

## Opinion 01/2026

### **pursuant to Article 51(1) of Regulation (EU) 2019/943 and Article 52(6) of Directive (EU) 2019/944 – Republic of North Macedonia – Certification of MEPSO**

On 29 December 2025, the Energy and Water Services Regulatory Commission of the Republic of North Macedonia (hereinafter, “ERC”) notified the Energy Community Secretariat (hereinafter, “the Secretariat”) of a preliminary decision (hereinafter, “the Preliminary Decision”) on the certification of the joint stock company *Electricity Transmission and Power System Management, JSC MEPSO* (hereinafter, “MEPSO”), the transmission system operator for electricity (hereinafter, “TSO”). The Preliminary Decision was adopted on 29 December 2025 pursuant to Article 137(4) of the Energy Law<sup>1</sup> and Article 5(1) of the Rulebook on Certification of an Electricity Transmission System and Natural Gas Transmission System Operator.<sup>2</sup>

Pursuant to Article 52(6) of Directive (EU) 2019/944 on common rules for the internal market for electricity (hereinafter, “the Electricity Directive”)<sup>3</sup> and Article 51(1) of Regulation (EU) 2019/943 on the internal market for electricity (hereinafter, “the Electricity Regulation”)<sup>4</sup>, the Secretariat shall examine the notified Preliminary Decision and deliver its opinion to ERC as to the compatibility of the Preliminary Decision with Article 43 and Article 52 of the Electricity Directive.

#### **I. State-owned energy undertakings in North Macedonia**

##### **1. The applicant MEPSO**

###### **i. Company history and MEPSO’s first certification as TSO**

The electricity TSO MEPSO was initially part of the State-owned vertically integrated company for production, transmission, and distribution of electricity, *Elektrostopanstvo Makedonija* (hereinafter, “ESM”), whose sole shareholder was the Government.

Based on the 2004 Law on Transformation of ESM,<sup>5</sup> on 27 September 2004, the Government adopted a decision<sup>6</sup> dividing ESM into two State-owned joint stock companies:

<sup>1</sup> Official Gazette of the Republic of North Macedonia, No. 101/25 and 135/25.

<sup>2</sup> Official Gazette of the Republic of Macedonia, No. 146/18.

<sup>3</sup> Directive (EU) 2019/944 of 5 June 2019 on common rules for the internal market for electricity, incorporated and adapted by the Ministerial Council Decision 2021/13/MC-EnC of 30 November 2021, and amended by Decision 2022/03/MC-EnC of 15 December 2022.

<sup>4</sup> Regulation (EU) 2019/943 of 5 June 2019 on the internal market for electricity, incorporated and adapted by the Ministerial Council Decision D/2022/03/MC-EnC of 15 December 2022.

<sup>5</sup> Official Gazette of the Republic of Macedonia, No. 19/04, as amended by No.84/05.

<sup>6</sup> Based on Article 518(4) and Article 417(3) of the Company Law and Article 4 of the Law on Transformation of “Elektrostopanstvo Makedonija”.



- *ESM*, active in production, distribution and supply of electricity and
- *MEPSO*, in charge of transmission of electricity and management of the electricity system of North Macedonia.

Under the 2004 Law on Transformation of *ESM*, the assets, employees, as well as the rights and obligations related to the activity of transmission and management of the electricity system have been transferred to *MEPSO*.<sup>7</sup>

On 24 July 2018, the Government transferred its shares in *MEPSO* to the Ministry for Transport and Communications.<sup>8</sup>

On 27 March 2019, *ERC* notified the Secretariat on a preliminary decision on the certification on *MEPSO*. On 17 June 2019, the Secretariat issued Opinion 3/19 on the Certification of *MEPSO*, in which it largely supported the TSO's certification under the ownership unbundling model.<sup>9</sup>

On 24 July 2025, the Ministry of Transport and Communications transferred its shares in *MEPSO* to the Ministry of Energy, Mining, and Mineral resources (hereinafter, "*Ministry of Energy*") as a sole shareholder.<sup>10</sup> On 4 August 2025, the shares of *MEPSO* were registered to the Ministry of Energy in the Central Securities Depository of the Republic of North Macedonia.<sup>11</sup>

These changes have prompted a new certification request by *MEPSO* in August 2025,<sup>12</sup> based on which *ERC* issued its Preliminary Decision.

