



Montenegro

Energy Regulatory Agency

Pursuant to Article 68 paragraph 1 of the Energy Law (OGM 5/16 and 51/17), Article 7 of the Rules on Certification of Transmission System Operators (OGM 50/2016) and Article 12 paragraph 1 item 6 of the Statute of the Energy Regulatory Agency (OGM 15/16), acting in the decision-making procedure in respect of the Certification Application of the Crnogorski Elektroprenosni Sistem AD Podgorica (Montenegro Electrical Transmission System JSC Podgorica) no. 6788 dated 20 June 2017, and taking into account the Opinion of the Energy Community Secretariat no. 1/18 dated 27 February 2018, the Board of the Agency, at its session held on 24 April 2018, adopted the following

DECISION

1. The joint stock company Crnogorski Elektroprenosni Sistem, with registered office in Podgorica, Bulevar Sv. Petra Cetinjskog no. 18, registration number with the Central Registry of Business Entities 4-0008972, TIN (ID registration number): 02751372, is issued a certification as an electricity transmission system operator.
2. The Crnogorski Elektroprenosni Sistem is instructed within 12 months following the date of this decision to initiate amendments of the law or an enabling regulation to ensure that the appointment procedures for management bodies of undertakings involved in electricity generation and supply activities are carried out independently from the state administration authority responsible for finance affairs, which proposes management body members of the of transmission system operators.
3. The Crnogorski Elektroprenosni Sistem is instructed within 6 months following the date of this decision to designate a person who will be bound to monitor if the appointment procedure for the management body of the transmission system operator is carried out independently from the appointment procedures for the management bodies of undertakings involved in electricity generation and supply activities, while being bound to inform the Energy Regulatory Agency about any changes.

4. The Crnogorski Elektroprenosni Sistem is to report to the Agency on two-month basis about the activities undertaken in view of meeting the requirements under items 2 and 3 of these enacting terms.
5. Should the Crnogorski Elektroprenosni Sistem fail to meet any of the instructed actions under 2 and 3 of these enacting terms within the established deadlines, the Agency will, pursuant to Article 70 paragraph 4 of the Energy Law, pass a decision to revoke the certification.
6. The Crnogorski Elektroprenosni Sistem is instructed within 15 days following the date of a change material for fulfilment of the certification requirements to inform the Agency thereof.
7. This Decision is published in the Official Gazette of Montenegro and delivered to the Energy Community Secretariat.

Reasoned Statement

Legal Grounds for the Certification Decision

Article 5 of the Law on Cross-Border Exchange of Electricity and Natural Gas (OGM 42/16) envisages that cross-border transmission of electricity may be carried out solely by a certified transmission system operator that has international system cooperation established and provides conditions for operations in energy interconnection.

Article 68 paragraph 1 of the Energy Law (OGM 5/16 and 51/17) envisages that the Agency may issue certification to an electricity transmission system operator that is licensed to carry out transmission activities and satisfies the independence requirements envisaged in Article 136 of this Law; Article 68 paragraph 2 envisages that the fulfilment of the conditions under this Article shall be established in the certification procedure; Article 68 paragraph 3 envisages that the certification procedure is to be initiated upon an application filed by a transmission system operator; Article 68 paragraph 4 envisages that certification appoints a transmission system operator and confirms that the transmission system operator fulfils the conditions in terms of unbundling and independence, the conditions related to financial, material, technical and staff capabilities, as well as any other conditions envisaged by this Law; and paragraph 5 envisages that the contents of the certification application form, evidence accompanying the application form, contents of the certification decision, substance and form of the certification and deadline for the certification finalisation are to be regulated in more details by the rules to be passed by the Agency.

The Rules on Certification of the Transmission System Operators (OGM 50/16) (hereinafter: Rules) entered into force in August 2016.

Procedure Description

Along with the document no. 6788 dated 20 June 2017, registered with the Agency on the same date under 17/1967-1, the Crnogorski Elektroprenosni Sistem AD Podgorica (CGES) filed an application for initiating a procedure of the transmission system operator certification.

The following documents have been enclosed to the Application:

Form S – Certification Application no. 6789 of 20 June 2017

- 1) Memorandum of Association,
- 2) Decision on Restructuring through Spin-Off rendered by the Shareholders Meeting of Elektroprivreda Crne Gore AD Nikšić, no. 10-00-3204 dated 23 March 2009;
- 3) Statute of the Crnogorski Elektroprenosni Sistem AD, Podgorica, June 2012;
- 4) Extract from the Central Register of Business Entities, evidence S-IV-2;
- 5) Act on Assigning the Performance of Activities of Common Interest, evidence S-IV-3;
- 6) Annual Financial Report with auditor's report, evidence S-IV-4;
- 7) Ownership and other rights over the network, evidence S-IV-5;
- 8) List of licences, permits and/or other authorisations of the CGES to carry out energy business in Montenegro and/or other countries, evidence S-IV-6;
- 9) List of co-owners/shareholders, evidence S-IV-7;
- 10) List of co-owners/shareholders from third countries, evidence S-IV-8;
- 11) List of legal entities directly or indirectly controlled by the CGES, evidence S-IV-9;
- 12) List of other energy entities related to the CGES, evidence S-IV-10;
- 13) List of licences, permits and/or other authorisations possessed by the parties under 7) and 8) of the Certification Application (S Form) to carry out energy business in Montenegro and/or other countries, evidence S-IV-11;
- 14) Acts regulating work organisation of the management body of the Crnogorski Elektroprenosni Sistem AD, evidence S-IV-12;
- 15) List of the members of the management body referred to in items 7 and 8 (Certification Application – S Form), evidence S-IV-13;
- 16) Decision on appointment of the members of the Board of Directors of the Crnogorski Elektroprenosni Sistem AD, evidence S-IV-14;
- 17) Decision on appointment of the Chief Executive Officer of the Crnogorski Elektroprenosni Sistem AD, evidence S-IV-15;

- 18) Statement on the Director and other persons authorised to act as representatives, evidence S-IV-16;
- 19) Rulebook on Business Secrecy of the Crnogorski Elektroprenosni Sistem AD Podgorica, evidence S-IV-17;
- 20) Statement on Employees, evidence S-IV-18;
- 21) Statement on the representatives of public authorities having direct or indirect control or interest right with the CGES, evidence S-IV-19;
- 22) Method for fulfilling the provisions on independence (Articles 135 and 136 of the Energy Law), evidence S-IV-20;
- 23) Specification of energy facilities comprising the transmission system, evidence S-IV-21;
- 24) SE/G Form – Certification Application, and
- 25) Evidence SE/G-2, Statement on the control and ownership over the transmission system operator.

Following the filing of the Application, the 7th ordinary session of the Shareholders Meeting of the CGES was held on 29 June 2017, where acts different from those filed along with the Application were adopted, and for this reason the Applicant was asked to provide the amended data and documents.

Along with the act no. 8051 dated 20 July 2017 registered with the Agency under 17/1967-5, the CGES submitted additional documents, as follows:

- 1) Extract from the Tax Authority Central Register of Business Entities no. 4 - 0008972/014 dated 10 July 2017 (Evidence S-IV-2);
- 2) Financial Statements of the CGES for 2016, including the auditor's report (Evidence S-IV-4);
- 3) Decision by the Shareholders Meeting on the appointment of the members of the Board of Directors no. 10-00-7203/1 dated 29 June 2017 (Evidence S-IV-14);
- 4) Statement on the Director and other persons authorised to act as representatives, (Evidence S-IV-16/1);
- 5) Statement on the representatives of public authorities having direct or indirect control or interest right with the CGES /Evidence S-IV-19/, and
- 6) Act by the Ministry of Finance no. 01-10677 dated 29 June 2017, as evidence that pursuant to the provisions of Article 135, paragraph 3 of the Energy Law, this authority autonomously and directly proposed the members of the management body of the transmission system operator.

In another three occasions - on 28 September and 6 and 12 October the Agency asked for additional documents, which the CGES submitted along with the letters registered with the Agency under 17/1967-12, 17/1967-13 and 17/1967-15, as follows:

- 1) Statement on Independence of the TSP IT system in relation to energy undertakings carrying out electricity generation and supply activities;
- 2) Supplement to Evidence S-IV-9 (List of legal entities under direct or indirect control of the CGES);
- 3) Qualification structure of the employees showing the level and type of educational-vocational qualifications;
- 4) Evidence of passed professional exams, or work capability exams, and
- 5) Request for facility registration, no. 10738/1 dated 9 October 2017, registered with the Real Estate Administration RU Kotor under 5954-106-268 dated 13 October 2017.

Having reviewed the submitted documentation, the Agency drew a conclusion that the Application analysis for rendering an interim decision may commence and thus, on 20 October 2017 the Agency rendered the Interim Decision no. 17/1967-17 on certification of the CGES as a transmission system operator. On 27 October 2017, pursuant to the Law on Cross-Border Exchange of Electricity and Natural Gas (Article 6 paragraph 2) and the Certification Rules (Article 8 paragraph 2), the Agency submitted the Interim Decision to the Energy Community Secretariat to provide an opinion.

Pursuant to Article 3 (1) of the Regulation (EC) no. 714/2009 and Article 10 (6) of the Directive 2009/72/EC, the Energy Community Secretariat provided the Opinion no. 1/18 dated 27 February 2018, where it is stated that the Secretariat supports the CGES certification in accordance with the Interim Decision, with a note that the Agency is required to:

- 1) monitor if two substations SS 110/35 kV Kotor and SS 110/10 kV Kličevo are registered with the cadastre;
- 2) examine in what way and to whom dividend is paid and how CGES, EPCG and Montenegro Bonus auditors are commissioned;
- 3) examine the role and possible or potential *de iure* or *de facto* influence of the Government and the Prime Minister in relation to the Ministry of Finance;
- 4) demand that independence and avoidance of conflict of interest between the Ministry of Finance and the Government and/or Prime Minister are ensured by appropriate measures, e.g. through an enabling regulation and appointment of a compliance officer and enforcement of the compliance programme;
- 5) examine the CGES independence in relation to undertakings where the CGES has financial or other interests;
- 6) examine the independence in the control over the CGES in relation to other related undertakings founded by the state, particularly Montenegro Bonus, and, if

required, demand appropriate measures to ensure independence and avoidance of conflicts of interest;

- 7) examine the independence of the CGES shareholders save the state, in particular EMS, and other minority shareholders (Robotti Global Fund United States of America and Langston Shipholding LTD – Liberia) from undertakings for generation and/or supply, and if necessary, demand appropriate measures to ensure independence and avoidance of conflicts of interest.

