suppliers with public service obligations (“PSOs”) receive preferential access to “reserved” cross border transmission capacity, known as “already allocated capacity” (“AAC”)?

8.4.2 If so, what rules are applicable to AACs and what information (i.e. transparency) is provided?

8.4.3 Are entities with PSOs required to bid for congested capacity in the auctions conducted by the SEE-CAO or pay the congestion fee paid by winning bidders for any capacity set aside for them?

8.4.4 Are TSOs required to publish a standard set of information regarding AAC (e.g. the quantity of capacity allocated, the amount actually used, the period of allocation, and the name of the capacity holder).

8.4.5 Is there a definition of what constitutes a “public service obligation”?

9. **Antitrust – Competition**

9.1 Does the participation of the TSO in the SEE CAO create any obligation for notifications or approval from the national competition authority (the formation of the SEE-CAO may raise competition/cartel issues, given that the TSO will be ceding control of its border capacity to the SEE-CAO thereby effectively ensuring that the SEE-CAO has a monopoly on cross-border capacity)? If the answer is yes, what is the procedure that needs to be followed and a likely timeframe?

9.2 In the event the SEE CAO receives approval from the European Commission for Competition, will this relieve the national TSO from its obligation to notify or acquire approval from the national competition authority?
10. **Dispute Settlement**

Disputes may arise between and among TSOs, the SEE-CAO, traders and regulatory authorities. Commercial disputes regarding breach of contractual terms between the SEE-CAO and traders or TSOs are likely to be resolved through arbitration. However, disputes involving the SEE-CAO and the regulatory authorities, or disputes between regulatory authorities, may not be as easily resolved through arbitration because they are likely to be more political in nature.

10.1 As concerns disputes involving the SEE-CAO and the regulatory authorities, or disputes between regulatory authorities:

10.1.1 Are there any constitutional or other legal barriers that would prevent the regulatory authority from agreeing to arbitration by a panel of experts as a means of resolving disputes with other regulatory authorities, whose decision would be final and irrevocable that cannot be appealed before local courts? Please state if the regulatory authority has previously agreed to be bound by an arbitration panel and describe the circumstances.

10.1.2 Are there other mechanism available for resolution of disputes between regulators concerning the SEE-CAO, or between a regulator and the SEE-CAO, that you can suggest?

10.2 As concerns disputes involving TSOs and the SEE CAO:

10.2.1 Can the local TSOs agree to be subject to a foreign governing law and a foreign court or arbitration?

10.2.2 How are disputes between traders and/or between traders and TSOs settled according to your legislation?

10.2.3 In the event of a dispute among local traders, the national TSO and/or the SEE CAO, does national legislation provide for any limitations or obligations in connection as to the manner in which such disputes must be settled?
Annex II – Capacity Allocation models

According to the Business Plan for the formation of the SEE Auction Office prepared by SETSO TF, the model of the SEE-CAO is aimed at capacity allocation based on coordinated explicit load-flow based auctions. However, before achieving the final approach of a region wide flow-based allocation scheme, the national stakeholders concluded at the 8th SEE-CAO IG Meeting that the initial capacity allocation mechanism could be based on coordinated bilateral NTC-based auctions as an intermediate stepping stone.

We set out below some of the main issues that will play a decisive role in electing the “coordinated bilateral NTC-based auction” model as the initial intermediate stepping stone to the future use of the “coordinated explicit load-flow based auctions” model:

1. The lack of full harmonization in the non EU jurisdictions will constitute a legal obstacle for the SEE-CAO to be able to establish and operate effectively “coordinated explicit load-flow based auctions” as the main capacity allocation model for the SEE-CAO, given that this model presupposes stronger and deeper integration, cooperation and coordination throughout the 8th Region, thus a more harmonized legal regime throughout the region. Until all non EU jurisdictions in the 8th Region fully harmonize their legislation with EC Regulation 1228/2003/EC and the Congestion Management Guidelines, the SEE-CAO should be able to use coordinated bilateral NTC-based auctions as the initial capacity allocation mechanism and an intermediate stepping stone to “coordinated explicit load-flow based auctions”.

2. Given that the jurisdictions in the 8th Region have considerably different regimes regarding the relationship between TSOs and Regulators, this may constitute a legal obstacle for the SEE-CAO to be able to establish and operate effectively “coordinated explicit load-flow based auctions” because this model presupposes stronger and deeper integration, cooperation and coordination among regulators throughout the 8th Region, thus a more harmonized legal regime throughout the region. Initially and until the TSO-Regulator relationship throughout the 8th Region becomes more harmonized and uniform, the SEE-CAO should use coordinated bilateral NTC-based auctions as the initial capacity allocation mechanism and an intermediate stepping stone to “coordinated explicit load-flow based auctions”.

3. As concerns reservation of capacity (AAC), EU member states and UNMIK do not have legal provisions regarding the reservation of capacity. On the other hand, the non EU jurisdictions in the 8th Region have provisions regarding AAC and grant AAC according to their national legislation. Until the non EU jurisdictions amend their national provisions regarding AAC in order to be compliant with EC Regulation 1228/2003/EC and the CMGs, this will create a problem with the establishment and operation of “coordinated explicit load-flow based auctions” given the inequalities and inefficiencies that will arise in the 8th Region. Initially and until AAC is abolished in all jurisdictions, the SEE-CAO could use coordinated bilateral NTC-based auctions as the initial capacity allocation mechanism and an intermediate stepping stone to “coordinated explicit load-flow based auctions”.

4. As concerns the coordinated auction rules, given that there are 13 jurisdictions with a highly varying degree of current regulation (e.g. limitations of liability, definitions of force majeure, dispute settlement, requirements for participating in the auctions etc.), the auction rules may have to differentiate between general terms and conditions (applicable to all 13 jurisdictions) and special terms and conditions applicable to specific jurisdictions. These differences constitute an obstacle as concerns the auction model to be used. It should be noted that any differentiation in the coordinated auction rules per jurisdiction:

- may be possible in the event the SEE-CAO adopts the use of “coordinated bilateral NTC-based auctions”, which effectively constitutes, from a legal perspective, a triangular legal relationship between the SEE-CAO - the TSO – Auction Participant the object of which is the cross border allocation of capacity on one specific border;

- may not be possible in the event the SEE-CAO adopts the use of “coordinated explicit load-flow based auctions” because this mechanism presupposes a uniform internal market in the 8th Region with harmonized legal rules throughout the region.
5. The degree of harmonization of national legislation in each of the 13 jurisdictions with respect to (i) the criteria to be used to classify information as “confidential” and (ii) the national legal obligations and administrative rules regarding the sharing of “confidentiality” information by all TSOs and Regulators is dependent highly on the capacity allocation mechanism that will be selected by the TSOs to undertake the auctions (i.e. “coordinated explicit load-flow based auctions” vs “coordinated bilateral NTC-based auctions”). The use of “coordinated explicit load-flow based auctions”, presupposes a uniform internal market with a higher degree of cooperation and transparency among stakeholders than in the case of “coordinated bilateral NTC-based auctions”. In order for the TSOs to choose for the SEE-CAO to allocate cross border capacity through “coordinated explicit load-flow based auctions”, it is necessary for the national legislation in each of the 13 jurisdictions to be harmonized with respect to the criteria to be used to classify information as “confidential” and the national legal obligations and administrative rules regarding the sharing of “confidentiality” information by all TSOs and Regulators (our comments regarding the three requirements noted above in item 2 apply respectively). Until special and uniform rules are provided in national legislation regarding “confidential” information, the SEE-CAO should initially operate with “coordinated bilateral NTC-based auctions” as the initial capacity allocation mechanism and an intermediate stepping stone to “coordinated explicit load-flow based auctions”.

Study on the Identification of Legal Requirements to the Establishment and Operation of and the Participation in a Coordinated Auction Office in South Eastern Europe

C.A.O
## Annex III – Table of Main Obstacles / Requirements for setting up CAO

<table>
<thead>
<tr>
<th>A/A</th>
<th>Question</th>
<th>AI</th>
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<th>Srb</th>
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<td>2.1</td>
<td>Can TSOs participate in the share capital of the SEE-CAO?</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
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<tr>
<td>2.3</td>
<td>Can TSOs assign their right to conduct auctions?</td>
<td>No</td>
<td>No</td>
<td>No</td>
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<tr>
<td>2.3</td>
<td>Can TSOs agree for SEE-CAO to conduct auctions in its name but on behalf of TSOs?</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
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<tr>
<td>2.3</td>
<td>Can TSOs agree for SEE-CAO to conduct auctions as a service provider?</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
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<tr>
<td>2.1.2</td>
<td>Is a decision only of management required for TSO to participate in the SEE-CAO (i.e. not requiring decision of owner/general assembly – replied as “no&quot;)?</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
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<td>Must TSOs obtain approval from Regulator to participate in the SEE-CAO?</td>
<td>No</td>
<td>Yes</td>
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<td>No</td>
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<td>Yes</td>
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<td>Can the Regulator condition its approval provided SEE-CAO undertake reporting obligations to TSO?</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
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<td>2.5-6</td>
<td>Do TSOs have contractual or financing obligations vis a vis third parties impeding their participation in the SEE-CAO?</td>
<td>No</td>
<td>No</td>
<td>No</td>
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<td>3.3</td>
<td>Can the SEE-CAO operate without being licensed by national Regulators (i.e. requiring national license – replied as “no”)?</td>
<td>Yes</td>
<td>Yes</td>
<td>Likely</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
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<td>4.1.1</td>
<td>Is an approval of auction rules needed by national Regulators?</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
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<td>4.1.3</td>
<td>Is national legislation compliant with AAC obligations?</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
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<td>Yes</td>
<td>Yes</td>
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<td>4.2</td>
<td>Can the Regulator directly monitor the SEE-CAO (if established in Montenegro)?</td>
<td>No</td>
<td>No</td>
<td>Unlikely</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
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<td>5.1</td>
<td>Can Regulator enter into binding agreement with other Regulators?</td>
<td>Yes</td>
<td>Conditional</td>
<td>No</td>
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<td>No</td>
<td>No</td>
<td>Yes</td>
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<td>Could the Regulatory Gap be solved by empowering the ECRB in the Energy Community (the reply “yes” refers to that there are no national legal obstacles)?</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
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<td>5.5</td>
<td>Can the Regulators share “confidential” information with other Regulators?</td>
<td>No</td>
<td>No</td>
<td>No</td>
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<td>6.7.1</td>
<td>Can traders participate in national Auctions without a local license (“no” refers to local license requirement)?</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
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<td>6.7.3</td>
<td>Are non local companies allowed to participate in national Auctions (“no” refers to local vehicle requirement)?</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
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<td>Would a standardized “traders license” for “horizontal” movement throughout the region be valid?</td>
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<td>7.1</td>
<td>Can the SEE-CAO be used as an invoicing vehicle according to national accounting rules?</td>
<td>No</td>
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<td>Yes</td>
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<td>Do the jurisdictions apply EU VAT laws?</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
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<td>7.6</td>
<td>Will the SEE-CAO create VAT issues in the local jurisdictions</td>
<td>Yes</td>
<td>Likely</td>
<td>No</td>
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<td>Will the competition authority likely require notification or approval</td>
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<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
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<td>9.2</td>
<td>In the event the SEE CAO receives approval from the European Commission for Competition this should relieve ISO from its obligation to notify or acquire approval from the BiH competition authority</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
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<td>No</td>
<td>Yes</td>
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<td>Can the Regulatory authority agree to arbitration for resolving disputes with other regulatory authorities</td>
<td>Yes</td>
<td>Unlikely</td>
<td>No</td>
<td>Unlikely</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Unlikely</td>
<td>Yes</td>
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<td>10.2</td>
<td>Can the local TSOs agree to be subject to a foreign governing law and a foreign court or arbitration</td>
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<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
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Annex IV – Acknowledgement