## ii. Current corporate structure of *MEPSO*

*MEPSO*'s corporate bodies are:

**The Shareholders' Assembly** operates based on the Law on Trade Companies and *MEPSO*'s Statute. As of July 2025, the Ministry of Energy is the sole shareholder of *MEPSO*. The Minister of Energy presides the Shareholders' Assembly.<sup>13</sup> Its core competences include amendments to the Statute, approval of the annual account, financial statements and annual operations report, decision-making on the distribution of revenues or coverage of losses, appointment and dismissal of Supervisory Board members, increase or reduction of the company's share capital, appointment of a certified auditor, as well as transformation or termination of the company. The Shareholders' Assembly does not decide on matters related to the management and day-to-day operation of the company, which fall within the competence of the management bodies.

**The Supervisory Board** controls and supervises the operation of the Management Board. In its supervisory role, it may examine the company's books, documents and assets, including treasury operations and securities. The Supervisory Board of *MEPSO* is composed of 7 members, two of

<sup>7</sup> Energy Community Secretariat's Opinion 3/19 on the Certification of *MEPSO*, 17 June 2019, p 2.

<sup>8</sup> Government Decision, No.44-6841/1, 24.07.2018.

<sup>9</sup> Energy Community Secretariat's Opinion 3/19 on the Certification of *MEPSO*, 17 June 2019.

<sup>10</sup> Decision no. 50-6306/18, 24.07.2025.

<sup>11</sup> Preliminary Decision, p 21.

<sup>12</sup> Preliminary Decision, p 2.

<sup>13</sup> Preliminary Decision, p 21.



which are independent, and one of which is appointed as President.<sup>14</sup> The term of the Supervisory Board members is four years. The Supervisory Board adopts decisions by simple majority of the members appointed.

**The Management Board** is responsible for the overall management and the day-to-day operation of *MEPSO*. The seven members of the Management Board are appointed by the Supervisory Board for a duration of four years. The Management Board adopts decisions by simple majority of the members appointed.

Its competences include adopting the development programme, the annual operating and financial plans, appointing management personnel for daily operations, adopting investment decisions, approving major contracts, managing assets and reserves, adopting measures related to environmental protection, occupational safety and defence, determining authorised signatories, concluding collective agreements, and ensuring compliance with all legally prescribed obligations. The Management Board reports regularly to the Supervisory Board and performs all other tasks that do not fall within the competences of the Shareholders' Assembly or of the Supervisory Board.

**The compliance officer** is appointed by the Supervisory Board following approval by ERC. Its main competences are the monitoring of the activities of the Supervisory Board and of the Management Board and attending their meetings when necessary, take measures to prevent money laundering and corruption, notify the Supervisory Board of actual or potential conflicts of interest within *MEPSO*, monitor the implementation of *MEPSO*'s compliance programme, and ensure appropriate data management.

*MEPSO*'s current compliance officer was appointed on 13 November 2023.<sup>15</sup>

## 2. State activities in generation and supply of electricity and natural gas

In 2004, the Government of North Macedonia owned 100% of the shares in *ESM*, the company performing distribution and supply of electricity, as well as the country's biggest electricity producer.

In 2005, two joint-stock companies were created from *ESM*: *ELEM* and *TEC Negotino*, both active in electricity generation.