In accordance with the mentioned requirements by the Energy Community Secretariat, upon the request by the Agency the CGES submitted the following documents:

- 1) Decision by the Shareholder Meeting on the appointment of the members of the Board of Directors no. 10-00-13773/1 dated 15 December 2017 (Evidence S-IV-14);
- 2) Decision on the appointment of the Chief Executive Officer no. 10-00-13777 dated 15 December 2017 (Evidence S-IV-15);
- 3) Statement on the Director and other persons authorised to act as representatives (Evidence S-IV-16/1);
- 4) Statement on the representatives of public authorities having direct or indirect control or interest right with the CGES (Evidence S-IV-19);
- 5) Act by the Ministry of Finance no. 01-20604/1 dated 8 December 2017, as evidence that pursuant to the provisions of Article 135, paragraph 3 of the Energy Law, the state administration authority responsible for finance affairs autonomously and directly proposed the members of the management body of the transmission system operator, who were elected on 5th extraordinary session of the Shareholder Meeting held on 15 December 2017, and designated a proxy for such session;
- 6) Resolution by the Real Estate Administration – Regional Unit Kotor no.: 954-106-UPI-2682/17 dated 25 October 2017, in conjunction to entering the substation SS 110/35kV Kotor into possession of the CGES;
- 7) Extract from the Tax Administration Central Register of Business Entities dated 10 January 2018 (Evidence S-IV-2);
- 8) Dividend payment procedure and the Decision by the Shareholder Meeting on dividend payment for 2011 and 2012;
- 9) Decision by the Real Estate Administration – Regional Unit Nikšić no.: 954-103-UPI-1013/18 dated 26 March 2018, in conjunction to entering the substation SS 110/35kV Kličevo into possession of the CGES.

Based on the provided documents, the Agency commenced the procedure to establish the conditions justifying the Application for the CGES certification as a transmission system operator and accordingly analysed the provided documents and based on such analysis and taking into account the Opinion of the Energy Community Secretariat, it established the facts as follows.

1. CGES and other energy undertakings under the control of Montenegro

1.1. CGES

CGES Basic Information

Until the end of March 2009, the business and management activities of the electricity transmission system were carried out within the vertically integrated undertaking - Elektroprivreda Crne Gore AD Nikšić (EPCG), as the only undertaking in Montenegro where all energy activities were carried out.

The joint stock company Prenos Podgorica was established by virtue of the Decision on Restructuring through Spin-Off no. 10-00-3204 passed by the EPCG Shareholders Meeting on 23 March 2009. The restructuring was carried out in accordance with the provisions of Articles 22, 22a, 22b, 22v, 22g of the Law on Business Organisations (OGRM 6/2002 and OGM 17/2007, 80/2008, 40/2010), in the way that the existing company (EPCG) transferred the property required for performance of electricity transmission activities to the newly established company (Akcionarsko Društvo Prenos Podgorica, subsequently CGES), and that the EPCG is not a member of the newly established company and has no financial, management or other rights over the newly established company or its shareholders.

The company acquired the capacity of a legal entity on 27 March 2009 when it was registered with the Central Register of Business Entities under 4-0008972/001 and named – Joint Stock Company Prenos Podgorica, as specified in the aforementioned Decision on Restructuring.

Article 17, paragraph 1 of the Law on Business Organisations envisages that a joint stock company is a company of physical persons or legal entities established for the purpose of carrying out business activities, and its equity is split into shares. Pursuant to Article 17, paragraph 1 of the Law on Business Organisations this company is a legal entity which is fully detached from shareholders in terms of its assets and liabilities and is liable for its obligations to the extent of all its assets. Pursuant to Article 17, paragraph 1 of the Law on Business Organisations, shareholders are not to forgo their assets to cover the liabilities of the company.

At the first ordinary session of the Shareholders Meeting held on 25 June 2010 a decision was passed on the change of the name of the Company, and thus, since 2 July 2010, when this change was registered with the Central Register of Business Entities, the Applicant has been operating as a joint stock company “Crnogorski Elektroprenosni Sistem“. The registered office of the Company is in Podgorica, at Bulevar Svetog Petra Cetinjskog no. 18. The prevailing business of the Company is electricity transmission – business activity code: 3512.

CGES is a company with the State of Montenegro as a majority owner. The company's ownership structure as of 31 December 2016 is as follows:

- State of Montenegro is the owner of 55.00%,
- Terna Rete Elettrica Nazionale S.p.A. is the owner of 22.0889%,

- AD Elektromreže Srbije – Beograd is the owner of 10.0141% (the shares of this company are recorded in the statement from the Central Depository Agency register at the NM – Consolidated Custody Account 7).
- Other custodial accounts, funds and other legal persons own 5.3407% of the share capital,
- While natural persons own 7.5563% of the share capital.

In the course of making this decision, the CGES submitted the data on the ownership structure as of 31 December 2017:

- State of Montenegro is the owner of 55.00%,
- Terna Rete Elettrica Nazionale S.p.A. is the owner of 22.0889%,
- AD Elektromreže Srbije – Beograd is the owner of 10.0141% (the shares of this company are recorded in the statement from the Central Depository Agency register at the NM – Consolidated Custody Account 7).
- Other custodial accounts, funds and other legal persons own 5.1568% of the share capital,
- While natural persons own 7.7402% of the share capital.

Pursuant to Articles 30, 31 and 32 of the Law on Business Organisations, the shareholders of joint stock companies such as the CGES, have property and non-property rights proportional to the ownership interest in the CGES equity.

Therefore, there is no legal or statutory option for third legal entities or physical persons, save the shareholders themselves, to perform **de facto** and **de jure** control over the performance and operations of the CGES

The Extract from the Central Register of Business Entities no. 4-0008972/014 dated 10 July 2017 has been reviewed, and it specifies that the prevailing business of the company is electricity transmission in internal and international markets (registered under the code: 3512).

In 2010 the Republic of Italy and the State of Montenegro entered into an inter-state agreement to state their institutional support and agreement on the construction and operation of the new interconnection system and implementation of the Strategic Partnership. The mentioned agreement, inter alia, specifies that Terna Rete Elettrica Nazionale S.p.A. (Terna) is responsible for the construction of the new interconnection, which will be under the ownership of Terna and make an integrated part of the Italian transmission network (as public infrastructure), and the CGES is responsible for the construction of related network infrastructure, which will be under the ownership of the CGES and make an integrated part of the Montenegrin transmission network (as public infrastructure). Based on the mentioned agreement, in 2011 the State of Montenegro, Terna and CGES entered into the Strategic Shareholder Agreement¹ to specify the rights and obligations of Terna and CGES as strategic partners in details.

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<https://www.google.me/url?sa=t&source=web&rct=j&url=http://www.minekon.gov.me/ResourceManager/FileDownload.aspx%3Frid>

The Energy Law establishes that energy business activities may be carried out based on a license issued by the Agency. The CGES is a holder of the Licence for carrying out the business activity of electricity transmission, entered in the register of issued licences under L–E–007 with validity expiry date 29 July 2019. This License establishes that it is issued for carrying out the electricity transmission activities and includes the conditions that an energy undertaking has to fulfil in carrying out the activities for which the license is issued.

According to Article 48 of the Energy Law, the Agency has legal authorisations to monitor and supervise the work and operations of energy undertakings in terms of meeting the conditions established in the license, particularly with regard to the operator's independence and account unbundling (paragraph 1 item 11 of the mentioned Article).

CGES Bodies

In line with the Law on Business Organisations and the Statute of the CGES, the CGES bodies are as follows: Shareholders Meeting, Board of Directors, Chief Executive Officer and Secretary of the Company.

- Meeting of the joint stock company

According to Article 34 paragraph 2 of the Law on Business Organisations, an Meeting of joint stock company is a body of owners, and its establishing is mandatory. This Shareholders Meeting is not elected, has no term mandate and may not be dissolved. It is comprised of shareholders, as owners of invested equity, or their representatives and its authority and legitimacy are not underpinned by election majority but ownership. Such a composition determines the Shareholders Meeting as hierarchically the highest body of the company. The hierarchical position of the Shareholders Meeting is confirmed and manifested through its powers, its position derives from its status (appointment and dissolution of the body, status changes of the company) and property (disposal and distribution of capital and profit) authorisations, which are capital in terms of importance (Article 35 of the Law on Business Organisations). But, although the Meeting is hierarchically the highest body of the company, it does not mean it is the most important body for the operations of the company. It is not an expert leading body, given that it is not an expert, professional body. Authorities of the Shareholders Meeting are, by nature, periodical and extraordinary, not current or operational. The position of the highest body of the company does not give a right to the Shareholders Meeting to assume under its powers what is by law or statute established as powers of another body which is subordinated to it in terms of status. Therefore, the hierarchical position of the Shareholders Meeting, although ownership-based and undisputable, is functionally limited.

The Shareholders Meeting (Article 35 of the Law on Business Organisations) is comprised of the shareholders of the Company. Every shareholder has a number of votes equal to the number of shares they own. Shareholders Meeting sessions are attended by shareholders personally or by their proxies.

Article 19 of the Statute envisages that the share capital of the Company amounts to €155,108,283.12, whereas Article 20 specifies that the share capital of the Company is divided into 146,176,876 shares and all the shares of the Company are *ordinary* voting shares in dematerialised form. Article 21 of the Statute establishes that a share is an ownership interest in the Company, consisting of management rights, right to take part in profit distribution and other rights established by the law and the Statute.

The powers of the Shareholders Meeting of the CGES are envisaged by the Law and the Statute of the Company (Article 35 of the Law on Business Organisations). The Statute of the CGES regulates the issues of significance for business operations and organisation of this company (Art. 13 and 52 of the Statute), i.e. issues that are by the Law on Business Organisations (Article 19) specified to be regulated by the Statute, as well as the issues of joint interest for the Company and its shareholders.

Exclusive right of the Shareholders Meeting is to: adopt the Statute of the Company and its amendments; appoint and discharge the members of the Board of Directors; appoint and discharge the Company's Auditor; appoint and discharge the liquidator of the Company; render decisions on disposing of the Company's assets (purchase, sale, lease, replacement, acquisition or other way of disposal) with the value exceeding 10% of the book value of the Company's assets (high value assets); render the decision on issue of bonds, options or other securities or instruments allowing the right of subscription and/or the right of ownership over the Company's shares or any other party under its control, or grant the right to purchase shares of the Company or any other entity under its control; render decision on distribution of profit (dividends), reserves or assets of the Company to shareholders or on dividend policy, or redemption of equity securities of the Company and coverage of losses; render decision on the increase or decrease of the Company's equity and replacement of shares of one class for shares of another class; adopt the annual financial statement and operating statement of the Company; adopt decision on establishing new business organisations with initial capital amounting over 1% of the core capital of the Company; render decision on restructuring of the Company; render decision on voluntary liquidation of the Company or submission of the proposal for initiating a bankruptcy procedure or initiating another procedure in accordance with the law regulating bankruptcy procedure; render decision on the remuneration policy and the remunerations to the members of the Board of Directors; render decision on restricting or annulling the right of pre-emption of shareholders to subscribe or acquire replaceable bonds; approve entering into agreements with regard to the purchase of assets from the founder or a majority shareholder of the Company in all cases where disbursements exceed 10% of the book value of the Company's assets; dispose of the Company's operations or any other part of Company's operations, or in any other way dispose of any part of the Company or establish security over any part of the Company's assets, which exceed 10% of the Company's assets, or any other entity

controlled by the Company, as shown in the current balance sheet of the Company, i.e. entity controlled by the Company, confirmed by the Auditor; render investment decisions of value over 10% of the book value of the Company's assets; decide about delisting of the Company's shares from the stock exchange; upon the request of the Board of Directors consider issues under its power related to the operations of the Company; adopt its Rules of Procedure; decide on other issues as established by the Law and the Statute.