We would like to convey our warmest gratitude to the national TSOs and the Regulators from the jurisdictions in the 8th Region for their ongoing assistance and generous contributions in accumulating the necessary information and legislation, making the project possible. Although we cannot name all persons that were involved per stakeholder and jurisdiction, we set out below the stakeholders who assisted in the project and the names of the contact persons for future references:

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<td>Ms. Zenel Spahija</td>
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Bosnia and Herzegovina

State Electricity Regulatory Commission
Miška Jovanovića 4, 75000 Tuzla

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<th>Independent System Operator (NOS BiH)</th>
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<td>Mrs. Saša Lukić</td>
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<tr>
<td>Analyst</td>
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<td>Country</td>
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<tr>
<td><strong>Bulgaria</strong></td>
<td><strong>Bulgarian Regulatory Authority</strong>&lt;br&gt;Dondukov 8-10, Sofia 1000, Bulgaria</td>
<td>Mr. Stefcho Nachev&lt;br&gt;Director&lt;br&gt;+359 2 988 87 30&lt;br&gt;+359 2 988 87 82&lt;br&gt;<a href="mailto:snachev@dker.bg">snachev@dker.bg</a>&lt;br&gt;Mr. Nenko Gamov&lt;br&gt;Transmission Network Planning Engineer&lt;br&gt;35929263728&lt;br&gt;35929810102&lt;br&gt;<a href="mailto:ngamov@ndc.bg">ngamov@ndc.bg</a>&lt;br&gt;Mr. Mitiu Hristozov&lt;br&gt;Member of B/D and Director of Nat. Dispatching Center&lt;br&gt;+359 2 92 13 701&lt;br&gt;+359 2 98 10 102&lt;br&gt;<a href="mailto:mhristozov@ndc.bg">mhristozov@ndc.bg</a></td>
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<td><strong>Croatia</strong></td>
<td><strong>Croatian Energy Regulatory Agency (HERA)</strong>&lt;br&gt;Koturaška 51, 10000 Zagreb</td>
<td>Mr. Tomo Galić,&lt;br&gt;President of Managing Council&lt;br&gt; Tel: +385 1 63 23 700&lt;br&gt; Fax: +385 1 61 15 344&lt;br&gt;<a href="mailto:tgalic@hera.hr">tgalic@hera.hr</a>&lt;br&gt;Mr. DAMJAN MEDJIMOREC&lt;br&gt;Director&lt;br&gt; Tel: + 385 (0)1 6322 608&lt;br&gt; Fax: + 385 (0)1 6322 564&lt;br&gt; <a href="mailto:DAMJAN.MEDJIMOREC@HEP.HR">DAMJAN.MEDJIMOREC@HEP.HR</a>&lt;br&gt;Mr. Željko Rajić&lt;br&gt;Director of Electricity Division&lt;br&gt; Tel: +385 1 63 11 418&lt;br&gt; Fax: +385 1 61 15 344&lt;br&gt;<a href="mailto:zrajic@hera.hr">zrajic@hera.hr</a>&lt;br&gt;Mr. Silvio Brkic&lt;br&gt;Assistant Director&lt;br&gt; Tel: + 385 (0)1 6322 625&lt;br&gt; Fax: + 385 (0)1 6322 564&lt;br&gt; <a href="mailto:SILVIO.BRKIC@HEP.HR">SILVIO.BRKIC@HEP.HR</a>&lt;br&gt;Mr. Lahorko Wagmann&lt;br&gt;Head of Department for Electricity and Quality of Service&lt;br&gt; Tel: +385 1 63 23 760&lt;br&gt; Fax: +385 1 61 15 344&lt;br&gt;Mr. Leo Prelec&lt;br&gt;General Manager&lt;br&gt; Tel: +385 1 6306700&lt;br&gt; Fax: +385 1 6306777&lt;br&gt; <a href="mailto:leo.prelec@hrote.hr">leo.prelec@hrote.hr</a>&lt;br&gt;Mrs. Sojia Tomašić-Škevin&lt;br&gt;Deputy General Manager&lt;br&gt; Tel: +385 1 6306700&lt;br&gt; Fax: +385 1 6306777&lt;br&gt;<a href="mailto:sonia.tomasic-skevin@hrote.hr">sonia.tomasic-skevin@hrote.hr</a></td>
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<td>Study on the Identification of Legal Requirements to the Establishment and Operation of and the Participation in a Coordinated Auction Office in South Eastern Europe</td>
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<td><strong>FYR. Of Macedonia</strong></td>
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<tr>
<td>Energy Regulatory Commission</td>
<td>Dimitrie Cupovski St. No. 2, 4th floor, 1000 Skopje, Republic of MACEDONIA</td>
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<tr>
<td>Mrs. Natasha Trimcheska</td>
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<td>Regulatory Authority of Energy</td>
<td>69 Panepistimiou &amp; Aiolou Str., Athens</td>
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<tr>
<td>Mr George Koutzoukos</td>
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<tr>
<td>Country</td>
<td>Organization</td>
<td>Address/Location</td>
<td>Contact Information</td>
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<td>---------------------------------------</td>
<td>--------------------------------------------------------------------------------------</td>
</tr>
</tbody>
</table>
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00 39 02 655 65 222  
fcariello@autonta.energia.it  
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81000 Podgorica                      | Mr. Monir Škopelja  
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Tel: +382 81 407 614  
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Moskovska 39, Podgorica, Montenegro                                                                 |
STUDY ON THE IDENTIFICATION OF LEGAL REQUIREMENTS AND ISSUES RELATED TO THE ESTABLISHMENT AND OPERATION OF AND THE PARTICIPATION IN A COORDINATED AUCTION OFFICE IN SOUTH EASTERN EUROPE

PART 2: POSSIBLE REQUIREMENTS FOR THE ESTABLISHMENT AND OPERATION OF THE PLANNED COORDINATED AUCTION OFFICE IN SOUTH EASTERN EUROPE

(referred to as “task 4”)

Prepared by:

Tom Kyriakopoulos
Dr. Yannis Kelemenis

7 July 2009
TABLE OF CONTENTS

I. SCOPE OF TASK 4 ......................................................................................................................... 3

II. CHARACTERISTICS OF THE SEE-CAO .................................................................................... 4
1. CORPORATE STRUCTURE OF THE SEE-CAO ................................................................. 4
2. OPERATIONS AND MANAGEMENT OF THE SEE-CAO .................................................. 5
3. SERVICES TO BE PROVIDED BY THE SEE-CAO ............................................................. 7
4. CAPACITY ALLOCATION MODEL ...................................................................................... 8
5. RELATIONSHIP SEE-CAO - TSOs – AUCTION PARTICIPANTS ...................................... 8
   5.1 According to the Business Plan ...................................................................................... 8
   5.2 Following clarifications provided at the 8th SEE-CAO IG Meeting in Budva .................. 11

III. REVIEW OF MONTENEGRO LEGAL ORDER .................................................................. 14
1. AGREEMENT FOR SYNDICATION ....................................................................................... 14
2. SETTING UP THE SEE-CAO ............................................................................................... 15
3. SHARE CAPITAL OF THE SEE-CAO ............................................................................... 23
4. SHARES AND SHAREHOLDERS ......................................................................................... 23
5. MANAGEMENT – SUPERVISORY BOARD ........................................................................... 26
6. GENERAL MEETING OF SHAREHOLDERS ....................................................................... 27
7. FINANCING – LOANS ........................................................................................................... 30
8. PROFITS – FISCAL YEAR – AUDITORS ............................................................................... 30
9. EMPLOYMENT AND SOCIAL SECURITY .......................................................................... 31
10. LEGAL REVIEW OF COMMERCIAL SET UP OF THE SEE-CAO ....................................... 32
11. TAXES ................................................................................................................................. 33

ANNEX I – CHECKLIST OF LEGAL ISSUES ........................................................................... 39
I. Scope of Task 4

According to the 5th Ministerial Council decision on 11 December 2008 in Tirana and the agreement of the TSOs, the location of the SEE-CAO will be in Montenegro.

To this effect, the scope of Task 4 is the analysis of the legal order of Montenegro with the objective of identifying the legal and administrative steps necessary to host the SEE-CAO in terms of establishment and operation in Montenegro.

On the basis of the above, the Consultant has undertaken, with the assistance and support of legal colleagues in Montenegro, a review and screening of the legal order of Montenegro, the result of which is the present Report providing the Energy Community with the legal and administrative steps necessary to host the SEE-CAO in terms of establishment and operation.

The screening of the Montenegro legal order in order to identify the legal and administrative steps necessary to host the SEE-CAO in terms of establishment and operation in Montenegro was carried out on the basis of a Check List prepared by the Consultant. The Check List of legal issues examined and presented in this Report is attached as Annex I herein.
II. Characteristics of the SEE-CAO

The analysis of the legal order of Montenegro with the objective of identifying the legal and administrative steps necessary to host the SEE-CAO in terms of establishment and operation in Montenegro was based on the following main characteristics of the SEE-CAO. The characteristics below are based on:

- the Business Plan prepared and approved by the SETSO TF,
- the Minutes of the 8th SEE-CAO IG Meeting in Budva on 20.1.2009 (which took place following the preparation and approval of the Business Plan) and
- the work we have undertaken and the meetings we have concluded thus far with national stakeholders during the Inception Phase and the 2nd Stage of the Project (Task 3).