After the spin-off of *ELEM* and *TEC Negotino*, *ESM* continued its activities of electricity distribution and supply.<sup>16</sup> In 2006, *ESM* was privatised: 90% of its shares are now owned by the Austrian company *EVN AG*, while 10% of its shares remain in State ownership through *ESM*. Electricity distribution is performed by *Elektrodistribucija DOOEL Skopje*, owned by *EVN Makedonija*. Electricity supply is performed by *EVN Home DOO* and *EVN Makedonija Elektrosnabduvanje DOOEL Skopje*.

In 2019, *ELEM* changed its name to *ESM Skopje*. On 29 February 2024, *TEC Negotino* was

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<sup>14</sup> Preliminary Decision, p 22.

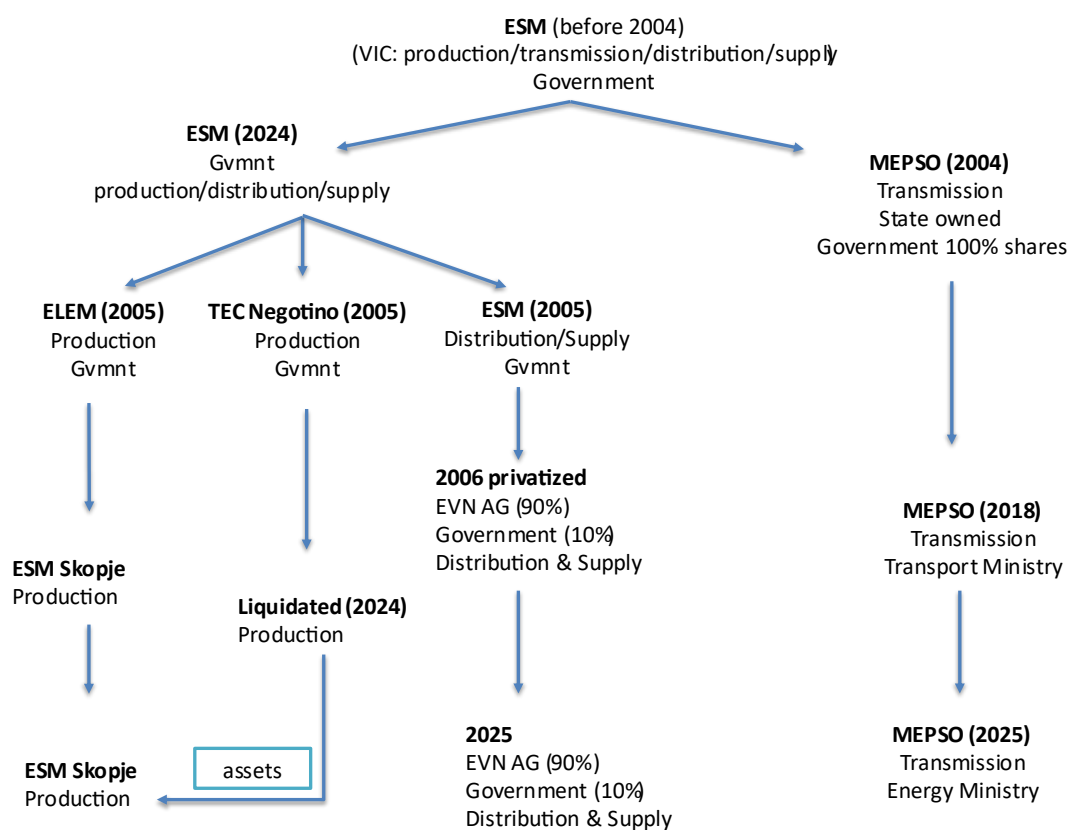
<sup>15</sup> Preliminary Decision, pp 26-28.

<sup>16</sup> Preliminary Decision, p 17.

liquidated, and its assets and activities taken over by *ESM Skopje*,<sup>17</sup> which now is the main producer of electricity in North Macedonia.