- Board of Directors

Pursuant to the Law on Business Organisations (Article 34, paragraph 3), the Board of Directors is a governing and managing body of the company, whose decisions are executed by the company's secretary and the chief executive officer. The provision of Article 34 paragraph 4 of the Law on Business Organisations determines the nature of the Board of Directors as a mandatory body of a joint stock company. It is determined as a governing and managing body of the company. Thus, the Board of Directors is the most important body for the operations of the company.

The CGES Board of Directors has seven members, of which four are the government representatives, two are Terna representatives and one is a representative of minority shareholders.

Pursuant to the Law on Business Organisations (Article 42 paragraph 5), the term of office of the members of the Board of Directors expires on the first ordinary annual meeting of shareholders.

Pursuant to Article 34 paragraph 3 and Article 43 of the Law on Business Organisations, and Article 45 of the Statute, the CGES Board of Directors is empowered to govern and manage the Company, supervise the current operations and have the central role in the corporate management system.

Pursuant to the mentioned Article of the Statute, the Board of Directors has the following powers to: convene the Annual and Extraordinary Shareholders meetings; prepare proposal decisions for the Shareholders meetings and execute its decisions; adopt the Company's Business Plan or any material amendments thereof and provide guidance for their implementation; adopt annual budget of the Company or any material amendments thereof and provide guidance for their execution; adopt investment development plans of the Company, including construction plans (and any material changes) relating to the Associated Network Infrastructures and the Additional Network Infrastructures, including but not limited to any provisions of such plans for the procurement of relevant materials; determine the internal organisation and systematisation of the Company; determine the structure and composition of the management and administration of the Company; adopt periodical and establish annual financial statements of the Company; establish annual business report of the Company; propose the distribution of profit, dividends, reserves, assets and coverage of losses; approve any transaction (investment, disposal of assets, loan borrowings) the value of

which does not exceed 10% of the book value of the Company's assets; approve entering into agreements that are not under the powers of the Shareholders Meeting; adopt general acts under its powers; appoint the Chairman and Deputy Chairman of the Board of Directors; appoint and discharge the Chief Executive Officer and the Secretary of the Company; propose the Auditor of the Company and change of the Auditor before the expiry of their terms; appoint, discharge and determine the authorities and responsibilities of the management members; appoint the members of the Audit Board; adopt the report on the inventory of the Company's assets and liabilities; propose establishment of new business organisations whose initial capital is less than 1% of the Company's equity; appoint representatives to the Company's corporate bodies and give them binding guidelines and instructions to adhere to; decide on business cooperation and connectivity with other companies; adopt its Rules of Procedure; appoint working bodies and committees of the Board of Directors; decide on other issues not specified in the Law on Business Organisations and the Statute as attributed to the exclusive powers of the Shareholders Meeting, the Chief Executive Officer or the Secretary.

Article 50 of the Company's Statute envisages that the Board passes decisions by simple majority of votes of the Board members attending the session unless the decisions of the Board are related to reserved matters, in which case minimum six members are required to vote in favour of a decision. The domain of the reserved matters includes the decisions of the Board that are, inter alia, related to the approval of the Company's Business Plan, annual budget, development plan, construction plan, financial borrowings of any kind exceeding €250,000 and other decisions referred to in the mentioned Article.

Accordingly, it is established that material management decisions are passed if supported by the votes of minimum six members of the Board, implying that government representatives may not autonomously decide in respect of such decisions although they have majority in the Board.

- Chief Executive Officer

Pursuant to Article 45 paragraph 1 item 16 of the Statute, the Chief Executive Director is appointed and discharged by the Board of Directors.

Chief Executive Officer manages the Company and organises day-to-day operations of the Company, represents the Company and acts on its behalf, ensures and is responsible for the legality of the Company's operations. The powers and responsibilities of the Chief Executive Officer are established by Article 52 of the Statute and a special agreement entered into with the CGES Board of Directors. Chief Executive Officer is to execute instructions given by the Board of Directors and implement its decisions related to the CGES operations and is accountable to the Board of Directors for his/her work.

The submitted documents include the Statement on the powers of the Chief Executive Officer established by the Statute, job description of the Chief Executive Officer and the

statement of the Chief Executive Officer that he/she is not involved in carrying out electricity and/or gas generation and/or supply business activities.

On the occasion of submitting the documents required for the development of the Interim Decision, the Applicant submitted the document no. 01-10677/1 dated 29 June 2017, where the Ministry of Finance, pursuant to the provisions of Article 135 paragraph 3 of the Energy Law, proposed four members of the CGES Board of Directors. The same document also proposed a proxy of the Ministry of Finance for the CGES Shareholders meetings.

Based on the Decision by the Shareholders Meeting on the appointment of the members of the Board of Directors of the Crnogorski Elektroprenosni Sistem AD, No 10-00-7203/1 dated 29 June 2017 (evidence S-IV-14), it has been established that the persons proposed by the Ministry of Finance were appointed as the members of the Board of Directors. The Agency has reviewed the records of the Central Registry of Business Entities publicly available, for the purpose of determining whether the same persons are the members of both the Board of Directors of CGES and the Board of Directors of EPCG, and thus fulfilled the requirement specified in Article 136 of the Energy Law.

After the adoption of the Interim Decision, pursuant to Article 6 paragraph 2 of the Certification Rules, the CGES provided information and evidence of the change in the structure of the management bodies to the Agency.

Provided was the act of the Ministry of Finance dated 8 December 2017, in which, pursuant to the provisions of Article 135 paragraph 3 of the Energy Law, the Ministry of Finance proposed directly and autonomously, without seeking opinion or guidance from the Government Vesna Bračanović, Tamara Ivković, Zoran Miljanjić and Zoran Rakočević as the members of the Board of Directors of the CGES.

In the same document, the Minister of Finance designated Tamara Ivković to be the proxy for the 5th extraordinary meeting of shareholders of the CGES.

Based on the above mentioned act of the Ministry of Finance, at the 5th extraordinary Shareholder meeting held on 15 December 2017 Vesna Bračanović, Tamara Ivković, Zoran Miljanjić and Zoran Rakočević were appointed as the members of the CGES Board of Directors as the state capital representatives.

At the same session, Giovanni Cerchiarini and Carlo Crea were appointed as Terna representatives, while Jelena Matejić was appointed as the representative of the Joint Stock Company Elektromreža Srbije – Beograd (EMS) and minority shareholders.

Submitted was also the Decision of the CGES Board of Directors on the appointment of the Chief Executive Officer in which, pursuant to Article 52 of the Statute, the Board of Directors appointed Dragan Kujović as the Chief Executive Officer at the session held on 15 December 2017, as well as the Statement by the Chief Executive Officer that he does not participate in performing energy activities – electricity generation and/or supply.

1.2. EPCG

As for the EPCG, which is engaged in the electricity generation and supply, the representative of the state capital i.e. the proxy for the Shareholders meeting of EPCG is appointed by the Government of Montenegro, which has been established based on the review of the Conclusion of the Government of Montenegro on proxy appointment dated 24 January 2017. The state capital representatives and the proxy for the Shareholder meeting of the EPCG are proposed to the Government of Montenegro by the Commission for HR and Administrative Matters, in line with Article 14 of the Rules of Procedure of the Government of Montenegro (OGM 3/2012, 31/2015 and 48/2017), at proposal by the Ministry of Economy, which has been established based on the review of the acts of the Commission for HR and Administrative Matters of the Government of Montenegro, no. 07-003-4111/2 and 07-003-4112/2 of 28 December 2017.

Based on the review of the ownership structure of the Elektroprivreda Crne Gore (EPCG), which performs electricity generation and supply activities, it has been established that the State of Montenegro is the owner of 57.02% of shares, Italian company A2A S.p.A. is the owner of 41.75% and minority shareholders are the owners of 1.23% shares.

In response to the request by the Energy Community Secretariat that the Agency is to examine the independence in the control over the CGES in relation to other related companies founded by the state, in the course of making this Decision the Agency asked the EPCG to supplement the documents, i.e. the decision on appointment of the management body. Acting in respect of the request, the EPCG provided the Decision no. 10-00-61230 dated 30 December 2017, in which, pursuant to Article 35 paragraph 2 item 2 of the Law on Business Organisations and Article 36 paragraph 2 item (ii) of the Statute of EPCG, at the 15th ordinary Shareholder meeting, Đoko Krivokapić, Ranko Milović, Ljubo Knežević, Samir Hodžić, Francesco Becchelli, Oreste Bramanti and Massimo Tiberga were appointed as the members of the EPCG Board of Directors.

The EPCG also submitted the Decision no. 10-00-35314 of 20 July 2017 on the appointment of the Chief Executive Officer, in which, based on Article 43 paragraph 3 of the Law on Business Organisations and Article 52 paragraph 2 item (xiii) of the EPCG Statute, the EPCG Board of Directors at its 6th session appointed Igor Noveljić as the Chief Executive Officer.

1.3. Montenegro Bonus

The members of the Board of Directors of Montenegro Bonus, based on the ownership structure of the Government in the overall capital of this company, are proposed by the Commission for HR and Administrative Matters, in line with Article 73 of the Law on Business Organisations which envisages that for a limited liability company Shareholders Meeting is not a mandatory body of the company, in conjunction with Article 5 of the Statute which envisages that the bodies of the company are the Board of Directors and Chief Executive Officer, and the members of the Board are appointed by the founder which in this specific case is the Government of Montenegro.

In line with the conclusions of the Energy Community Secretariat that the Agency is to examine the independence in the control over the CGES in relation to other energy

undertakings founded by the State of Montenegro, i.e. Montenegro Bonus, the Agency asked this company to provide evidence of appointment of the management body of this company. Accordingly, Montenegro Bonus provided the information that such bodies are the Montenegro Bonus Board of Directors and the Chief Executive Officer. The Board of Directors is a body that governs and manages the company, and its decisions are executed by the Chief Executive Officer.

The founder of Montenegro Bonus is the Government of Montenegro and it appoints the Board of Directors which counts five members, and the Board of Directors elects, appoints and discharges the Chief Executive Officer.