1. Corporate Structure of the SEE-CAO

The SEE-CAO will be established in the form of a limited liability company, i.e. D.O.O. The shareholders of the SEE-CAO (in the event of D.O.Os, the appropriate term may not be “shareholders” but “partners”; in any case the term “shareholders” is used in general to define the owners of the company) will be the regional TSOs. All shares (in the event of D.O.Os, the appropriate term may not be “shares” but “parts” or “units”; in any case the term “shares” in general to define the fraction of the share capital of the D.O.O).

Although limited liability companies are profit-oriented companies, the aim of the SEE-CAO is to operate on a very small (in the event investments are required for the following year) or zero net profit margin.

The founding shareholder TSOs (it is likely that not all TSOs will join the SEE-CAO from the beginning) will contribute equally to the initial share capital, each one holding the same number of shares. The remaining TSOs in the 8th Region (i.e. non founding shareholders of the SEE-CAO) will be allowed to join the SEE-CAO as additional shareholders, if agreed by the existing shareholders and on the condition that they will participate in the auction mechanism.

In order to establish the SEE-CAO, different agreements will have to be concluded, such as the Articles of Association, the Agreement for Syndication, Service Level Agreements between TSOs and the SEE-CAO and Inter-TSO Agreements.
In particular, it is noted that the Agreement for Syndication will be an agreement signed among all TSOs, in their capacity as shareholders of the SEE-CAO, specifying various corporate and commercial matters and describing in particular the relationship, the rights and obligations of the shareholders of the SEE-CAO. The issues in the Agreement for Syndication may contain matters not specified in the Articles of Association or matters not compliant with the laws of Montenegro. Indicatively, the Agreement for Syndication may consist and cover some or all of the following issues (outside, over and above the provisions of the Articles of Association):

- Shareholders, shares and disposal of shares,
- Obligations when transferring shares
- Object of the syndicate
- Management of the SEE-CAO
- Supervisory Board of the SEE-CAO
- Voting rights
- Joining and withdrawal from the Syndicate
- Indemnification/penalties
- Court of jurisdiction and applicable law

2. **Operations and Management of the SEE-CAO**

The SEE-CAO will have the following operational and management features:

a. *Management* will be responsible for the day to day activities of the SEE-CAO. One Managing Director elected by the shareholders shall manage the SEE-CAO in the first period of start-up (e.g. first 2 years). He/she will coordinate and supervise the staff as well as negotiate and conclude contracts between the SEE-CAO and its partners.

b. The *Supervisory Board* will consist of representatives of the shareholders, i.e. the TSOs, and will represent the economic interests of the shareholders. Management will be bound by the decisions of the Supervisory Board and it will have to report to it on a regular basis.
c. The Risk Management Office (RMO) will be a department within the SEE-CAO. The Market participants will provide risk management instruments to cover credit limit risks and they will be allowed to bid up to the credit limit provided. The RMO will be in charge of defining acceptable risk management instruments and administration of risk management instruments provided by market participants and corresponding credit limits. The risk management Instruments provided in the Business Plan are: (i) bank guarantees, (ii) deposits, (iii) promissory notes and (iv) custody accounts.

d. The IT Department will be part of the SEE-CAO. It will provide the technical services for coordinated auctioning as well as necessary ancillary services – such as scheduling support, online risk management assessment and billing.

The figure below outlines the overall operations and management structure of the SEE-CAO.
3. Services to be provided by the SEE-CAO

The general overview of the service the SEE-CAO will be providing is the performance of auctions “for the account and on behalf of the national TSOs” with respect to the allocation of cross-border capacity on the national borders of the 8th Region [i.e. Albania, Bosnia & Herzegovina, Croatia, the former Yugoslav Republic of Macedonia, Montenegro, Serbia, the territory under administration by the United Nations Interim Administration Mission in Kosovo (pursuant to United Nations Security Council Resolution 1244), Bulgaria, Greece, Hungary, Romania, Slovenia and Italy] using a coordinated explicit auction method to be agreed by the national TSOs (i.e. either “coordinated explicit load-flow based auctions” or “coordinated bilateral NTC-based auctions”).

As concerns the above general definition of the service SEE-CAO will be providing, the following main points should be accentuated:

- the SEE-CAO will be auctioning the cross-border capacity on the borders of the 8th Region “for the account and on behalf of the national TSOs” (please see section 5 below regarding the triangular legal relationship between SEE-CAO, the TSOs and the auction participants) and it will NOT be allocating any cross-border capacity;

- the allocation of the cross-border capacity on the national borders of the 8th Region will be undertaken by the national TSOs, who are licensed by the national Governments or Regulators; in other words, the SEE-CAO will only be performing the administration task (i.e. an administrative support function of the TSOs) necessary in order for the TSOs to carry out their licensed duty which is the actual allocation of the cross border capacity;

- the TSOs will have the obligation that any cross-border capacity on the national borders of the 8th Region auctioned by SEE-CAO “for the account and on behalf of the national TSOs” to the auction participants will be honoured and carried by the licensed national TSOs, according to the scheduling.

Further to the general description of the service to be provided by SEE-CAO to the TSOs, we set out below the particular services and responsibilities SEE-CAO will have vis a vis the TSOs:
1. Coordinated merging and processing of data provided by TSOs;
2. Coordination of calculations performed by TSOs;
3. Market and customer Interface;
4. Comprehensive risk management services;
5. Execution of coordinated auctions and controlling auction results;
6. Calculation of congestion income distribution;
7. Issuing of Settlement Notifications;
8. Scheduling communication (interface TSOs and Traders);
9. Secondary market services for trading of PTRs

4. Capacity Allocation Model

According to the Business Plan for the formation of the SEE Auction Office prepared by SETSO TF, the model of the SEE-CAO is aimed at capacity allocation based on coordinated explicit load-flow based auctions.

However, before achieving the final approach of a region wide flow-based allocation scheme, the national stakeholders concluded at the 8th SEE-CAO IG Meeting that the initial capacity allocation mechanism could be based on coordinated bilateral NTC-based auctions as an intermediate stepping stone before implementing a region wide flow-based allocation scheme.

5. Relationship SEE-CAO - TSOs – Auction Participants

5.1 According to the Business Plan

The Business Plan stipulates (page 11, section 3.1.4) that “In order to allow for distribution of auction incomes to the shareholders during the year and to avoid issues related to the corporate taxes it is recommended to set up the company to do transactions “for the account of another”. With such a construct the Auction revenues are not part of the balance sheet of the CAO and thus also possible taxation problems have less priority.”
Furthermore, the Business Plan stipulates (page 19, section 3.6.5) that “The settlement notification process performed by CAO is necessary for TSOs to prepare and submit invoices to market participants in automated way.”

On the basis of the above wording, it seems that the Business Plan envisages the SEE-CAO exclusively as a “service provider” to the TSOs providing the services noted above in section 3 and not as a “contracting” or “invoicing” party with any Auction Participant.

In particular, if the SEE-CAO is to adopt the above structure, when interfacing with Auction Participants and executing coordinated auctions, the SEE-CAO will have to make known to Auction Participants that it is acting and entering into transactions in the name, on behalf and on the account of the TSOs. The above structure has the following legal characteristics:

1. The commercial relationship arising from the auctions will be concluded directly between the TSO and the Auction Participant and not between the SEE-CAO and the Auction Participant. In this case, the result of the auction will be commercially binding between the particular TSO and the Auction Participant and there will be no liability for the SEE-CAO.

2. Each TSO will invoice the Auction Participant directly for congestion income.

3. In the event the SEE-CAO receives payment from the Auction Participant on the basis of the invoice issued by the TSO, this payment will be recorded in the SEE-CAO’s accounting books, however, not as the SEE-CAO’s income but as an off balance third party income.

4. The SEE-CAO will invoice the TSOs for its services on a cost basis.

As concerns the above, the Consultant notes the following:

- The above “service provider” structure may be feasible in the event of coordinated bilateral NTC-based auctions. However, this structure would have considerable legal complications and problems, in the event of coordinated explicit load-flow based auctions. In particular, in the event of load-flow based auctions, it is not apparent or certain (at least at the time of the auction) which path the TSOs will use to carry out the obligation to transfer power from “source” to “sink” and therefore it is not apparent or certain (at least at the time of the auction) which and how many TSOs will be the actual contracting parties and who will eventually be performing the allocation, thus being entitled to the congestion income.
• The idea expressed by some of the TSOs (in favour of adopting a “service provider” structure with “coordinated explicit load-flow based auctions”) that at the end of each month the various TSOs will invoice invariably the Auction Participants for the amount of congestion income, without specifying if that TSO has actually allocated the respective capacity to the invoiced Auction Participant will give rise to legal complications because in the event of a dispute, the Auction Participant will go against the “invoicing” TSO and not the TSO that actually was liable for the dispute.

• In the event the SEE-CAO is used solely as a “service provider” and not as a “contracting-invoicing” vehicle, there is no legal rationale for the SEE-CAO to have a Risk Management Office or in any case to accept financial guarantees in its name from the Auction Participants because, given that the SEE-CAO will not be a contracting party with the Auction Participants and it will not be invoicing the SEE-CAO for the congestion income. Therefore, if the “service provider” structure is to be adopted, there is no legal basis for the SEE-CAO to accept financial guarantees/instruments from the Auction Participants in its name.

The above commercial relationship is justified in the Business Plan (page 11) as follows: The profit is ordinarily distributed among shareholders at the end of the year as dividend and in this case problems arise in the event of distribution of auction income to the shareholders during the year. Furthermore, the auction income can only be distributed to the owners according to their contribution to the share capital. This could also lead to taxation problems because the CAO has to pay corporate taxes – from the overall auction income – which clearly doesn’t reflect the owners’ will.

The Consultant would like to clarify that the above explanation is not accurate for the following reasons:

• In the event the SEE-CAO issued an invoice to an Auction Participant in connection with congestion income arising from a particular auction for a particular interconnection, the respective TSOs would have to issue invoices to the SEE-CAO for each one’s portion of that congestion income.
In this case, the congestion income paid by the Auction Participant to the SEE-CAO and from the SEE-CAO to the TSO respectively would go through the SEE-CAO’s accounts as income (based on the SEE-CAO’s invoice issued to the Auction Participant) and at the same time an expense (based on the TSOs’ invoice issued to the SEE-CAO), thus leaving a nil result in the SEE-CAO’s Profit and Loss Account and corporate tax statement.