Pursuant to Article 3(1) of the Law on Use and Disposal of the State-Owned Property and Municipal Property,<sup>18</sup> the State-ownership in *ESM* is exercised by the Government. *ESM*'s corporate bodies are the Shareholders' Assembly, the Supervisory Board, and the Management Board. The members of the Supervisory Board are appointed by decision of the sole shareholder, the Government (signed by the Prime Minister as President of the Government, or a Deputy Prime Minister presiding the respective session),<sup>19</sup> while the members of the Management Board are appointed by the Supervisory Board.

The State is not involved as shareholder or otherwise in gas production or supply.



<sup>17</sup> Preliminary Decision, p 9.

<sup>18</sup> Official Gazette of the Republic of Macedonia, No. 78/2015, as amended.

<sup>19</sup> Article 11(3) of the Law on Government, Official Gazette, No. 59/2000 as amended.



### 3. The electricity market operator

On 8 October 2018, *MEPSO* founded and became the sole owner of the National Electricity Market Operator *MEMO DOOEL Skopje (MEMO)*.<sup>20</sup> On 25 September 2019, *ERC* issued *MEMO* a license for performing the activity of market organisation and managing the electricity market.<sup>21</sup>

The Energy Law prohibits *MEPSO*, as the holder of a license for electricity transmission, from holding licenses for or participating in electricity production, distribution, trade, supply, or electricity market organization and management.<sup>22</sup> Conversely, *MEMO*, as the licensed electricity market operator pursuant to Article 115(1) of the Energy Law, may not hold licenses for or engage in electricity production, storage, transmission and transmission system management, distribution, trade, or supply. Furthermore, Article 115(2) of the Energy Law stipulates that where the electricity market operator is owned by the electricity transmission system operator, it must ensure functional independence from the transmission system operator in legal, organizational, and decision-making terms, in accordance with the program referred to in Article 135 of the Energy Law.<sup>23</sup>

*MEMO*'s key functions include the preparation of daily and monthly market plans, maintenance of registers of market participants and guarantees of origin, calculation of imbalances and settlement of market transactions, invoicing of market usage fees, and timely exchange of data with the electricity TSO. *MEMO* facilitates market coupling, conducts implicit auctions of transmission capacities, cooperates with regional and international market operators, and publishes essential market information. *MEMO* does not trade electricity, except in limited cases involving preferential renewable producers, and supports security of supply through oversight of market participation.

## II. Description of the notified Preliminary Decision

On 22 August 2025, *MEPSO* submitted to *ERC* a request for certification<sup>24</sup> pursuant to Article 308(3) of the Energy Law and Article 3 of the Rulebook on Certification. On 29 December 2025, *ERC* adopted and notified to the Secretariat its Preliminary Decision on the certification of *MEPSO* subject to the opinion of the Secretariat.

In the Preliminary Decision, *ERC* concluded that *MEPSO* complies with the requirements of the provisions on ownership unbundling. Also, *ERC* requests that *MEPSO* submits a semi-annual report on the progress of procedures before the Real Estate Cadastre concerning the registration of ownership of the immovable property used for electricity transmission activities.

## III. Assessment of the Preliminary Decision

### 1. General

<sup>20</sup> Registered in the Central register of the Republic of North Macedonia on 8 October 2018.

<sup>21</sup> License no 12-15/19, Official Gazette of the Republic of North Macedonia, no 197/19 and 234/22.

<sup>22</sup> Art 133(4) of the Energy Law.

<sup>23</sup> Preliminary Decision, pp 37-38

<sup>24</sup> No. 12-1619/1, 22.08.2025.



The unbundling provisions were designed to separate, in vertically integrated undertakings, control over transmission system operation, on the one hand, and production and supply activities, on the other hand, to eliminate a potential conflicts of interest between transmission and other activities performed by vertically integrated undertakings.<sup>25</sup> This objective is best fulfilled by implementation of the ownership unbundling model of Article 43 of the Electricity Directive, which North Macedonia transposed in Article 133 of its Energy Law.