Montenegro Bonus provided the Resolution no. 08-1274/3 of 28 April 2016, in which based on Article 77 of the Law on Business Organisations and Article 11 of the Statute of this Company, the Government of Montenegro elected Miroslav Ivanišević, Dragan Janković, Jovo Rabrenović, Rajko Kovačević and Andrija Ivanović as the members of the Board of Directors.

For the purpose of specifying the role of Montenegro Bonus, as an energy undertaking, in the potential control over the CGES, the Agency has reviewed the Statute (Article 6) of this Company and established that the basic business activity of this company is the trade in solid, liquid and gaseous fuels and similar products. In accordance with the Law (Article 65), the Agency issued this Company a license to carry out the wholesale trade activity in oil derivatives, transport and storing of liquefied oil gas.

This Company is also registered for carrying out the activity of electricity supply (Article 6 Statute) for which activity, also in line with the Law, on 28 September 2012, the Agency issued this Company a licence for electricity supply with validity period until 27 September 2027.

Based on the operating data for 2017, which according to the obligations envisaged in the License an undertaking is to submit to the Agency, it has been established that Montenegro Bonus as of 31 May 2017 does not carry out electricity supply, and therefore it has no agreements concluded, i.e. has no business cooperation with the transmission system operator.

Based on the above information on the persons appointed in the management bodies of the CGES, EPCG and Montenegro Bonus, it is evident that there are no same persons in the management bodies of these companies.

1.4. Crnogorski Operator Tržišta Električne Energije DOO

The Energy Law from 2010 (Article 94 paragraph 4) specifies that the Government of Montenegro establishes the electricity market operator. In line with the mentioned legal provision, the Government of Montenegro passed the Decision no. 03-10685 of 16 December 2010, on establishing the limited liability company “Crnogorski Operator Tržišta Električne Energije” (COTEE). The Decision (Article 6) specifies that the business activity of this Company is to be the electricity market organisation and management in the territory of Montenegro. Article 12 of the Decision envisages that the bodies of the Company are the Board of Directors and the Chief Executive Officer, and Article 14 envisages that the Board of Directors has three members who are appointed

by the Government at proposal of the administrative authority responsible for energy affairs, i.e. Ministry of Economy. Article 15 of the Decision envisages that the Board of Directors elects the Chief Executive Officer with the consent of the Government.

On 23 December 2011, the Energy Regulatory Agency issued a license to the Market operator for the business activity of electricity market organisation and management.

This Company is in no possession of the license for carrying out the business activity of electricity generation and supply.

2. Assessment of compliance with unbundling criteria

2.1. Ownership over the Transmission System

Article 111 paragraph 1 of the Law establishes that the electricity transmission system operator is to carry out transmission of electricity business activity and manage the electricity transmission system under the conditions specified in the license and certificate based on principles of impartiality, transparency and non-discrimination.

The same Article paragraph 2 establishes that the electricity transmission system is comprised of 110 kV installations, 110/x kV/kV transformers and 110 kV lines, as well as of installations, transformers and lines of higher voltage level, extending to the connection points of system users, and it is comprised of facilities, telecommunication and IT equipment and other infrastructure required for its functioning; whereas paragraph 5 envisages that Electricity Transmission System Operator is not to carry out both the activity of generation of electricity and the activity of electricity supply.

Based on the mentioned Articles of the Law, which are harmonised with Article 9(1)(a) of the Directive 2009/72/EC that envisages that each undertaking that is an owner of the transmission system acts as a transmission system operator, it is unambiguous that the CGES as a transmission system operator is the owner of the infrastructure required for performance of the business activity of electricity transmission.

Based on the Restructuring Decision, the EPCG transferred the property required for performance of the business activity of electricity transmission to the CGES. As ownership evidence, the CGES submitted Deeds of Title within the evidence S-IV-5, Ownership and other rights over the network.

The Law on State Survey and Cadastre, Article 10, envisages that the data on real estate and rights over them, registered with the real estate cadastre, are considered accurate and no one can suffer harmful consequences in the sale of real estate and other relations where such data is used.

The CGES submitted ownership evidence for:

- 23 substations: SS 400/220/110kV Pljevlja 2, SS 400/110kV Podgorica 2, SS 220/110/35kV Podgorica 1, SS 400/110/35kV Ribarevina, SS 220/110/35kV Mojkovac, SS 110/35kV Nikšić, SS 110/35kV Herceg Novi, SS 110/35kV Tivat, SS 110/35kV Budva, SS 110/35kV Bar, SS 110/35kV Ulcinj, SS 110/35kV Cetinje, SS 110/35kV Danilovgrad, SS 110/10kV Podgorica 3, SS 110/10kV Podgorica 4, SS 110/35kV Berane, SS 110/35kV Pljevlja 1, SS 110/35kV Vilusi, SS 110/35kV Andrijevica, SS 110/35kV Virpazar, SS 110/10kV Podgorica 5, SS 110/35kV Kotor and SS 110/10kV Kličevo;

Also, the Applicant presented the list of cable power lines within the Evidence S-IV-5. It is pointed out that the Montenegro state authority responsible for administrative affairs has no a cadastre of power lines established, therefore the Agency accepted the fact that they are recorded as fixed assets in the Balance Sheet as evidence that the cable power lines are under the ownership of the CGES, as follows:

- five 400kV overhead power lines in the total length of 284.3 km: Podgorica 2 – Trebinje, Podgorica 2 – Ribarevine, Ribarevine - Kosovo B, Ribarevine - Pljevlja 2 and Podgorica 2 – Tirana;
- eight 220kV overhead power lines in the total length of 337.4 km: HPP Perućica – Trebinje, Podgorica 1 - HPP Perućica, Podgorica 1 – Albania, Podgorica 1 – Mojkovac, Mojkovac - Pljevlja 2, Piva - Pljevlja 264, Piva - Pljevlja 265 and Piva - Lukavica (Buk Bijela);
- twenty-eight 110kV overhead power lines, in the total length of 505.1 km: Podgorica 2 – Virpazar, Virpazar – Bar, Podgorica 2 – Budva, Podgorica 1 - Podgorica 3, Podgorica 2 - Podgorica 4, Podgorica1 - Podgorica 2 I, Podgorica1 - Podgorica 2, II, Podgorica 2 - KAP I, Podgorica 5 - KAP I, Podgorica 2 - KAP II, Podgorica 2 - KAP III, Bar – Budva, Bar – Ulcinj, Budva – Cetinje, Budva – Tivat, Podgorica 2 – Cetinje, Tivat - Herceg Novi, Herceg Novi – Trebinje, Perućica – Danilovgrad, Perućica - Nikšić 3, Podgorica – Danilovgrad, Podgorica - EVP Trebešica, EVP Trebešica – Andrijevica, Andrijevica – Berane, Berane – Ribarevine, Ribarevine – Mojkovac, Nikšić – Bileća and Pljevlja 1 - Pljevlja 2;
- 110kVm cable line, 3.6 km long: Podgorica 3 - Podgorica 5;
- two double circuit 110kV overhead lines, in the total length of 58.9 km: Perućica – Podgorica lines II and III and Perućica - Nikšić lines I and II, and
- five 110kV overhead power lines, which temporarily operate under the voltage of 35 kV, in the total length of 121.2 km: Pljevlja 1 - Čajniče (Goražde), Nikšić – Brezna, Pljevlja 1 – Žabljak, Berane – Rožaje and Ribarevine – Nedakusi.

In the procedure of passing the Interim Decision, the Deeds of Title for two substations SS 110/35 kV Kotor and SS 110/10 kV Kličevo that were constructed in 2017, haven't been provided given that the procedure for registration with the real estate cadastre was in progress.

In response to the Opinion of the Energy Community Secretariat asking the Agency to monitor if the substations SS 110/35 kV Kotor and SS 110/10 kV Kličevo have been registered with the real estate cadastre, upon the request by the Agency the CGES submitted:

- Resolution no. 954-106-UPI-2682/17 of 25 October 2017, by the Real Estate Administration, Regional Unit Kotor, allowing the registration of the change in the way that the SS Kotor and the land on which it is constructed are registered as the ownership of the CGES.
- Resolution no. 954-103-UPI-1013/18 of 26 March 2018, by the Real Estate Administration – Regional Unit Nikšić, allowing entering of the substation SS 110/35kV Kličevo into possession of the CGES.

Given that after the Interim Decision has been made, the CGES registered the two substations with the real estate cadastre, the position of the Energy Community Secretariat regarding the obligation of the Agency to monitor if these substations have been registered with the cadastre, has been fully satisfied, and the obligation of the CGES has met the requirements regarding the technical capabilities, i.e. possession of the overall infrastructure for carrying out the business activity of electricity transmission.

2.2 CGES as a transmission system operator

The CGES carries out the business activity of electricity transmission as a transmission system operator (Article 111 of the Law) and is to manage the electricity transmission system in accordance with the license and certificate conditions, based on principles of impartiality, transparency and non-discrimination. The same Article (paragraph 5) envisages that the electricity transmission system operator must not carry out both the activity of generation of electricity and the activity of electricity supply.

The Law (Article 112) envisages that the transmission system operator is to ensure long-term system capacity to meet realistic requirements for electricity transmission, or ensure operation, maintenance, improvement and development of the transmission system in a specific region and its connecting with other systems, and to ensure long-term system capacities to meet the demands of the system users.

Technical capabilities of the CGES

As already mentioned, this Company has technical capabilities, which is concluded based on the evidence of facilities and capacities it owns, ownership and other rights over them.

Also, the CGES submitted the statement on independence of the IT system of the transmission system operator from the IT systems of energy undertakings performing the business activity of electricity generation and supply, where it is stated that the IT system of the transmission system operator is independent so it cannot be accessed or used by energy undertakings that carry out the business activity of energy generation and supply, or their related parties.

In the procedure of passing this Decision, the CGES submitted data on IT systems, as follows:

- Technical IT systems:
 - SCADA (*Supervisory Control And Data Acquisition*) is a system for overseeing and managing the transmission system of Montenegro,

- EMS (*Energy Management System*) is a set of applications such as AGC – secondary and tertiary regulation, Monitoring zones of observability of Montenegro, Energy Status Estimator, Work plans,
 - AMR (*Automatic Meter Reading*) is a system for automated reading of meters (energy),
 - *SCHEDULING & ACCOUNTING SYSTEM* is a system for planning and recording of energy exchange,
 - *Tase.2 ICCP* is a system for exchange of data between the transmission system operators and electrical power companies,
 - WAMS (*Wide Area Monitoring System*) is a system for monitoring the status of the grid,
 - SCALAR is a system for detecting lightning strikes, which in cooperation with SCADA system statuses unambiguously identifies transmission line outages caused by lightning strikes, and
- Business IT systems:
 - ERP (*Enterprise resource planning*) system which is also the base of the CGES' FMIS (*Financial Management Information System*), whose following modules are in use: General Ledger, Buyers, Suppliers, Inventory-material accounting, Fixed assets, Records of assignments of workers, Inventory of fixed assets using bar-code technology, HR records, Overtime engagement of the CGES employees, Investments in progress, BI-moduo for financial reporting,
 - Symantec is an anti-virus protection system, and
 - Microsoft Exchange is the CGES mail system.