At the same time, this would allow the TSOs to receive payment of their corresponding congestion income upon issue of their respective invoice.

5.2 Following clarifications provided at the 8th SEE-CAO IG Meeting in Budva

According to the Minutes of the 8th SEE-CAO IG Meeting, SETSO TF clarified that “it is envisaged that the future CAO will be responsible for invoicing, collecting and distributing revenues as described within the Business Plan.”

Notwithstanding the comments in section A above, on the basis of the above clarification with respect to the auctioning of cross border capacity, it is understood that the SEE-CAO will take a more active commercial role and in particular that of a “contracting” and “invoicing” intermediating counter party in a triangular commercial structure between the SEE-CAO, the TSO and the Auction Participants.

With respect to the auctioning of cross border capacity, the triangular commercial structure will be set up approximately as follows:

1. The SEE-CAO will execute coordinated auctions of cross border capacity on the borders between the TSOs in the 8th Region according initially to coordinated bilateral NTC-based auctions (the Auctions) in its name but on behalf of the TSOs (coordinated explicit load-flow based auctions will take place at some time in the future).

2. The SEE-CAO will represent and bind the TSOs and the TSOs will commit themselves to accept the results of the common auctions executed by the SEE-CAO.
3. The contractual relationship arising from the result of any Auction will be directly between the SEE-CAO and the Auction Participants who will have submitted the winning bids. According to this contractual relationship, the SEE-CAO promises the allocation of the capacity to the Market Participants who submitted the winning bids.

4. The TSOs will commit themselves to accept the results of the common auctions executed by the SEE-CAO and allocate the capacity promised by the SEE-CAO to the Auction Participant, according to the Common Auction Rules. The Consultant notes that the Auction Rules should stipulate that the TSOs will carry out the transmission services in accordance with their individual respective prerequisites, the legal requirements applicable to them and their mandatory national laws.

5. Following the announcement of the winning bids (to the TSOs and the Auction Participants), the SEE-CAO will issue an invoice to the Auction Participants who submitted the winning bids.

6. Following the issue and receipt of the SEE-CAO’s invoice, The Auction Participants will pay the congestion income to the SEE-CAO within the deadline set out in the invoice.

7. Following the announcement of the winning bids and the issue of the SEE-CAO’s invoice, the TSOs (whose interconnection capacity was auctioned by the SEE-CAO) will then issue an invoice to the SEE-CAO for the congestion income it is entitled to according to the TSOs agreement. Payment of this invoice should be done on a regular basis and in any event perhaps before use of the capacity in the cases of monthly and yearly auctions.

8. The SEE-CAO should not make any “profit” from the allocation of interconnection capacity, nor “mark down” the congestion income due to the corresponding TSOs. In this manner, 100% of the congestion income received by the SEE-CAO will be redistributed to the TSOs accordingly.

9. The redistribution of the congestion income will be made in the form of “income” due to the TSOs on a regular basis during the course of the entire year and not as “dividend” at the end of the SEE CAO’s fiscal year. Therefore, the TSOs can expect regular payments of the congestion income due to them.
10. Notwithstanding the above, the SEE-CAO will also invoice the TSOs for its services on a cost basis in order to cover its annual capital expenditures and working capital needs.

The Consultant notes that the above structure may be feasible in both coordinated bilateral NTC-based auctions and in coordinated explicit load-flow based auctions.
III. Review of Montenegro Legal Order

On the basis of the characteristics of the SEE-CAO set out in section II above, the Consultant provides below an analysis of the main legal and administrative steps necessary to host the SEE-CAO in terms of establishment and operation in Montenegro.

1 Agreement for Syndication

Preliminary Comment: It is our understanding that in addition to the “Articles of Association” the TSOs will sign a “side agreement” defined as “Agreement for Syndication”. The “Agreement for Syndication” will be an agreement signed among all TSOs in parallel to the “Articles of Association”, as shareholders of the SEE-CAO, specifying various corporate matters and describing in particular the relationship, the rights and obligations of the shareholders of the SEE-CAO, as this is outlined further in section II.1 above. Thus, the corporate relationship of the shareholders will be governed by the “Articles of Association” and the “Agreement for Syndication”.

1.1 Montenegro corporate law does not recognize nor contain provisions regarding side shareholder agreements such as the “Agreement for Syndication”.

On the other hand, based on contract law, the TSOs can agree and sign an Agreement for Syndication in the form of a side commercial agreement setting out their relationship as shareholders of the SEE-CAO. This agreement would be valid and binding for the contracting parties. Moreover, it is possible for the Agreement for Syndication to be governed by foreign law and any disputes arising from such an agreement could be settled in a foreign or international judicial or arbitration forum.

1.2 On the basis of the above and notwithstanding the fact that the Agreement for Syndication may be valid and binding, the Agreement for Syndication will not bind the SEE-CAO, because, although it will be concluded freely between the shareholders, it will not be deemed part and parcel of the Articles of Association and therefore are not part of the corporate mechanism of the SEE-CAO. The SEE-CAO will operate solely on the terms and conditions of the Articles of Association, which is considered its only constitutive document. Therefore, in the event of a dispute among the TSOs regarding the enforcement of the provisions of the Agreement for Syndication conflicting with those of the Articles of Association, the latter would prevail if brought before a court in Montenegro or enforced in Montenegro.
1.3 On the basis of the above, the Agreement for Syndication should not contain provisions that are contrary or conflicting with those of the Articles of Association or mandatory provisions of Montenegro corporate law, because although they may be valid, they could not be enforced in Montenegro. To this effect, special attention must be paid when drafting the Agreement for Syndication to ensure that it does not conflict with mandatory provisions of Montenegro corporate law.

2 Setting up the SEE-CAO

2.1 The following should be taken into consideration when setting up the SEE-CAO:

2.1.1 Information required for setting up the SEE-CAO:

<table>
<thead>
<tr>
<th>Information</th>
<th>Comments and Guidelines</th>
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</thead>
<tbody>
<tr>
<td>1 Proposed name of the Company</td>
<td>Name can be proposed to be in English as well. It will obligatory include “doo” as a short term for limited liability company</td>
</tr>
<tr>
<td>2 Short name of the Company</td>
<td>Company may have a short name in use as well, but it must also be registered.</td>
</tr>
<tr>
<td>3 Address of the seat of the Company</td>
<td>Seat of the Company must be registered as the management seat or the address where the business activity is performed. It is usually leased premises. Lawyer’s address or similar arrangements to nominee services or registered address are not allowed according to the law.</td>
</tr>
<tr>
<td>4 Main Business Activity</td>
<td>Description of the main business activity will have to be provided in order to adjust it to legal codification, as required by the law.</td>
</tr>
<tr>
<td>5 Founders of the Company (Founders)</td>
<td>Founders can be equally individuals and legal entities, foreign or domestic. Minimum 1, and maximum 30.</td>
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<tr>
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<td>Description</td>
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<tr>
<td>6</td>
<td>Amount of the founding capital (Founding Capital)</td>
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<td>7</td>
<td>Proportional ownership participation in the Company (Stakes)</td>
</tr>
<tr>
<td>8</td>
<td>Executive Director of the Company (Director)</td>
</tr>
<tr>
<td>9</td>
<td>Authorised representatives</td>
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</table>
10 Board of Directors (BoD) LLC does not have to have a BoD as the mandatory body in the Company. It is optional. If chosen to be elected, it has to be elected and registered with Company Registry every year. It has at least 3 members, and always odd number of members.

11 Term for which the Company is registered The SEE-CAO can be established for a definite or indefinite period of time.

2.1.2 Documents required by the TSOs as shareholders of the SEE-CAO:

<table>
<thead>
<tr>
<th>Documents</th>
<th>Explanation</th>
</tr>
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<tbody>
<tr>
<td>1 Company Registration Application Form (Application Form)</td>
<td>After TSOs deliver all necessary data, an “Application Form” will be delivered for signing to the Executive Director (i.e. Managing Director) and/or to the members of BoD (i.e. the Supervisory Board). The Application Form must be signed in person. This document must be issued in two original copies.</td>
</tr>
</tbody>
</table>
| 2 Decision on Foundation or Agreement on Foundation | After the TSOs deliver all necessary data and agree on the completed text of the act, the “Decision on Foundation” will be prepared by the SEE-CAO’s legal counsel and delivered to the TSOs (as founders of the SEE-CAO) for signing by their legal representatives. Given that the founders will be companies (i.e. the TSOs), legal representatives of the TSOs must be a) either registered representatives of the founder having the Company Registry Certificate not older than 6 months, notarized and/or apostilled, to prove their position and scope of authorizations, or b) Special Power of Attorney issued by the registered representative of the founder, notarized and/or apostilled, issued for this purpose (note: this text can
be prepared by the SEE-CAO’s legal counsel on request). The “Decision on Foundation or Agreement on Foundation” must be certified before the notary public or local Montenegrin court. This document must be issued in three original copies.

<table>
<thead>
<tr>
<th>3</th>
<th>Articles of Association</th>
</tr>
</thead>
</table>
|     | After the TSOs deliver all necessary data and agree on the completed text of the act, the Articles of Association will be prepared by the SEE-CAO’s legal counsel and delivered to the TSOs (as founders of the SEE-CAO) for signing by their legal representatives. Given that the founders will be companies (i.e. the TSOs), legal representatives of the TSOs must be a) either registered representatives of the founder having the Company Registry Certificate not older than 6 months, notarized and/or apostilled, to prove their position and scope of authorizations, or b) Special Power of Attorney issued by the registered representative of the founder, notarized and/or apostilled, issued for this purpose (note: this text can be prepared by the SEE-CAO’s legal counsel on request) This document must be issued in three original copies. According to the Business Organization Law in Montenegro, the Decision/Agreement of Foundation and the Articles of Association are two different legal acts especially taking into consideration the contents of these, because these acts must content following:

1. The Decision/Agreement of Foundation must include:
   - the founders (full names, identification numbers, names of legal persons) and their addresses;
   - the name of the company;
   - a statement that the company is a limited...
| | liability company;  
| - | the rights and obligations of the founders in the formation of the company and their liability for failure to fulfil their obligations;  
| - | the Capital of a LLC;  
| - | procedure for settling disputes between the founders;  
| - | authorization of one or more named founders to represent the company.  