In a market environment still prevailing in many Contracting Parties including North Macedonia, where energy activities are predominantly performed by undertakings with whole or majority ownership by the State and/or characterized by dominant positions on their respective markets, the separation of control and the prevention of conflicts of interest is of particular importance. For cases where the State as owner engages in more than one energy-related activity and is thus to be considered a vertically integrated undertaking within the meaning of European energy law,<sup>26</sup> Article 43(5) of the Electricity Directive offers an ownership unbundling variant, in which the tie of control within the vertically integrated undertaking is not fully severed. The continued exercise of public ownership as well as constitutional and political links differentiate these situations from other cases of ownership unbundling and require additional measures and safeguards to ensure the independent operation of the TSO.

The Secretariat reviewed ERC's Preliminary Decision against that background.

## 2. Application of the ownership unbundling provisions to *MEPSO*

When assessing the compliance of *MEPSO* with the unbundling model enshrined in the Article 43 of the Electricity Directive, and transposed by Article 133 of the Energy Law, the following aspects matter in particular:

- a) *MEPSO* needs to be the owner of the transmission assets as required by Article 43(1)(a) of the Electricity Directive;
- b) *MEPSO* needs to perform the functions and tasks of a TSO enshrined in Article 40 of the Electricity Directive;
- c) Control over and exercising rights in *MEPSO* need to be separated from control over and exercising rights in undertakings involved in production or supply of electricity and natural gas as required by Article 43(1), (b), (c), (d) and (2) of the Electricity Directive.

### a. *Ownership of the electricity transmission system*

Article 43(1)(a) of the Electricity Directive requires that "*each undertaking which owns a transmission system acts as a transmission system operator*". This means that the undertaking applying for certification must be the owner of the transmission assets.

In the case of *MEPSO*, Article 133(1) of the Energy Law requires that the electricity TSO owns the electricity network consisting of substations, line infrastructure facilities and other plants,

<sup>25</sup> Secretariat Opinion 1/16 of 3 February 2016 *TAP AG*; Secretariat Opinion 1/17 of 23 January 2017 *OST*; Secretariat Opinion 3/17 of 23 January 2017 *EMS*.

<sup>26</sup> See, for instance, Commission's Opinions on certification of *Vorarlberger Übertragungsnetze (VÜN)* C(2012) 2244 final of 29.3.2012, at p. 4; on certification of *Augstsprieguma ti tks* C(2012) 9108 final of 3.12.2012, at p. 2.



facilities and assets that are in function of managing the electricity transmission system and the transmission of electricity.

The Preliminary Decision describes in detail the electricity infrastructure owned by *MEPSO*.<sup>27</sup> The Secretariat has no reason to dispute that *MEPSO* owns all 113 electricity transmission lines in the Republic of North Macedonia.<sup>28</sup> So far, 80 transmission lines have been registered as immovable property in the Real Estate Cadastre Agency of the Republic of North Macedonia in the name of *MEPSO*, while the registration of ownership rights for the remaining 33 transmission lines is still ongoing.<sup>29</sup> Three transformer stations owned by *MEPSO* are also subject to ongoing ownership registration procedures before the Real Estate Cadastre Agency of the Republic of North Macedonia.<sup>30</sup>

The Preliminary Decision imposes a reporting obligation on *MEPSO* with regard to the registration process in the cadastre. As already held in previous opinions,<sup>31</sup> the Secretariat concludes that in a situation such as in the case at hand, where the legal framework of a Contracting Party provides a clear and unambiguous basis for ownership of the transmission system operator over transmission assets as a matter of principle (Article 133 of the Energy Law), the requirement under Article 43(1)(a) of the Electricity Directive may be deemed to be satisfied.