HR Capabilities

In order to carry out the activities of a transmission system operator, pursuant to the Energy Law (Art. 111 and 112, in conjunction with Article 68), the CGES is required to have HR capabilities to perform such activities.

Qualification structure of employees has been reviewed and it has been established that on 31 December 2017, the CGES had the total of 313 employees, of which 288 with open-ended employment contracts and 25 with fixed-term employment contracts, of which 118 with university qualifications (84 in technical area, 23 in economics, 6 in legal and 5 in other areas).

Having reviewed the systematisation and qualification structure of employees, it has been determined that CGES has sufficient number of employees who are professionally capable to carry out specific electricity transmission assignments.

In order to demonstrate HR capabilities the following has been submitted: certificates of passed professional exams for operating and managing energy plants, as well as

certificates of passed professional exams related to work capabilities of persons employed to maintain and handle energy plants, devices and equipment. Based on the submitted documents it has been established that such structure facilitates smooth performance of transmission system operator activities.

Financial Capabilities

Pursuant to authorities provided by the Energy Law (Article 43 paragraph 3), for the CGES as a regulated undertaking, the Agency establishes regulatory allowed revenue and prices for use of the transmission system as to ensure operating conditions, i.e. financial viability of the company.

Article 59 paragraph 5 of the Law envisages that regulatory allowed revenue for transmission system operator covers total justified operating costs, including also obligations from ratified international contracts, that the Agency sets on the basis of analysis of requested operating costs, depreciation and return on assets.

Article 112 of the Law envisages that the Electricity Transmission System Operator is to:

- Given the system condition and exploitation, prepare the ten-year transmission system development plan which is updated every year, together with the investment projects schedule, and submit it to the Agency for approval not later than July 1 of the year prior to the first year of a period to which the concerned plan refers to, harmonized with the following documents: the Energy Development Strategy and the Action plan, taking into account projects on electricity production plant construction, especially projects of use of energy from renewable sources; development plans of neighbouring transmission systems, taking into account projects of common interest for the Community (note: referring to the Energy Community); requirements of the distribution system development for the performance of the business activities of the transmission system operator.
- Depending on the system user requirements compliant with the spatial planning documents, define the three-year investment plan and submit it for the Agency's approval, as an integrated part of the Development Plan, which contains the following: investments for which decision has already been made and new investments to be implemented within next three years, by each year individually.

The mentioned means that the CGES provides the fixed assets for carrying out of the business activity through implementation of development plans and investment plans approved by the Agency. It is important to note that the Law (Article 27) envisages that the activities established by law in the energy area are carried out by the Agency as an autonomous, non-profit organization, legally and functionally independent from the state authorities and energy undertakings, and while performing the public authorizations it is to act in a fair and transparent manner; perform activities independently of any market interest; must not take up or ask for instructions from the governmental or other

authorities and organizations or other persons while carrying out activities defined by this Law. It means that when providing consents to acts adopted by the CGES, including investment plans, the Agency does not seek any opinion from state authorities, and neither the Government of Montenegro nor any other public authority have influence on establishing investments relating to the transmission system development.

Pursuant to Art. 58 to 64 of the Law, the CGES provides the financial resources required for regular business operations through:

- Charges for provided services in the form of a fee for engaging the electricity transmission capacities, which is payable by producers directly connected to the transmission system, buyers directly connected to the transmission system and the distribution system operator;
- Charges for use of cross-border transmission capacities in case of congestion;
- Borrowings in the financial markets.

Based on the review of the following documents: Audit Reports for 2014, 2015 and 2016 and the Agreements on Use of Transmission Network, as well as the decisions of the Regulator approving the CGES Investment Plan 2017-2019 and establishing regulatory allowed revenue for the period 2017-2019, it has been established that the CGES meets the financial viability requirements, as envisaged in Article 68 paragraph 4 of the Law.

Audit of financial statements

With regard to the requirement by the Energy Community Secretariat that the Agency is to examine how the auditors of the CGES, EPCG and Montenegro Bonus are commissioned, the mentioned undertakings provided the following information in the procedure of preparation of this decision:

- *CGES*

The procedure for selecting the auditor of the CGES as a joint stock company is regulated by the Law on Business Organisations and the Statute of the CGES.

Article 47 of the Law on Business Organisations envisages that the company's financial report is audited upon the expiration of the financial year and prior to holding of the general meeting of shareholders, that the audit is performed by an independent auditor and that such auditor is elected by the general meeting of shareholders for a term specified in the statute but not exceeding one year. The same Article envisages that shareholders holding no less than 5% of the share capital are entitled to nominate candidates for the company's auditor.

The CGES Statute (Article 58) envisages that the Company's auditor is appointed by the Shareholders' Meeting at proposal of the Board of Directors, for one year period

and the decision on the appointment of the auditor is passed by a majority of votes of shareholders present at the Shareholders' Meeting.

Pursuant to the Strategic and Shareholder Agreement entered into between Montenegro, Terna – Rete Elettrica Nazionale S.p.A and Crnogorski Elektroprenosni Sistem AD in January 2011, the CGES is bound to appoint as the auditor of the company one of the leading international auditing firms, including those listed in Annex 2.4, in accordance with Montenegrin law. The list from Annex 2.4 includes the following auditing firms: Deloitte DOO, Kpmg DOO, Ernst & Young Montenegro DOO, Pricewaterhouse Coopers DOO.

In line with the above stated, the CGES Chief Executive Officer every year establishes a commission for selection of the most favourable bidder for audit of financial statements, which sends a query to the mentioned auditing firms regarding the existence of potential limitations envisaged in Article 9 of the Law on Audit (OGM 001/17), which envisages that audit may not be performed by an authorized auditor: 1) who is a shareholder, member or founder of the audited entity; 2) who has performed accounting activities or provided consulting services to the audited entity; 3) in other cases stipulated by the Code of Ethics for professional accountants.

Following the receipt of the response, the auditing firms that made a statement that there are no limitations for them to conduct audit are delivered a bid for conduct of audit of financial statements, and thereafter the commission selects the most favourable bid according to the lowest price criterion.

Subject to Article 58 of the CGES Statute, after the procedure for selection of the most favourable bidder has been completed, the Board of Directors proposes to the Shareholders Meeting to appoint the selected auditor. This proposal is not binding for the Shareholder Meeting, and at the very session of the Shareholder Meeting, each shareholder possessing no less than 5% of share capital is entitled to nominate a candidate for the auditor.

Having reviewed the Decision by the CGES Shareholder Meeting no. 10-00-11841 of 5 October 2015, the Decision no. 10-00-7298 of 30 June 2016 and the Decision no. 10-00-7441 of 4 July 2017, on the appointment of the CGES auditor for 2015, 2016 and 2017, it has been established that KPMG DOO Podgorica was selected as the CGES auditor for the mentioned years.

- *EPCG*

The EPCG appoints an external auditor every year. Pursuant to the provisions of Art. 36 and 47 of the Law on Business Organisations and Art. 36 and 67 of the EPCG Statute, the EPCG Shareholder Meeting appoints an auditor of the Company at proposal of qualified shareholders, in this specific case the State of Montenegro and A2A. The proposal by the qualified shareholders is preceded by the procedure for selection of the most favourable bidder in accordance with the Law on Public Procurement out of the “big four” identified by the set tender conditions which ensure credibility of the selected candidate with international financial and energy institutions.

The EPCG provided information no. 10-00-12146 of 14 March 2017, including evidence of the selection of auditors for 2015, 2016 and 2017, which states that

financial statements for 2017 have not been completed or delivered to the Tax Administration or the external auditor for assessment yet.

Based on the review of the Decision by the EPCG Shareholder Meeting no. 10-00-44233 on the appointment of the auditor for 2015, it has been established that Pricewaterhouse was appointed as the auditor of the EPCG. Based on the review of the Decision by the EPCG Shareholder Meeting no. 10-00-59379 on the appointment of the auditor for 2016 and the Decision by the EPCG Shareholder Meeting no. 10-00-61228 on the appointment of the EPCG auditor for 2017, it has been established that Ernst & Young was selected as EPCG auditor for these two years. Having been appointed by the Shareholder Meeting, the selected external auditor is registered with the Central Registry of Business Entities.

- *Montenegro Bonus DOO*

In response to the request by the Agency that the Montenegro Bonus should provide evidence for the previous three years regarding the auditor selection, the following agreements were provided: Audit Agreement, no. 225 of 22 February 2016, Audit Agreement no. 298 of 6 March 2017 and Audit Agreement no. 01-133 of 7 February 2018, entered into between the Montenegro Bonus and Eurorev d.o.o. Podgorica, based on which the mentioned company is commissioned to conduct audit of financial statements for 2015, 2016 and 2017.

It is important to note that for financial statements relating to 2015, 2016 and 2017, the same auditing firms were not concurrently commissioned by the CGES as the transmission system operator, the EPCG that carries out electricity generation and supply activities or Montenegro Bonus licensed to carry out electricity supply, which can be identified in the review of all the mentioned decisions on the selection of auditors for these energy undertakings. Thus, the requirement by the Energy Community Secretariat to examine how the auditors of the CGES, EPCG and Montenegro Bonus are commissioned has been met and it has been identified that there is no conflict of interest in the conduct of audit of the mentioned entities.

Taking into account the option that in the selection of the EPCG auditor the same auditors may potentially appear out of the four that the CGES, in line with the Strategic and Shareholder Agreement, is obliged to commission, the CGES is required to continue the current practice in the subsequent period and ensure not to commission the same auditor that has been commissioned by the energy undertakings that carry out electricity generation and/or supply activities, in which the State has an ownership interest, and thus avoid any conflict of interest, which will be the subject of control by the Agency.

Based on the mentioned evidence, the Agency has concluded that the CGES is fully capable in technical, financial and HR terms to carry out the electricity transmission activities as the transmission system operator.

2.3. Independence of authorities performing control over CGES in relation to undertakings carrying out generation and supply activities

The provisions of the Directive 2009/72/EC relating to the ownership unbundling are transposed into the Law.

The Energy Law fully transposed the provisions of the Directive and Article 136 envisages that the independence of Electricity Transmission System Operator is ensured in the way that the same person or persons is/are not authorised as follows:

- 1) to directly or indirectly control energy undertakings which perform activities of electricity generation or supply, and at the same time directly or indirectly control or have other authorities over the Transmission System Operator or Transmission System;
- 2) to directly or indirectly control the Transmission System Operator or Transmission System and at the same time directly or indirectly control or have other authorities over energy undertakings that perform activities of electricity generation or supply;
- 3) appoint members of the Board of Directors or other bodies or legal representatives of the Transmission System Operator and at the same time directly or indirectly control energy undertakings performing the activities of electricity generation or supply, and
- 4) concurrently be members of the Board of Directors or other bodies or legal representatives of the Transmission System Operator and energy undertakings performing the activities of electricity generation or supply.