2. The Articles of Association must include:  
   - the name of the company;  
   - address of its registered office and place for receiving official notices;  
   - the general nature of the company’s business activities;  
   - a statement that the company is a limited liability company and the amount of the capital;  
   - in so far as a board of directors is constituted, the rules governing the appointed number of board members and the procedure for appointment of the board and appointing members of the management and executive bodies, their respective powers and duties, disqualification and removal and the allocation of powers among these bodies;  
   - rules for alteration of capital if not determined by law;  
   - persons authorized to represent the company either jointly or individually.
<table>
<thead>
<tr>
<th>4</th>
<th>Decision on the BoD appointment, if applicable</th>
<th>The Decision appointing the BoD must be signed by the TSOs as founders of the SEE-CAO. This document must be issued in two original copies.</th>
</tr>
</thead>
</table>
| 5 | Documents to be provided by the TSOs as founders of the SEE-CAO | The TSOs (as they are in the form of legal entities) must provide the following documents:  
- Company Registry Certificate on Foundation,  
- Good Standing Certificate not older than 6 months and  
- Power of Attorney for the signing representative (as described in point 3 above),  
- all documents must be notarized and/or apostilled. |
| 6 | Documents for the members of BoD (i.e. Supervisory Board) | For every member of the BoD (i.e. the Supervisory Board) a notarized and/or apostilled copy of his/her passport is required. |
| 7 | Documents for the Executive Director (i.e. Managing Director) | A notarized and/or apostilled copy of his/her passport is required and his/her working book, if he/she is a resident of Montenegro. |
| 8 | Document for the Registered Representatives, if applicable | A notarized and/or apostilled copy of his/her passport is required. |
| 9 | Proof of the founding capital payment | If the founding capital is determined in cash, then a statement issued by a local commercial bank in which each of the TSOs (as founders) remitted the payment of each one’s contribution to the founding capital, must be produced.  
If part of the founding capital is contributed in kind (i.e. not cash) an evaluation of a locally certified evaluator
must be provided.

2.1.3 Procedure for Incorporation and Registration:

<table>
<thead>
<tr>
<th>Procedure</th>
<th>Explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 SEE-CAO’s company Stamp</td>
<td>Stamp must be issued.</td>
</tr>
<tr>
<td>2 Directorate for Statistics Registration</td>
<td>Certificate may be issued in 1-2 days.</td>
</tr>
<tr>
<td>3 Licensed Local Accountant’s engagement</td>
<td>The SEE-CAO must have an accountant engaged right after registration is completed. It must be a locally licensed accountant.</td>
</tr>
<tr>
<td>4 Bank account</td>
<td>The SEE-CAO must open a bank account in one of the local commercial banks.</td>
</tr>
<tr>
<td>5 Tax Registration</td>
<td>The SEE-CAO must register as Tax Payer and as VAT payer, if qualified.</td>
</tr>
<tr>
<td>6 Business premises municipality license issuance</td>
<td>For the SEE-CAO’s business premises, usually leased by the Company, where the seat of the Company is registered and/or where the business activity of the Company is conducted, depending on the business activity registered, the SEE-CAO must obtain a business license.</td>
</tr>
<tr>
<td>7 Customs Registration</td>
<td>If applicable for import-export activities, the SEE-CAO must be registered with the Customs Directorate</td>
</tr>
<tr>
<td>8 Pension Fund Registration</td>
<td>Both the SEE-CAO and the employees must be registered with State Pension Fund.</td>
</tr>
<tr>
<td>9 Health Fund Registration</td>
<td>Both the SEE-CAO and the employees must be registered with State Health Fund.</td>
</tr>
<tr>
<td></td>
<td>Employment Contracts</td>
</tr>
<tr>
<td>---</td>
<td>---------------------</td>
</tr>
<tr>
<td>10</td>
<td>Residence and Working permits</td>
</tr>
</tbody>
</table>

2.2 The approximate time frame (not taking into account the time required for obtaining any special licenses if necessary and for the shareholders to agree on the text of the Articles of Association and to provide the necessary documents) for setting up a limited liability company is approximately one week, once all documents are collected from the Shareholders and the necessary applications for registration are filed. It should be noted that the collection of all necessary documentation from the shareholders and the translation of such documents (which is within the control of each TSO) will be the most time consuming aspect of setting up the SEE-CAO.

2.3 As concerns the cost for establishing, incorporating and registering for tax purposes the SEE-CAO, the following costs (not including legal fees) should be taken into consideration:

- There are no taxes on share capital.
- There are no taxes for tax registration.
- Translation services to local language (as all documents must be filed to Company Registry in local language) is approximately €15 per page.
- Company Registry registration taxes amount to approximately €30.
- Certification taxes must be paid (instead of notary public, as Montenegro does not have notary public function yet). These cannot be estimated in full before entering the incorporation procedure, but they are estimated at approximately €300.

2.4 The TSOs, in their capacity as shareholders in a Montenegro limited liability company, are not required to be registered in any public authority in Montenegro (including tax authorities).
3 Share capital of the SEE-CAO

3.1 The minimum share capital provided by Montenegro law is €1 and there is no higher limit.

3.2 The declared share capital in the by-laws must be fully paid up by the TSOs before the SEE-CAO is registered in Montenegro. The share capital must be remitted in a temporary SEE-CAO bank account, opened in a Montenegro bank. The share capital can be increased afterwards, but it cannot be declared and then paid in instalments. Furthermore, the share capital cannot be paid in a bank account outside Montenegro.

3.3 The laws of Montenegro do not contain restrictions or limitations regarding debt – equity ratio [Note: Debt – equity ratio refers to the maximum amount of loans the SEE-CAO can receive in connection to its share capital (e.g. In a 4:1 debt – equity ratio, the SEE-CAO cannot borrow more than 4 times its share capital)]. This effectively means that when discussing the manner in which the SEE-CAO will be financed (i.e. Debt vs Equity) the TSOs can agree to finance the SEE-CAO with higher debt, therefore reducing the amount of capital the TSO must tie up in the share capital of the SEE-CAO.

4 Shares and Shareholders

4.1 A limited liability company can have from 1 to 30 shareholders.

4.2 According to Montenegro corporate law, limited liability companies do not have different categories of shares (e.g. registered or bearer shares, blocked shares, common shares, preferred shares, shares with and without the right to vote etc.). The TSOs’ participation (i.e. equity stake) in the limited liability company’s share capital will be determined according to their proportional participation ownership in the company (i.e. 10%, 15%, 32%, etc…).

4.3 If the shareholders wish to agree that they do not want any shareholder having the right to sell his shares to third parties in the event a shareholder wants to exit/leave the SEE-CAO, according to the corporate law of Montenegro, this can be provided in the Articles of Association. In this case, the Articles can prohibit the free transfer of shares by providing that such shares be bought by the shareholders of the SEE-CAO or SEE-CAO itself. Where the shareholders or the SEE-CAO do not buy the shares, the shares shall be withdrawn relating to the reduction of the initial capital.
Notwithstanding the TSO’s right to agree to the above restriction, according to mandatory provisions of Montenegro corporate law, the TSOs, as shareholders of the SEE-CAO, will not be free to sell, transfer or dispose their shares in any way they want because the other shareholders must have a pre-emption right on these shares, according to mandatory provisions set out in Montenegro corporate law. Such rules must be set out in the SEE-CAO’s Articles of Association.

The shares of a limited liability company in Montenegro may be transferred only in accordance with the procedures established in the Articles of Association. Shares may be transferred among shareholders without restriction in conformity with the Articles of Association. Where a shareholder proposes to transfer shares, the shareholders of the SEE-CAO and the SEE-CAO itself have a pre-emptive right to purchase the shares, in accordance with the procedure to be agreed in the Articles of Association. Where no agreement to purchase the shares is reached between the TSO selling the shares and the shareholders, the shares are divided among them proportionately to their percentage in the SEE-CAO, unless otherwise provided in the Articles of Association.

Where the shareholders and the SEE-CAO itself have declined to purchase the shares proposed to be sold within 30 days from the date on which the shares were offered, the shares may be transferred to a third party under terms no less favourable than offered to the SEE-CAO or to the existing shareholders.

If the shares are being sold by execution procedure, the court shall notify the shareholders and the SEE-CAO. If the shareholders and the SEE-CAO fail to express their wish to buy the shares within 15 days from receipt of notification, such shares shall be sold in accordance with the execution procedure rules.

The Articles of Association of a limited liability company give the shareholders the right to increase their interest in the limited liability company if the company proposes to increase its capital. The size of the increase in the value of a part shall be proportionate to the relationship of the part to the total value of the limited company’s capital, unless the Articles states otherwise.
According to Montenegro corporate law, the shareholders cannot stipulate in the Articles of Association that a shareholder must withdraw from the SEE-CAO (as a shareholder) in the event of a decision of the remaining shareholders in the general assembly and receive his contribution to the share capital. Even if such a clause were to be agreed under any circumstances in the Agreement for Syndication or the Articles of Association, such provision may be disputable in Montenegro courts, which would have exclusive jurisdiction to settle corporate differences of Montenegro limited liability companies.

As concerns minority rights, according to Montenegro corporate law, shareholders holding or representing 5% of the company’s share capital have the following rights:

1. In case of Company merger to ask for the Assembly to vote,
2. To appoint a representative to make an audit of company accounting,
3. To call upon the ordinary and extraordinary General Assembly,
4. To request the change of the Assembly’s agenda,
5. To propose a member of the Board of Directors,
6. To propose the external auditor.

In the event all 13 TSOs join the SEE-CAO, each TSO will have approximately 7.7% of the company's share capital and therefore, each TSO can individually exercise any of the above minority rights. Moreover, given that the Law generally determines the minimum of what the Articles must include, the TSO shareholders should be able to agree on broadening the scope of the minority rights, to a degree that they do not conflict with the mandatory rights and powers of the limited liability company’s corporate bodies.

We understand that not all TSOs will be founding shareholders in the SEE-CAO. The SEE-CAO will be set up initially by the TSOs that wish to be the founding members of the SEE-CAO and the remaining TSOs will enter the SEE-CAO following a future increase of share capital. This is of course possible, on the condition that the provisions regarding the pre-emption right of the other shareholders is respected first (see item 4.3 above) before a new shareholder enters. The pre-emption right is to be determined by the Articles of Association.
It should be noted that a 2/3 majority of votes must be respected in the General Meeting of Shareholders in bringing a decision to increase the capital. The Articles of Association cannot provide for a lower majority than that stipulated in Montenegro corporate law.

Moreover, the Articles of Association should be able to provide for a higher majority (even a consensus of 100%) of shareholders.

5 Management – Supervisory Board

5.1 According to the SETSO TF Business Plan, the SEE-CAO will have:

(i) a Managing Director elected by the shareholders who will be responsible for the management of the day to day activities of the SEE-CAO for the first period of start-up (e.g. first 2 years), including coordinating and supervising the staff and negotiating contracts between the SEE-CAO and its partners and

(ii) a Supervisory Board, which will consist of representatives of the shareholders. The Managing Director will be bound by the decisions of the Supervisory Board and it will have to report to it on a regular basis.

According to Montenegro corporate law for limited liability companies, the basic corporate bodies are (i) the Founders / Assembly of Shareholders and (ii) the Executive Director (i.e. the Managing Director).

Nonetheless, given that the SEE-CAO wishes to have a two tiered management structure (as noted above), according to Montenegro corporate law, a limited liability company (i.e. the SEE-CAO) can provide in its Articles of Association to have a two tiered management structure, with one Executive Director (i.e. Managing Director – as per the SETSO TF Business Plan) and a Board of Directors (i.e. Supervisory Board – as per the SETSO TF Business Plan), whereby the Supervisory Board will be the ultimate management body issuing binding decisions as concerns the management of the SEE-CAO and binding the Managing Director as to the manner in which he/she must perform his/her executive managerial duties, as long, as the requirement of Board of Directors (i.e. the Supervisory Board) is set as the top management Board and Executive Director is the Chief of Administration.
5.2 According to Montenegro corporate law, management (i.e. the Board of Directors - Supervisory Board) is appointed by the shareholders (i.e. the TSOs) and Executive Director (i.e. Managing Director) is appointed by the Board of Directors. The bodies that appoint them also revoke their position.

5.3 As concerns the Supervisory Board (which will be in the form of a Board of Directors) the minimum number of members is 3 and there is no maximum. Therefore, all 13 jurisdictions can be represented in the Supervisory Board. It should be noted that the number of members in the Supervisory Board must be odd, in which case, in the event of an even number of TSOs in the SEE-CAO, one more member will have to be appointed. Decisions are taken by majority with the Chairman having the casting vote.

5.4 According to Montenegro corporate law, foreign nationals (i.e. from the EU, countries within South East Europe, persons outside Europe) can be appointed in the management (i.e. Managing Directors or members of the supervisory board) of a limited liability company in Montenegro. They do not have to be Montenegro nationals. For those who are to be employed, if foreigners, residence and working permits must be obtained.

5.5 Only the Executive Director (i.e. the Managing Director), as the Chief of Administration, by very law must be employed and as such must have residence and working permit. Board of Directors members (i.e. Supervisory Board), or other Board type members by law do not have to be employed in the SEE-CAO and as such do not have to have working permit.

6 General Meeting of Shareholders

6.1 According to Montenegro corporate law, the General Meeting of Shareholders is the sole and appropriate body to decide on the following matters:

(1) amend and supplement the Articles of Association of the SEE-CAO;

(2) elect the members of the Board of Directors and approve the appointment of the auditor;

(3) remove from office members of the Board of Directors and auditor who have been elected by the general meeting;

(4) set the fees for the Board of Directors;

(5) adopt a resolution on the distribution of profit;
(6) increase or reduce the authorized capital, exchange shares of one class for shares of another;

(7) voluntary liquidate the company or reorganize the company or file bankruptcy proceedings;

(8) approve the valuation of non-monetary contributions; and

(9) at the request of the Board of Directors, consider issues assigned to the Board, which pertain to the activity of the company;

(10) approve any contract to be entered into by the SEE-CAO concerning property acquisition from a founder or a majority shareholder of the company for a payment of not less than 1/10 of the company’s authorized capital, when such a contract is to be concluded within a period of 2 years from registration of the company;

(11) adopt a decision to issue any bonds or any convertible debentures or convertible securities;

(12) limit or cancel a priority right of shareholders to subscribe for shares or acquire convertible bonds, but only by the 2/3 majority vote of all affected shareholders.

It should be noted that the Articles of Association can provide for additional matters.

6.2 In order for the GMS to take decisions outlined in 6.1 above, as determined by the law, a quorum of shares representing at least 50% of the total voting shares is required. If not achieved, a repeat meeting may be called within 30 days of the original meeting, at which at least 33% of the total voting shares is required. If not achieved, a third meeting may be called within 30 days of the repeat meeting at which no quorum is required, and the meeting shall have the right to adopt resolutions on all the items of the agenda irrespective of the number of shares represented. If decisions are mentioned in the law for a 2/3 majority of votes, otherwise a simple majority of votes, unless the Articles of Association determine otherwise.

6.3 The procedure for convening the GMS is as follows:

- The first annual general meeting must be held within 18 months of the company’s statutory general meeting.

- The general meeting is organized by the Authorized Officer on the instructions of the Board of Directors. The right to call a meeting is vested in the Board and in the shareholders, the value of whose shares is no less than 5% of the share capital, unless the Articles of Association provides for a smaller percentage.
With the exception of the first year following the incorporation of a company, the Board must call a regular annual general meeting within 3 months of the end of each financial year.

Notice of the convening of a general meeting is issued no later than 30 days before the date of the meeting. Notice of the meeting must be delivered by mail.

The meeting may not adopt resolutions on issues that are not on the agenda unless all shareholders who have voting rights attend the meeting.

The Chief Executive shall act as by the chairman of the meeting unless otherwise decided by majority vote of the attending shareholders.

The minutes of the general meeting shall be signed by the chairman of the meeting, secretary and at least one shareholder authorized to do so by the meeting.

A quorum at a general meeting shall consist of shares representing at least half of the total voting shares, either in person, or by proxy. If this meeting does not attain the required quorum, a repeat meeting may be called within 30 days of the original meeting, at which the quorum shall consist of shares representing at least thirty three percent of total voting shares, either in person, or by proxy.

If the repeat meeting does not attain the required quorum, a third meeting may be called within 30 days of the repeat meeting at which no quorum is required, and the meeting shall have the right to adopt resolutions on all the items of the agenda irrespective of the number of shares represented. The procedure for calling a general meeting shall be valid for convening the repeat meetings. Notice of any repeat meeting must be given in the manner prescribed already except that only 10 days notice is required.

Upon viewing the agenda and the draft resolution, shareholders who are entitled to vote at the general meeting may inform the meeting in writing of their vote “for” or “against” in respect of each individual resolution or may instruct their proxy in writing.

Voting at the general meeting shall be open. Secret voting shall be mandatory on the issues on which at least 10% of the shares represented at the meeting request a secret vote.
• The resolution of the meeting shall be adopted by a simple majority vote of the shares present, with the exception of cases where resolutions require a higher percentage vote. For the purposes of this paragraph, shares for which a valid proxy attends the meeting shall be deemed to be present.

• Shares with suspended voting right shall not be counted toward any decision. However, such shares shall be counted toward establishing number of shares for quorum.

7 Financing – Loans

7.1 A limited liability company in Montenegro (i.e. the SEE-CAO) can receive loans from foreign or international banks (e.g. EBRD) and there are no limitations to this effect.

7.2 According to Montenegro law and practice, it is disputable whether limited liability companies in Montenegro (i.e. the SEE-CAO) can receive loans from their third parties (i.e. non banks) or the shareholders. Montenegrin Law on Banks prescribes that only financial institutions can provide loans and the tax authority opinion is the same. However, the Ministry of Finance has taken the opposite position. In practice, limited liability companies receive loans from non-financial organizations.

7.3 There are no restrictions regarding the amount of loans a limited liability company can take. Moreover, as also noted above (see item 3.3 herein) the laws of Montenegro do not contain restrictions or limitations regarding debt – equity ratio. This effectively means that the SEE-CAO can receive as much debt as needed without the amount of share capital playing any decisive legal role.

8 Profits – Fiscal Year – Auditors

8.1 As concerns whether the Articles of Association of the SEE-CAO can stipulate that its profits will never be distributed, we note that the laws of Montenegro do not prescribe this eventuality. However, as Montenegro company law has general provisions on protection of minority shareholders, such a provision may be regarded as a violation of shareholders’ rights in advance, against their freedom to dispose of their assets.
Notwithstanding the above, the Shareholders can decide at each Annual General Meeting of Shareholders that the profits of that year will not be distributed but will remain in the company to be re-invested. This must be freely decided by the shareholders each year at the SEE-CAO’s General Meeting of Shareholders. It should be noted that even if all TSOs concluded in the Agreement for Syndication that all of the SEE-CAO’s profits will not be distributed but rather carried forward to be used next year as working capital or reinvested in the SEE-CAO, this agreement cannot be enforced in Montenegro. In order to circumvent this problem, the TSOs would be able to conclude in the Agreement for Syndication that any TSO deciding to receive dividend from the SEE-CAO will have to compensate the SEE-CAO or the other TSOs for an amount equal to the dividends distributed.

8.2 The fiscal year provided for limited liability companies in Montenegro is 1 January to 31 December of each year (i.e. calendar year).

8.3 The SEE-CAO, as a limited liability company, does not in general have to have obligatory audit. However, in case it goes over certain amount of turnover and other conditions, prescribed by the tax laws, it enters into the audit regime, just like stock companies. Moreover, it may also enter into such a regime voluntarily.

8.4 The SEE-CAO can maintain its accounting books according to International Financial Reporting Standards (IFRS).

9 Employment and Social Security

9.1 The SEE-CAO, as a limited liability company in Montenegro, can hire foreign employees (i.e. nationals from EU member States, neighbouring countries or outside Europe) and there are no limitations to the number of foreign employees the SEE-CAO can have (i.e. the SEE-CAO can have only foreign employees if it so wishes). The only limitation is that foreign employees require temporary residence and working permits, according to Montenegro law.

9.2 Foreign employees need to have approved temporary residence and working permits. If specialists in some area, they need to have their diploma’s approved in the country, too. The same requirements apply for nationals of EU Members States or other neighbouring countries or nationals from outside Europe.

9.3 According to Montenegro law, the general work regime is as follows:
a. The legal daily and weekly working hours are 8 hours a day, 40 hours a week. There is no monthly quotation.

b. The permissible overtime is up to 10 hours a day, payable depending on what kind of hours and labour it is. There are different scales.

c. Working at night or on weekends (the SEE-CAO may operate 24 hours a day, 7 days a week so it will require different shifts) is also permissible, but in accordance with special conditions.

d. The annual vacation is at least 18 working days a year, to be used twice a year at most as per suggestion of the employee and decision of the employer. The number of days are increased depending on the industry, age and working experience of employee.