The same Article envisages that the mentioned provisions are particularly related to:

- 1) use of voting rights;
- 2) the right to appoint members of the Board of Directors or other bodies or legal representatives, or
- 3) ownership over the majority package of shares.

The Law includes a clear provision (Article 111 paragraph 5) saying that the electricity transmission system operator must not carry out both the activity of electricity generation and the activity of electricity supply, and also that energy undertakings that perform electricity generation or electricity supply activities must not directly or indirectly control the transmission system operator organised as a separate legal entity (Article 116 paragraph 3).

The Law provides a definition (Article 6 paragraph 1 item 26) that the control is direct or indirect impact on decisions of an energy undertaking based on ownership right or right to use the overall or a part of fixed assets, i.e. decisive impact on the composition, voting or decision-making of the energy undertaking's bodies.

Companies in which the CGES has ownership interest

Based on the review of evidence S-IV-9 – List of legal persons under direct or indirect CGES control, it has been established that CGES has control and impact on operations commensurate to the ownership interest in capital of the following legal entities:

- Invest Banka Montenegro AD Podgorica, as the owner of 4140 of shares with nominal value EUR51.1292, which makes 1.5290% in the capital of the bank;
- Elektroenergetski Koordinacioni Centar doo (EKC), with registered office in Belgrade, where it has equal interest as other founders in the amount of EUR49,548.31 and represents a share of 25.00% in the total value of the share capital of EKC;
- SEE CAO DOO Podgorica, where it has equal interest as other founders in the amount of EUR 40,000.15 and represents a share of 12.5% in the total value of the share capital;
- *Centar za Koordinaciju Sigurnosti* - SCC DOO (Security Coordination Centre) with registered office in Belgrade, where it has equal interest as other founders in the amount of EUR 34,765.00, and represents a share of 33.33% in the total value of the share capital; and
- *Berza Električne Energije DOO* (Electricity Exchange), with registered office in Podgorica, where it has equal share as other founders in the amount of EUR 49,995.00, and represents a share of 33.33% % in the total value of the share capital.

In the capital of Invest Banka Montenegro AD Podgorica, the CGES is the owner of 4140 of shares with nominal value EUR51.1292, which makes 1.5290% of the capital. Based on the publicly available data regarding the investments of the Invest Banka Montenegro AD Podgorica in the capital of other legal entities as of 31 December 2016, which can be verified in the document published on the web site of this financial institution titled “Equity Investments in Other Legal Entities“, it is evident that this financial institution has no possession of shares in value exceeding €4000 in the companies licensed in Montenegro to carry out the business activity of electricity generation and supply.

As one of the four founders of the Elektroenergetski Koordinacioni Centar doo, with registered office in Belgrade (EKC), the CGES owns interest amounting to € 49,548.31 and making 25% of capital. The EKC was founded in 1993 for the purpose of coordinating the operations of electrical power systems of Montenegro, Serbia and Macedonia, and in time it has grown into a credible consulting firm on the territory of South-Eastern Europe, concurrently providing continuous expert support to the CGES and other owners, both in operational work and in the area of strategic planning.

The CGES as one of the ten founders of the South-Eastern Europe Coordination Auction Office (SEE CAO) with registered office in Podgorica, owns interest in the amount of € 40,000.10 which makes 14.28% of initial investment of this company.

Observing the decisions by the ENTSO-E relevant authorities, while striving to timely prepare for the application of the standards of regional coordination security of system operation, in 2015, the CGES in cooperation with the transmission operators of Serbia and B&H (EMS and NOS) founded the Regionalni Centar za Koordinaciju Sigurnosti –

SCC doo, (Security Coordination Center) with registered office in Belgrade. The founders of the centre are equal owners, with initial investment of €34,765.00 each.

In respect of the interest in ownership of the aforementioned legal entities, the CGES has control over the operations and decision-making of such entities through its representatives in the management bodies, and voting rights proportional to its share in the capital.

None of the legal entities in which the CGES has interest performs the electricity generation and/or supply activities, which can be verified with the Central Register of Business Entities in the place of registered office of such legal entities.

Unbundling of competences

The Law on State Property stipulates in Article 2 that the state property consists of: the State ownership right over movable and immovable things and monetary funds, securities, and other property rights belonging to Montenegro; Article 3 stipulates that competent authorities are obliged to handle things and other goods being state property with due care of a prudent businessman and shall be accountable for it; Article 4 paragraph 1 states that Montenegro is the owner of things being state property; Article 4 paragraph 3 states that ownership authorizations over the things being State Property shall be carried out by other entities as well: state authorities, authorities of local self-government and public services established by Montenegro or a local self-government, and other authorities and organisations using budget funds or managing state property, in accordance with the law and other regulations adopted under law.

Article 6 of the same Law stipulates that the Government of Montenegro shall exercise property rights and authorisations with regard to the State Property, unless otherwise provided by a special law. This means that the Law envisages the possibility of departing from the general rule that the Government exercises ownership authorisations if specified by a special law. In the specific case, this special law is the Energy Law. In accordance with the legal principle that a special law derogates the general one - *lex specialis derogate legi generalis*, in this specific case the Energy Law applies (Article 135 paragraph 3) as the special law in relation to the Law on State Property.

Article 135, paragraph 3 of the Energy Law, as *Lex specialis*, stipulates that the state authority competent for financial affairs is to propose members of the body for managing the Transmission System Operator, without seeking opinion or instructions from the Government and is to assign a proxy for the shareholders meeting of the Transmission System Operator.

Article 33 paragraph 3 of the Law on Business Organisations stipulates that the proxy is obliged to act in accordance with the given instructions and if the power of attorney does not contain the instructions, the proxy is to vote conscientiously, at his/her own

discretion and in the best interest of the shareholder who is the principal in the power of attorney; while paragraph 5 states that if the state or a local self-government unit owns shares, the rights arising from such shares are to be exercised by an authorized officer or persons who are issued the power of attorney to exercise such rights.

Article 44 of the Law on Business Organisations stipulates that the obligations of the Board of Directors are to be specified by law and the Statute of the company, whereby one of the core obligations is to act conscientiously and work for the benefit of the company as a whole.

From the mentioned provisions of the law it can be concluded that the CGES that performs the functions of a transmission system operator, the EPCG that performs the generation and supply activities, and Montenegro Bonus that is licensed to carry out the supply activity, are under the ownership of the State of Montenegro and that their management bodies are proposed by the representatives of public authorities, i.e. the CGES representatives are proposed by the Ministry of Finance, and EPCG and Montenegro Bonus representatives by the Government. It means that the CGES management bodies and the bodies of the other two undertakings are proposed independently by different public authorities.

Appointing procedure for the management bodies of the EPCG, Montenegro Bonus and CGES

As already stated, the management bodies i.e. the members of the Board of Directors are proposed as the state capital representatives and proxies at the Shareholder Meeting for the CGES, in line with Article 135 of the Law, by the Ministry of Finance independently from the Government.

The representatives of state capital and the proxy at the Shareholder Meeting for the EPCG are proposed to the Government of Montenegro by the Commission for HR and Administrative Matters at proposal of the Ministry of Economy. Also, the members of the Board of Directors of Montenegro Bonus, in respect of the ownership structure of the Government in the overall capital of this company, are proposed by the Commission for HR and Administrative Matters, in accordance with Article 73 of the Law on Business Organisations which envisages that for a limited liability company a shareholder meeting is not a mandatory body of the company, in conjunction with Article 5 of the Statute which envisages that the bodies of the company are the Board of Directors and the Chief Executive Officer, and the members of the Board are appointed by the founder, which in this specific case is the Government of Montenegro.

As for the other minority shareholders, the ownership structure clear indicates that they cannot have deciding influence, as the total percentage of the shares belonging to minority shareholders is 13%. Therefore, the other minority shareholders cannot influence the adoption of the most important decisions of the Shareholders Meeting, given that their adoption requires majority of 77% of votes of all issued shares (other minority shareholders would need to have more than 23% of votes).

Thus, the same person (in this specific case the State) at the same time owns majority stake in the capital of the transmission system operator and the energy undertaking performing electricity generation and supply activities. As already stated, the Law on State Property stipulates that the owner of things under the State ownership is Montenegro, while the Government of Montenegro exercises the property rights and authorisations concerning the State property, unless otherwise stipulated by a special law. On the other hand, the Energy Law (Article 135 paragraph 3) stipulates that members of the managing body of the transmission system operator are proposed directly and independently by the state administration authority in charge of financial affairs (Ministry of Finance), without seeking an opinion or guidance from the Government and that the same authority assigns a proxy for the Shareholders Meeting of the Transmission System Operator. As regards the independence of the very members of the CGES management bodies, the Law on Business Organisations (Article 44) envisages that the members of the Board of Directors are to adhere to the principles of good faith and due care when making decisions.

Thus, the mentioned laws regulate the obligation of the management body members to act and make decisions autonomously and independently in relation to the sector of electricity generation and/or supply.

De facto and de jure independence

The Constitution of Montenegro, in its Article 100, defines, *inter alia*, that the Government shall enforce laws, other regulations and general acts; Article 102 stipulates that the Government shall consist of the Prime Minister, one or several Deputy Prime Ministers and the ministers. The Prime Minister represents the Government and manages its work; which means that the Ministry of Finance is a part of the Government. The Constitution also stipulates that the Government is responsible for enforcement of laws, in this specific case the Law on State Property and the Energy Law. Thus, the provision of Article 135, paragraph 3 of the Energy Law which stipulates authorities for the Ministry of Finance is binding for the Government, which means that the control over the transmission system operator on one hand and the control over the undertakings engaged in electricity generation and supply on the other hand are institutionally unbundled.

Also, it should be taken into account that the Energy Law stipulates powers for the Ministry of Economy in the energy sector, as follows: “monitors implementation and makes analysis of the energy balance realization and investments in electricity and gas generation, transmission and distribution in the previous year for the purpose of assessing security in supply.” In addition to the above mentioned, the Ministry of Economy also has other authorisations related to the energy sector, such as overseeing implementation of the Government Programme concerning the long-term energy

development objectives, energy development strategy, action plan for energy development strategy, and other. Namely, such authorisation is reasonably envisaged for the Ministry of Economy as the ministry in charge of energy activities and it falls under the role of the Ministry of Economy solely with respect to the general energy policy. This authorisation does not fall in the area of conflict of interests between the ministries in charge of activities in the area of electricity transmission from one side and electricity generation/supply from the other side, and is not of such nature to represent an obstacle for their efficient unbundling.