9.4 Employees (foreign and local) working in Montenegro have to be registered for mandatory social security in Montenegro. Contributions are payable monthly, with the salary, as they are due with the salary. They are determined in the form of percentage of the gross salary. The percentage of all taxes and social security contributions payable to any salary is approximately 62% to the net salary (e.g. for every €100 net salary paid out, the SEE-CAO has to pay an additional €62 for all contributions and taxes related to the salary. A ceiling exists only for the pension fund contributions, which is approximately €21-22,000/year, while other obligations do not have a ceiling.

9.5 As concerns whether foreign nationals working in Montenegro are entitled to get an exemption from Montenegro social security contributions if they have social security from their country, it is noted that there are bilateral treaties for social security concluded between former SFRJ and some countries. However, practice has shown that the Montenegro social security authorities are not experienced with such treaties and therefore, in practice it may be difficult to get an exemption.

10 Legal review of commercial set up of the SEE-CAO

10.1 Having reviewed the SETSO TF business plan, the description of the services that will be provided by the SEE-CAO and the commercial aspects related to the SEE-CAO’s services, either as a “service provider” or as a “contracting-invoicing vehicle” (see our comments above in section ii.5), we conclude that there are no legal implications, restrictions or limitations in general commercial law in Montenegro that would prevent or forbid the SEE-CAO from:
conducting auctions with respect to cross border capacity on behalf of the TSO and invoicing auction participants for such allocation and

(ii) providing cross border services to the TSOs and invoicing them for such services.

10.2 It is our understanding that the TSOs require that the SEE-CAO possess and operate a bank account outside Montenegro, in a neutral country with a well developed banking system. To this effect and according to Montenegro law, the SEE-CAO is allowed to maintain and operate bank accounts in foreign banks outside Montenegro. It should be reminded that the only limitation is that the share capital must be deposited in a bank account in Montenegro.

10.3 In connection with the above question, the SEE-CAO, as a Montenegro limited liability company, is allowed:

a. to receive payments in its bank accounts in foreign banks outside Montenegro from foreign companies and

b. to make payments through its bank accounts in foreign banks outside Montenegro to foreign companies.

10.4 According to Montenegro commercial law, the SEE-CAO as a Montenegro limited liability company has the right to sign commercial agreements with foreign companies (for services described in section II.3 above) that are governed by foreign law and stipulating that any dispute arising from the commercial agreement will be settled in a court or arbitration outside Montenegro. However, the terms and conditions of these agreements (SLA, Inter TSO Agreements, Agreement for Syndication etc.) must be carefully reviewed by Montenegro legal counsel before they are signed in order to conclude whether:

(i) the terms and conditions comply with mandatory Montenegro legal provisions,

(ii) disputes arising from such agreements can be resolved before foreign or international courts or arbitration or whether they must be brought before Montenegro courts that have exclusive jurisdiction and

(iii) such agreement and their terms can be enforced in Montenegro in the event any court or arbitration decision must be enforced against the SEE-CAO in Montenegro.

11 Taxes
11.1 Loans provided to the SEE-CAO in Montenegro from local or foreign banks (i.e. foreign or international banks such as EBRD) or foreign companies (i.e. non banks) and the interest paid thereon may be subject to taxes and duties. However, there are exceptions/situations prescribed by local law, and there may be a decision of the Government according to which certain loans may be exempt from tax. Tax advice should be obtained from local tax advisory counsel at the time of financing so that the optimum tax structure can be obtained thus lowering the overall costs of the loan.

11.2 The corporate income tax rate for limited liability companies is 9%. Dividends paid to shareholders are currently subject to 15% Montenegro withholding income tax, unless an applicable double tax treaty (see below question 11.4) provides for lower withholding tax rates for dividends paid out to shareholders who are foreign tax residents, qualified according to the double tax treaty.

11.3 It is our understanding that the SEE-CAO, as a Montenegro limited liability company, will operate with zero profit (i.e. it will operate on cost) whereby there would be no profit to distribute and no profit to tax. In general, companies can of course operate with zero profit/zero tax. However, the Montenegro tax authorities may not accept that a commercial company operates on a cost basis and therefore may try to impose income tax on deemed profit or disallow certain expenses. Even if presently the tax authorities were not to take such a position and allow a commercial company in agreeing with its suppliers and customers to provide services at a “zero profit” level, it is not certain that in the future such a situation (either by law or tax practice) will remain. The risk of having the SEE-CAO subject to payment of future income tax may be avoided only by enacting special legal provisions with respect to the income tax regime of the SEE-CAO.

11.4 As concerns double tax treaties and the applicable withholding tax rates, Montenegro has declared that it will honour all tax treaties that have been concluded by the state union of Serbia and Montenegro. However, these treaties have to be confirmed by treaty partners. The following chart contains the withholding tax rates that are applicable to dividend, interest and royalty payments by resident Montenegro companies (i.e. the SEE-CAO) to non-residents (i.e. TSOs) under the tax treaties currently in force. Where, in a particular case, a treaty rate is higher than the domestic rate, the latter is applicable.
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<th>Individuals, companies (%)</th>
<th>Qualifying companies (%)</th>
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<tr>
<td><strong>Domestic Rates</strong></td>
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<tr>
<td>Companies:</td>
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<td>15</td>
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<td>Italy</td>
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<td>Korea (Dem. Rep.)</td>
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<td>Latvia</td>
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</tbody>
</table>
### Study on the Identification of Legal Requirements to the Establishment and Operation of and the Participation in a Coordinated Auction Office in South Eastern Europe

<table>
<thead>
<tr>
<th>Country</th>
<th>Rate 1</th>
<th>Rate 2</th>
<th>Rate 3</th>
<th>Rate 4</th>
</tr>
</thead>
<tbody>
<tr>
<td>Former Yugoslav Republic of Macedonia</td>
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<td>10</td>
<td>10</td>
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<tr>
<td>Moldova</td>
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<td>5</td>
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<tr>
<td>Poland²</td>
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<td>Romania</td>
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<tr>
<td>Russia</td>
<td>15</td>
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<td>10</td>
<td>10</td>
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<tr>
<td>Slovak Republic</td>
<td>15</td>
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<td>Slovenia</td>
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<td>10</td>
<td>5/10²</td>
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<tr>
<td>Sri Lanka²</td>
<td>12.5</td>
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<td>Sweden²</td>
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<td>Switzerland</td>
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<td>Ukraine</td>
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<tr>
<td>United Kingdom²</td>
<td>15</td>
<td>5</td>
<td>10</td>
<td>10</td>
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</tbody>
</table>

1. The reduced treaty rates given in this column generally apply if the holding is at least 25% of the capital or of the voting power, as the case may be.
2. Tax treaty concluded by the former Socialist Federal Republic of Yugoslavia or by the Federal Republic of Yugoslavia. The other treaties listed were concluded by the state union of Serbia and Montenegro. Montenegro continues to honour the treaties of all those types. However, the application of treaties with Montenegro has to be confirmed by treaty partners.
3. The lower rate applies to copyright royalties, excluding computer software.
4. The reduced rate applies if the beneficial owner is a company which holds directly at least 25% of the capital of the dividend-paying company and has invested at least USD 100,000.
5. The lower rate applies to copyright royalties, including films, etc.
6. This rate applies if the Swiss company owns at least 20% of the capital in the dividend-paying company.
11.5 It is our understand that if the SEE-CAO adopts the “contracting-invoicing vehicle” structure, the SEE-CAO will issue invoices (i) to Auction Participants for the allocation of cross border capacity and (ii) to the TSOs for its services in order to cover its annual capital expenditures and working capital needs. The above invoices will be subject to Montenegro VAT at a rate of 17% if the Auction Participants are resident of Montenegro and in the case of TSO-EPCG.

In all other cases, it is not certain whether the invoices issued to companies residing outside Montenegro (i.e. Auction Participants outside Montenegro and all other TSOs) will be subject to Montenegro VAT or not. In particular, the general rules is that since the SEE-CAO is a resident of Montenegro, all services it provides will be subject to Montenegro VAT at a rate of 17% unless special provisions of Montenegro VAT legislation provides that the particular service should be subject to VAT outside Montenegro (i.e. VAT charged in the country of the recipient or charged in Montenegro with the right of exemption as the particular service may be deemed as an export of service).

Ex prima facie and in reservation to our comments in the following paragraph, it is our opinion that:

- the invoicing of congestion income to Auction Participants should not be subject to Montenegro VAT as it is capacity allocated outside Montenegro to a company residing outside Montenegro; and
- the invoicing of auctioning services to TSOs should be subject to Montenegro VAT as it is a service provided in Montenegro, irrespective if it is actually being provided to a company residing outside Montenegro.

Notwithstanding the above, it should be noted that once the operational structure between SEE-CAO – TSOs – Auction Participants is finalised and there is a clear and final description of the services that will be provided to the TSOs and the Auction Participants, a question must be filed with the Montenegro Ministry of Finance in order to obtain an official position of the State of Montenegro regarding the imposition of local VAT, given the large amounts of congestion income that will be actually “re-invoiced” through the SEE-CAO in Montenegro and secondarily the invoicing of the auctioning services, which will effectively increase by great lengths (i.e. 17%) the cost of the above services to the Auction Participants and the TSOs and benefit the State of Montenegro to the detriment of the regional market.
In the event both or either of the above income (i.e. congestion income and service income) are subject to Montenegro VAT, following the position to be taken by the Montenegro Ministry of Finance (as per above), the VAT issue may be resolved only by enacting special legal provisions with respect to the invoices issued by the SEE-CAO.

11.6 It is our understanding the TSOs (whose interconnection capacity was allocated by the SEE-CAO) will issue invoices to the SEE-CAO for their congestion income. Payment of this invoice will be effected by the SEE-CAO to the TSOs. In light of the above, the amounts paid by the SEE-CAO on the invoices issued by the TSOs should not be subject to Montenegro withholding tax, according to Montenegro income tax.