Based on the above and taking into account the provisions of Article 9 of the Decree on the Government (OGM 80/2008 and 14/2017), which envisages that the Government operates and makes decisions if its sessions are attended by more than half of the Government members, that the Government decisions are made by majority votes of the present members, in conjunction with Article 135 of the Law which ensures the right of the Ministry of Finance to propose the members of the CGES management body autonomously and independently from the Government, it is clear that the law provides for the possibility for the Ministry of Finance to be excluded from the decisions made by the Government. In this way, it is ensured that the Ministry of Finance has no influence on the decisions made on the appointment of management body representatives with entities dealing with electricity transmission generation and/or supply activities.

Although Article 135 of the Law clearly envisages that management body members of the transmission system operator are proposed directly and independently by the state authority responsible for finance affairs, without seeking opinions or guidance from the Government, taking into account the conclusion of the Energy Community Secretariat asking the Agency to ensure that independence and avoidance of conflict of interest between the Ministry of Finance and the Government and/or the Prime Minister are provided by appropriate measures, in item 2 of the enacting terms of this Decision the Agency instructed the CGES to initiate the procedure for amending the law or other enabling regulation to strengthen the independence of the state administration authority responsible for finances that proposes management body members of the transmission system operator in relation to the Government. This is aimed at strengthening the protection for operations within the Government, i.e. at restricting the role of the state administration authority responsible for finance affairs in proposing state capital representatives with management bodies of entities dealing with electricity generation and/or supply activities.

Auditor appointment

Auditors for joint stock companies like the CGES and EPCG are appointed by Shareholder Meeting at proposal of the Board of Directors, whereas for a limited liability company like the Montenegro Bonus audit is not legally required, however this Company commissions an auditor every year.

Based on the stated in the reasoned statement of the *Audit of Financial Statements*, the auditors for all the three aforementioned companies in the previous three years were

different, but it's still indicated to the CGES to continue with the requirements for the commissioned auditors to take into account not to have conflict of interest in relation to the EPCG and Montenegro Bonus, which will certainly be the subject of regular control by the Agency that is carried out in line with Article 48 of the Law.

Dividend distribution

CGES

Taking into account the Opinion of the Secretariat regarding the dividend payment, it should be noted that the rights of shareholders are regulated by the Law on Business Organisations and the CGES Statute.

A share is a part of company's capital owned by an individual, i.e. shareholder. The status of a shareholder – co-owner of the company, also implies specific rights, proportionally to the number of shares, i.e. interest in the company's capital. The rights of shareholders also include the right to participate in the profit of the company in the form of dividend after the decision on dividend distribution is made (Article 31 paragraph 1 item 1 of the Law on Business Organisations and Article 27 paragraph 1a of the SGES Statute).

The right to make a decision on profit distribution is an exclusive right of the Shareholder Meeting (Article 35 paragraph 2 item 5 of the Law on Business Organisations and Article 29 paragraph 2 item 7 of the CGES Statute).

A decision on dividend payment made by the Shareholder Meeting is an obligation of the company towards its shareholders (Article 63 paragraph 2 of the Law on Business Organisations).

Dividend is a portion of company's profit paid to shareholders, and its amount for each shareholder depends on the amount of the total profit that is by the decision of the Shareholder Meeting determined for distribution to shareholders, as well as on the number of shares that each shareholder owns individually. By rule, dividend is paid in money, but it can also be paid in the form of company's shares or other securities. Only the shareholders who own shares on the dividend date – the date when the Shareholder Meeting makes the decision on dividend payment (Article 63 of the Law on Business Organisations and Article 60 of the CGES Statute) are entitled to take part in the dividend distribution.

The amount intended for distribution to shareholders may not exceed the amount of profit generated at the end of the last financial year, increased by profit carried forward from previous year and available amount of provisions, decreased by losses carried forward from previous year and by the amounts intended for provisions, in line with Article 62 paragraph 2 of the Law on Business Organisations and Article 61 paragraph 1 of the CGES Statute.

Thus, any person (legal and physical) having the status of the CGES shareholder as of the date of the decision by the Shareholder Meeting on dividend payment is entitled to

dividend in the amount proportional to the number of shares they own, i.e. percentage interest of each individual shareholder in the CGES overall capital.

The CGES made dividend payments to its shareholders at two occasions since its establishment in 2009, from net profit generated for 2011 (Decision no. 10-00-7351 of 29 June 2012) and 2012 (Decision no. 10-00-2331 of 24 February 2014). On 28 March 2014 the Chief Executive Officer passed the Procedure no. 10-00-3888 regulating the procedure for dividend payment to shareholders.

Net operating profit expressed in other years is distributed as undistributed profit and cumulated with undistributed profit from previous years.

EPCG

In line with the conclusion of the Energy Community Secretariat asking the Agency to examine how and to whom dividend is paid, the EPCG Statute has been reviewed and it has been found that pursuant to Art. 69 and 70 of the Statute the decisions on dividend distribution are made by the Shareholder Meeting, and dividend may be paid in money or shares.

In response to the request of the Agency, the EPCG provided information that for 2015 and 2016 it has not paid dividend, which has been established based on the review of the financial statements and operating reports published on the website of the EPCG.

Montenegro Bonus

This company has been established as a limited liability company and as such it is not bound to make dividend payments, given that the Law on Business Organisation (Article 31) envisages that only shareholders with joint stock companies take part in the profit of the company in the form of dividend, while Article 63 envisages that the dividend is the payment of a portion of the joint stock company's profit to its shareholders.

Interest of the State in other related companies

In the course of passing the Interim Decision the following have been reviewed: evidence S-IV-10, the List of other energy undertakings related to the CGES, i.e. the list of undertakings whose financial statements are subject to consolidation and/or undertakings belonging to the same owners. Based on the submitted evidence, it has been concluded that in addition to the EPCG, the entities related to the CGES are Crnogorski Operator Distributivnog Sistema doo (Montenegro Distribution System Operator LLC) (CEDIS), Crnogorski Operator Tržišta doo (Montenegro Market Operator LLC) (COTEE) and Montenegro Bonus DOO.

In response to the Opinion of the Energy Community Secretariat asking the Agency to request examination of the independence in the control over the CGES in relation to other related companies founded by the State, a clarification of this issue for the EPCG and Montenegro Bonus is given in the reasoned statement of this Decision.

As regards the COTEE, it is also stated that the basic business activity of this company is organisation and management of electricity market in the territory of Montenegro, and it has a License issued in line with Article 65 of the Law to carry out this business activity. This company has no licenses for generation and/or supply activities, and therefore there is no control in relation to the CGES, or conflict of interest or influence on the CGES independence.

In the middle 2016 the EPCG established a separate legal entity Crnogorski Elektrodistributivni Sistem (CEDIS), which is licensed to carry out the activity of electricity distribution and according to Article 115 paragraph 5 of the Law it may purchase electricity only to cover losses in the distribution system, meaning that it may not carry out electricity generation or supply, and therefore there is no conflict of interest.

As already mentioned, the State of Montenegro is a founder of COTEE and Montenegro Bonus DOO, and EPCG is a founder of CEDIS. Pursuant to Article 112 paragraph 1 item 7 of the Energy Law and for the purpose of specifying mutual rights and obligations, the CGES entered into the following agreements with the mentioned energy undertakings, as system users: Agreement on Connecting to the Transmission System, Agreement on Use of Transmission System, Agreement on Use of Transmission System for the Needs of Electricity Producers; Agreement on Provision of Ancillary Services and System Balancing, and Balance Responsibility Agreement. The mentioned agreements regulate business cooperation with these entities but with no elements that have influence over their management structure, so there isn't any influence on the CGES independence.

Independence of shareholders from third countries

Based on the review of the evidence S-IV-11, the List of licenses, permits and/or other authorisations of co-owners/shareholders and co-owners/shareholders from third countries for carrying out energy activities in Montenegro and/or other countries, the following has been established:

The shareholders of the Crnogorski Elektroprenosni Sistem AD, possessing license, permit and/or other authorisations for performance of energy activities on the national territory are as follows:

- Terna, which owns 22.0889% of share capital of CGES and possesses concession for performance of energy activities of electricity transmission and dispatching on the national territory, issued by the Ministry of Economic Development of the Republic of Italy;
- Joint stock company Elektromreže Srbije – Belgrade which owns 10.0141% of share capital of the CGES, and has a license for performance of energy activities: electricity transmission issued by the Energy Agency of the Republic of Serbia, license registration number: 020/06-LE-3 and managing electricity transmission system issued by the Energy Agency of the Republic of Serbia, license registration number: 019/06-LE-3.

Terna

Given the ownership structure, in the specific case Terna is a minority shareholder of the CGES owning 22.0889% shares. With this percentage of shares, Terna has two representatives in the Board of Directors who together with state capital representatives (four representatives) take part in making decisions related to *reserved matters*, where it takes minimum six members to vote in favour of a decision in order for it to be passed. The *reserved matters* are related to the approval of the Company's Business Plan, annual budget, development plan, construction plan, financial borrowings of any kind exceeding €250,000 and other decisions referred to in Article 50 of the Statute.

Terna is an independent certified electricity transmission system operator in the Republic of Italy, meaning that Terna is independent from electricity generation and supply, i.e. from companies that carry out such activities in the State of Italy, including A2A which is an EPCG shareholder.

Taking into account the connectivity of the European energy market as well as Terna's investments aimed at connecting with the Montenegrin energy market, the Agency will conduct control to ensure there is no conflict of interest in this area related to electricity generation.

EMS

EMS owns 14.638.335 shares, which makes 10.0141% of the CGES share capital, and it is licensed to carry out the activity of electricity transmission and electricity transmission system management. The EMS is an independent and certified electricity transmission system operator in the Republic of Serbia.

The EMS has one representative in the Board of Directors of the CGES which counts seven members.

In the EMS certification procedure, the Energy Community Secretariat has found that the EMS is still under the direct control of the Government, as the state ownership representative with the EMS and with the Elektroprivreda Srbije (EPS), and therefore before the final decision on certification is made, inter alia, it is primarily necessary to ensure independence of the operator through unbundling of management powers over the EMS and public undertakings dealing with electricity generation and supply.

Given that one ministry was concurrently responsible for the EMS and EPS in Serbia, for the purpose of meeting this requirement, in June 2017 the Law on Ministries was amended. The amendments to the mentioned law provided for unbundling of the competencies related to the preparation of the proposal act on appointing and discharging management bodies, as well as other acts related to work and operations of such energy undertakings, i.e. such competencies were transferred from the Ministry of Economy to the Ministry of Mining and Energy for public undertakings that carry out electricity generation and supply activities, while the Ministry of Economy remained responsible for the EMS as the transmission system operator.

It should be noted that the EMS has no ownership interest with any energy undertaking registered in Montenegro that performs electricity generation or supply activities. Given that according to Article 65 of the Law, the conduct of electricity generation and supply

activities in the territory of Montenegro requires licensing by the Agency, the fact is that Elektroprivreda Srbije, as a company dealing with electricity generation and supply activities has not been issued a license pursuant to the Montenegrin legislation, or any other company with registered office in the Republic of Serbia that carries out the mentioned activities.

Based on the review of the organisational structure posted on the official website of the EPS, it has been established that the persons who are currently comprising the Supervision Board (Branko Kovačević, Aleksandar Trifunović, Dejan Popović, Aleksandar Gajić, Branislav Marković) of this Company are not the same persons who are in the Boards of Directors of the CGES, EPCG and Montenegro Bonus.

Also, the organisational structure posted on the EMS official website has been reviewed, and it has been found that the persons who are currently comprising the Shareholder Meeting (Milun Trivunac, Blagoje Conić, Stevan Đaković, Lepasava Milić, Aleksandra Nauparac) of this Company are not the same persons who are in the Supervision Board of the EPS, or in the Boards of Directors of the CGES, EPCG and Montenegro Bonus.

It should be particularly noted that the EMS interest in the CGES capital amounts to 10.0141%, and therefore it can be concluded, if the provisions of the CGES Statute on the majority required for making decisions are taken into account, that EMS as a minority shareholder has no potential to influence the CGES independence, and it is in no position to exercise control over the CGES. The Agency will certainly conduct control to ensure that neither the EPS, which is under the control of the Republic Serbia, nor any other energy undertaking dealing with electricity generation and supply in the Republic of Serbia has influence on the CGES independence, i.e. that they have no control over the CGES.

CGES shareholders from third countries

In addition to the mentioned, the CGES shareholders from third countries are as follows: Robotti Global Fund United States of America, owning 1,235,000 shares, which makes 0.84486687% of share capital of the CGES and Langston Shipholding Ltd - Liberia, owning 3,727 shares, which makes 0.00254965% of share capital of the CGES.

In relation to the conclusion of the Energy Community Secretariat asking the Agency to examine independence of the CGES shareholders save the state, in particular the EMS, as well as other minority shareholders (Robotti Global Fund United States of America and Langston Shipholding LTD – Liberia) from the generation and/or supply undertakings and, if necessary, require appropriate measures to ensure independence and avoid conflicts of interest, the CGES, upon the request by the Agency, provided the demanded clarifications.

Given that at the time of preparation of the Certification Application it was not known what business activity these two shareholders were dealing with, the CGES through the Central Depository Agency (CDA) managed to find out the address of the Robotti Global Fund, and sent a request to this shareholder to submit a list of licenses, permits and/or

other authorisations for conduct of energy activities, if any. However, there has been no reply.

Based on the information from the register, the CDA could not identify the address of the Langston Shipholding Ltd, so the CGES was in no position to obtain information related to its business activity or potential possession of licenses, permits and/or other authorisations for conduct of energy activities.

In line with the request of the Energy Community Secretariat, based on the search of the Internet the CGES obtained the information that the Robotti Global Fund is an investment fund, which can be established based on the data available on the website of the United States Securities and Exchange Commission:

https://www.sec.gov/Archives/edgar/data/1528264/000152826418000001/xslFormDX01/primary_doc.xml.

Thus, it is evident that the mentioned shareholder does not conduct any energy activity, and therefore it may have no influence over the CGES independence.

In addition, since these minority shareholders carry out business in the market that is not connected to the European market, including the Montenegrin one, even if such undertakings were connected with the electricity generation and supply activities in their countries, it would have no influence of the CGES independence. Also, the shares of the mentioned shareholders are minor in the overall number of the CGES shares (interest lower than 1%, i.e. less than 0.003%), and have no influence on the decisions made by the CGES Shareholder Meeting.

3. Data protection measures

Confidential information

Based on the review of the evidence S-IV-17 – Act and procedures preventing disclosure of confidential or other commercially sensitive information of energy undertakings engaged in electricity and/or natural gas generation and/or supply, it has been established that the Applicant has submitted a Rulebook on Business Secret of the Crnogorski Elektroprenosni Sistem AD no. 10-00-9373 dated 31 July 2015, which designates documents and data (information) representing a business secret of the Crnogorski Elektroprenosni Sistem AD Podgorica, the disclosure of which to unauthorised persons would damage its interests and/or its business reputation, as well as interests of monetary and economy policy of the State of Montenegro.

It is further explained that disclosure of confidential information and other commercially sensitive information of energy undertakings engaged in electricity generation and/or supply has been banned.

The Applicant provided evidence S-IV-18, the Statement by the Chief Executive Officer that the CGES has no employees who performed managing operations or used to be

members of management bodies in legal entities performing the activities of generating or supplying electricity or gas in the period of six months prior to the submission of the Certification Application.

The CGES provided Evidence – SE/G-2, Control and ownership over the transmission system operator, including a list of all the parties that directly or indirectly control the transmission system operator, a list of all the parties active in the energy market of Montenegro (electricity market or natural gas market) that are directly or indirectly controlled by the transmission system operator, i.e. parties having ownership over the transmission system and a list of all companies performing the generating or supplying activities in the electricity or gas market in case the same party indirectly or directly controls or has any kind of rights over the transmission system operator and such companies.

With regard to the conclusion of the Energy Community Secretariat asking the Agency to demand that independence and avoidance of conflict of interest are ensured by appointment of a compliance officer and enforcement of the compliance programme, the Agency demanded clarification if within the current CGES organisation there is an employee to ensure independence in proposing the CGES management body in relation to other energy undertakings.

The CGES provided the clarification where it is stated that for the purpose of ensuring legality of operations of the business organisation, the Law on Business Organisations (Article 44) envisages an obligation for the members of the Board of Directors and the Chief Executive Officer to act in line with the interest of the company while taking into account the legality of the company's operations. The same law ensures appropriate judicial protection.

Thus, the Law on Business Organisations and the CGES Statute envisage that the Chief Executive Officer manages the Company and organises day-to-day operations of the Company, represents the Company and acts on its behalf, ensures and is responsible for the legality of the Company's operations, and is responsible for its work to the Board of Directors and is to carry out instructions of the Board of Directors and implement its decisions related to the Company's operations.

As regards the activities related to the work of the Shareholder Meeting and the Board of Directors, the Secretary of the Company has the key role in ensuring that these activities are carried out in accordance with the Law on Business Organisations, other laws, the Company's Statute and Rules of Procedure of these bodies. Also, the Company's secretary is responsible for the activities related to organisation and preparation of shareholder meetings, including communication with shareholders with regard to proposing the candidates for the members of the Board of Directors, to be carried out in accordance with the law.

For the purpose of ensuring legality, Article 41 of the Law on Business Organisations envisages that the Commercial Court acting in respect of an action by the shareholders, the members of the Board of Directors or the Chief Executive Officer may declare invalid the decisions of the Shareholder Meeting if the issue on which the decision is adopted

has not been included in the agenda, if the documents or decisions which must be registered with the Central Registry have not been registered within the deadline prescribed by this Law, documents or decisions which must be registered with the Central Registry have not been registered within the deadline prescribed by this Law, if the provisions of the Law concerning the convening and holding of a general meeting of shareholders have not been complied with, or the decision made is not in compliance with the Law, the Statute, and other regulations governing this area.

The Law recognises the right to all shareholders to ask for annulment of a disputable decision irrespective of the number of shares or percentage of capital they own. Also, it is determined that attendance of the session at which the decision that is asked to be annulled is made is not a condition for a shareholder to be able to demand annulment of such decision.

The right to ask for annulment is also given to the members of the Board of Directors and the Chief Executive Officer and this right arises from their function which binds them to act in line with the interests of the company taking into account the legality of the operations of the company.

Acting in respect of an action for annulment of a decision of the Shareholder Meeting the court may annul such decision and order the legal entity to amend the Statute or a general legal act based on which the disputable decision has been made. The decision made contrary to the Statute or the law is in its own right null and void and acting in respect of an action for annulment of such decision is urgent.

Based on the above it can be concluded that in the CGES, in accordance with relevant legal regulations, there are already established mechanisms that essentially ensure legality of operations in all segments, including ensuring of the application of the provisions of Art. 135 and 136 of the Law relating to the independence of the transmission system operator. However, taking into account the recommendation of the Energy Community Secretariat, the Agency in item 3 of the enacting terms of this Decision instructed the CGES to formalise this obligation in the way that internal acts should envisage obligation for an employed person to monitor if the appointment procedure of the management body of the transmission system operator is carried out independently from the appointment procedure of the management bodies of undertakings that perform the electricity generation and/or supply activity, with an obligation to inform the Agency about any changes.

The Agency will monitor the acting of the CGES in implementing the above within the supervision of the work of this energy undertaking, which is envisaged in Article 48 of the Law.

Conclusion

Based on the all above-mentioned, demonstrated evidence and facts identified, the Agency has drawn a conclusion that CGES fulfils the conditions prescribed in the Energy Law, which includes the provisions transposed from the Directive 72/2009, i.e.:

- it has a transmission system under its ownership, which is sufficient and required for electricity transmission business activities,
- it performs the transmission system operator activities, and
- the control over the CGES and the control over the supplier and producer are unbundled,

However, given that the analysis of the legislative framework has identified that the influence of the Ministry of Finance on the decisions of the Government is not fully excluded when it comes to proposing the members of the management bodies as state capital representatives in the EPCG and Montenegro Bonus, in item 2 of the enacting terms of this Decision the CGES is instructed within 12 months following the date of this Decision to initiate an amending procedure of the law or an enabling regulation, as to strengthen impossibility of influence of the Ministry of Finance in relation to other state administration authorities that have any kind of role in appointing the management bodies of undertakings dealing with electricity generation and/or supply.

Also, for the purpose of ensuring full control over the application of the appointment procedure for the members of the CGES management body in relation to the appointment of the management bodies of the EPCG and Montenegro Bonus, in item 3 of the enacting terms of this Decision the CGES is instructed within six months following the date of this decision to ensure a person who will be bound to monitor these activities.

In line with Article 70 of the Law on Energy which envisages that if the Agency establishes that the transmission system operator has failed in meeting the conditions based on which the certification is issued, it is entitled to revoke certification, in item 4 of the enacting terms of this Decision the Crnogorski Elektroperenosni Sistem is warned about the consequences of non-fulfilment of obligations under items 2 and 3, while item 5 instructs the Crnogorski Elektroprenosni Sistem within 15 days following the occurrence of a change of significance for fulfilment of the conditions for issuance of certification to inform the Agency thereof.

Taking into account the above mentioned, it has been concluded that the CGES has met the conditions, and it is issued certification as an electricity transmission system operator as decided in item 1 of the enacting terms of this Decision.

Number: 18/99-22

Podgorica, 24 April 2018

Board Chairman

Branislav Prelević