However, once the operational structure between SEE-CAO – TSOs – Auction Participants is finalised, a question must be filed with the Montenegro Ministry of Finance in order to obtain an official position of the State of Montenegro regarding the imposition of withholding taxes on the payment of congestion income by the SEE-CAO to the TSOs because even if no withholding tax is imposed today, it is possible that Montenegro income tax may be amended in the future to provide for such tax.
## Annex I – Checklist of Legal Issues

<table>
<thead>
<tr>
<th></th>
<th>Agreement for Syndication</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.1</td>
<td>Is an Agreement for Syndication valid according to the laws of Montenegro?</td>
</tr>
<tr>
<td>1.2</td>
<td>In the event of corporate dispute among the shareholders, is an Agreement for Syndication enforceable in the courts of Montenegro?</td>
</tr>
<tr>
<td>1.3</td>
<td>Can the Agreement for Syndication contain provisions that are against Montenegro corporate law?</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>Setting up the SEE-CAO</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.1</td>
<td>What are the requirements and the procedure for setting up the SEE-CAO as a limited liability company?</td>
</tr>
<tr>
<td>2.2</td>
<td>What is the approximate time frame (not taking into account the time required for obtaining any special licenses if necessary and for the shareholders to agree on the text of the Articles of Association and to provide the necessary documents) for setting up a limited liability company?</td>
</tr>
<tr>
<td>2.3</td>
<td>What is the approximate cost for establishing, incorporating and registering for tax purposes the SEE-CAO?</td>
</tr>
<tr>
<td>2.4</td>
<td>Do foreign shareholders have an obligation to be registered in any way in Montenegro due to the fact they will become shareholders in a Montenegro limited liability company?</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>Share capital of the SEE-CAO</th>
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</thead>
<tbody>
<tr>
<td>3.1</td>
<td>What is the minimum and maximum share capital provided by law?</td>
</tr>
<tr>
<td>3.2</td>
<td>When does the share capital need to be paid by the shareholders and can it be paid in instalments?</td>
</tr>
</tbody>
</table>
3.3 Do the laws of Montenegro have provisions regarding debt – equity ratio limitation and if yes, what are they?

4. Shares and Shareholders

4.1 What is the minimum and maximum number of shareholders a limited liability company can have?

4.2 What kind and/or category of shares (if any) does Montenegro corporate law have for limited liability companies (e.g. registered or bearer shares, blocked shares, common shares, preferred shares, shares with and without the right to vote etc.)?

4.3 If the shareholders agree that they do not want any shareholder having the right to sell his shares to third parties, in the event a shareholder wants to exit/leave the SEE-CAO:

   a. can the Articles of Association contain provisions prohibiting the shareholder from selling, transferring or disposing shares in the SEE-CAO (i.e. “blocked shares”) to third parties or limiting the right of each shareholder to sell, transfer or in any way dispose of the shares?

   b. are the shareholder, according to the corporate law of Montenegro, free to sell, transfer or dispose their shares in any way they want or are the shareholders restricted in any way?

4.4 Is it possible, according to Montenegro corporate law, for the shareholders to stipulate in the Articles of Association that a shareholder must withdraw from the SEE-CAO (as a shareholder) in the event of a decision of the remaining shareholders in the general assembly?

4.5 What minority rights (i.e. the rights of a group of shareholders holding a certain minority percentage in the share capital) do shareholders have according to Montenegro corporate law?

4.6 Can a new shareholder enter the SEE-CAO as a shareholder following an increase of the share capital of SEE-CAO?

Can the Articles of Association provide that a lower (than that stipulated in
<p>| | |</p>
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<tbody>
<tr>
<td></td>
<td>Montenegro corporate law) quorum and/or majority of the General Meeting of Shareholders is required for the entry of new shareholders? Can the Articles of Association provide that the consensus (i.e. 100% agreement) of all shareholders is required for the entry of new shareholders?</td>
</tr>
<tr>
<td>5.</td>
<td>Management – Supervisory Board (see section 1.2.3 above)</td>
</tr>
<tr>
<td>5.1</td>
<td>According to Montenegro corporate law for limited liability companies, what kind of management structure can a limited liability company have (e.g. sole or multiple administrators working collectively or each one individually vs management boards working as a corporate body with issue of decisions)? According to Montenegro corporate law, can a limited liability company provide in its Articles of Association to have a two tiered management structure, with one Managing Director and a Supervisory Body, whereby the Supervisory Body will be the ultimate management body issuing binding decisions as concerns the management of the SEE-CAO and binding the Managing Director as to the manner in which he/she must perform his/her executive managerial duties?</td>
</tr>
<tr>
<td>5.2</td>
<td>According to Montenegro corporate law, how is management (i.e. administrators and/or management boards) appointed (during the establishment and thereafter) and revoked?</td>
</tr>
<tr>
<td>5.3</td>
<td>In the event of management boards, what is the minimum and maximum number of members the management board can have and how (by what majority) are decisions taken?</td>
</tr>
<tr>
<td>5.4</td>
<td>According to Montenegro corporate law, can foreign nationals be appointed in the management (i.e. Managing Director, member of the Supervisory Board) of a limited liability company in Montenegro or do they have to be Montenegrin nationals?</td>
</tr>
<tr>
<td>5.5</td>
<td>If foreign nationals can be appointed in the management of limited liability companies, what requirements (if any) do they have in Montenegro?</td>
</tr>
<tr>
<td></td>
<td><strong>General Meeting of Shareholders (GMS)</strong></td>
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<tr>
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</tr>
<tr>
<td>6.1</td>
<td>What corporate matters require GMS decision, according to Montenegro corporate law?</td>
</tr>
<tr>
<td>6.2</td>
<td>What quorum and majority percentages are required for GMS to take decisions outlined in 6.1 above?</td>
</tr>
<tr>
<td>6.3</td>
<td>What is the procedure for convening the GMS?</td>
</tr>
</tbody>
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<table>
<thead>
<tr>
<th></th>
<th><strong>Financing – Loans</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>7.1</td>
<td>Can limited liability companies in Montenegro receive loans from foreign or international banks (e.g. EBRD)?</td>
</tr>
<tr>
<td>7.2</td>
<td>Can limited liability companies in Montenegro receive loans from third parties or their shareholders?</td>
</tr>
<tr>
<td>7.3</td>
<td>In both case above are there any limitations as to the amount of loans a limited liability company can obtain, according to the laws of Montenegro?</td>
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</tbody>
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<table>
<thead>
<tr>
<th></th>
<th><strong>Profits – Fiscal Year – Auditors</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>8.1</td>
<td>According to the laws of Montenegro, can the Articles of Association stipulate that that limited liability company’s profits will never be distributed? According to the laws of Montenegro, can the Shareholders decide at each Annual General Meeting of Shareholders that the profits of that year will not be distributed but remain in the company?</td>
</tr>
<tr>
<td>8.2</td>
<td>What fiscal years can a limited liability company have?</td>
</tr>
<tr>
<td>8.3</td>
<td>What audit obligations does a limited liability company have according to Montenegro law?</td>
</tr>
<tr>
<td>8.4</td>
<td>Can a limited liability company maintain its accounting books according to International Financial Reporting Standards (IFRS)?</td>
</tr>
</tbody>
</table>
### 9. Employment and Social Security

#### 9.1 Can a limited liability company in Montenegro (i.e. the SEE-CAO) hire foreign employees and is there any limitation to the number or amount of foreign employees a company can have (i.e. can a limited liability company in Montenegro, i.e. the SEE-CAO, have only foreign employees?)

#### 9.2 If the limited liability company in Montenegro (i.e. the SEE-CAO) can hire foreign employees, what requirements (if any) do they have in Montenegro (e.g. acquire a work permit, be registered for tax purposes in Montenegro etc.)?

#### 9.3 Please provide brief information on what Montenegro general employment law (not taking into consideration specific collective labour agreements) provides on the following topics:

- a. daily and weekly working hours;
- b. permissible overtime and amount of additional compensation;
- c. working at night or on weekends (the SEE-CAO may operate 24 hours a day, 7 days a week so it will require different shifts);
- d. annual vacation;

#### 9.4 Do employees (foreign and local) working in Montenegro have to be registered for mandatory social security in Montenegro?

What salary withholding tax and social security contributions payable by the employee and the employer for national and foreign employees in the form of fixed fees or a percentage of the gross salary? Is there a ceiling (i.e. maximum) to the amount of social security contributions an employee can pay monthly?

#### 9.5 Are foreign nationals working in Montenegro entitled to get an exemption from Montenegro social security contributions if they have social security from their country?

### 10. Commercial

#### 10.1 Based on the description of the services that will be provided by the SEE-CAO, is there anything in general commercial law in Montenegro that would prevent or
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<tbody>
<tr>
<td>10.2</td>
<td>Are Montenegro limited liability companies allowed to maintain and operate bank accounts in foreign bank outside Montenegro?</td>
</tr>
<tr>
<td>10.3</td>
<td>Are Montenegro limited liability companies allowed to</td>
</tr>
<tr>
<td></td>
<td>a. receive payments in their bank accounts in foreign banks outside Montenegro from foreign companies?</td>
</tr>
<tr>
<td></td>
<td>b. make payments through their bank accounts in foreign banks outside Montenegro to foreign companies?</td>
</tr>
<tr>
<td>10.4</td>
<td>Can limited liability companies in Montenegro sign commercial agreements with foreign companies that are governed by foreign law and stipulating that any dispute arising from the commercial agreement will be settled in a court or arbitration outside Montenegro?</td>
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<td></td>
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<tr>
<td>11.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Taxes</td>
</tr>
<tr>
<td>11.1</td>
<td>Are loans provided to SEE-CAO in Montenegro from local or foreign banks (i.e. foreign or international banks such as EBRD) or foreign companies (i.e. non banks) and the interest paid thereon subject to stamp duty or any other tax, duty or levy?</td>
</tr>
<tr>
<td>11.2</td>
<td>What is the corporate income tax rate for limited liability companies what is the withholding tax rate for dividends paid to foreigners?</td>
</tr>
<tr>
<td>11.3</td>
<td>Can SEE-CAO, as a Montenegro limited liability company, operate with zero profit (i.e. it will operate on cost) whereby there would be no profit to distribute and no profit to tax?</td>
</tr>
<tr>
<td>11.4</td>
<td>What withholding tax rates does Montenegro apply with respect to applicable double tax treaties it has signed with third countries?</td>
</tr>
<tr>
<td>11.5</td>
<td>if the SEE-CAO adopts the &quot;contracting-invoicing vehicle&quot; structure, the SEE-</td>
</tr>
</tbody>
</table>
CAO will issue invoices: (i) to Auction Participants for the allocation of cross border capacity and (ii) to the TSOs for its services on a cost basis in order to cover its annual capital expenditures and working capital needs. Should the above two invoices be subject to Montenegro VAT?

| 11.6 | Following the announcement of the winning bids and the issue of the SEE-CAO’s invoice to the Auction Participants, the TSOs (whose interconnection capacity was allocated by the SEE-CAO) will then issue an invoice to the SEE-CAO for the congestion income they are each entitled to. Payment of this invoice will be effected by the SEE-CAO to the TSOs. In light of the above, are the amounts paid by the SEE-CAO on the invoices issued by the TSOs subject to Montenegro withholding tax, according to Montenegro income tax? |