#### *b. Performance of core TSO functions and tasks*

Article 43(1)(a) of the Electricity Directive also requires that the undertaking in question “acts as a transmission system operator”. The notion of TSO is defined by Article 2(35) of the Electricity Directive. The key elements for an undertaking to be considered a TSO are the operation, the maintenance and the development of a transmission network.<sup>32</sup> These functions and tasks are laid down in detail in Article 40 of the Electricity Directive. A regulatory authority’s assessment in this respect needs to establish whether a given undertaking is by law and in fact performing the core tasks of a TSO, and whether it disposes of the necessary (human, technical, financial) resources for this.<sup>33</sup>

*MEPSO* holds a license for performing the energy activity of electricity transmission.<sup>34</sup> Based on the information on the organisation, tasks and financial statements and their audits, resources of *MEPSO*,<sup>35</sup> its membership in ENTSO-E, and also based on its own long-standing experience and cooperation with the company, the Secretariat agrees with ERC’s findings that *MEPSO* satisfies the criteria of having available the necessary human, technical, physical and financial resources to effectively perform the tasks of a TSO.

#### *c. Separation of control over transmission from generation/supply*

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<sup>27</sup> Preliminary Decision, pp 44-50.

<sup>28</sup> Based on documents submitted by *MEPSO*, appendixes 19, 20, 27, 28, 29 and 30.

<sup>29</sup> Preliminary Decision, p 45.

<sup>30</sup> Preliminary Decision, p 48.

<sup>31</sup> Energy Community Secretariat’s Opinion 3/17 on the Certification of *EMS*, 23 January 2017; Energy Community Secretariat’s Opinion 2/19 on the Certification of *KOSTT*, 1 February 2019; Energy Community Secretariat’s Opinion 1/24 on the Certification of *NOMAGAS*.

<sup>32</sup> Energy Community Secretariat’s Opinion 1/16 on the Certification of *TAP AG*, 3 February 2016.

<sup>33</sup> Commission’s Opinion on certification of *VÜN C(2012) 2244 final* of 29.3.2012.

<sup>34</sup> *MEPSO*’s licence was issued on 14 November 2005, was subsequently amended, and expires on 14 November 2040.

<sup>35</sup> Preliminary Decision, pp 30-36.



Article 43(5) of the Electricity Directive provides that two separate public bodies may be seen as two distinct persons within the meaning of Article 43(1) and (2) of the Electricity Directive, and may control production and supply activities, on one hand, and transmission activities on the other hand. The notion of control is defined by the Merger Regulation<sup>36</sup> and includes the rights enumerated in Article 43(1)(b), (c) and (d) and 43(2) of the Electricity Directive, including the power to exercise voting rights, the holding of majority share and the power to appoint members of the TSO's corporate bodies and those legally representing the TSO.

In accordance with Article 134(1) of the Energy Law, the Ministry of Energy has been the sole owner of the TSO *MEPSO* since 24 July 2025,<sup>37</sup> while the *ESM* group of companies (electricity production, as well as limited supply and distribution activities) is owned by the Government.<sup>38</sup>

In the European Commission's case practice, two ministries,<sup>39</sup> a prime minister and deputy prime minister in a regional government,<sup>40</sup> a ministry and a prime minister,<sup>41</sup> have been accepted as two separate public bodies within the meaning of Article 43(5) of the Electricity Directive.

The Secretariat agrees with ERC that the Ministry of Energy on the one hand, and the Government on the other hand, representing the State's shares in *MEPSO* and *ESM* respectively, qualify as two distinct public bodies within the meaning of Article 43(5) of the Electricity Directive.

Formal separation between two public bodies is a necessary first step for unbundling under Article 43(5) of the Electricity Directive, but it is not sufficient. To accept that a ministry and a government are indeed two separate public bodies for the scope of compliance with the unbundling provisions, both the applicable legislative framework and the safeguards in place should be considered.

The Secretariat emphasises that in order to fully achieve the objective of Article 43 of the Electricity Directive – the prevention of potential and actual conflicts of interest – and to ensure unbundling of undertakings controlled by public bodies on equal footing with private undertakings, Article 43(5) of the Electricity Directive cannot be interpreted in a formalistic manner. The separation of control between the two public bodies in question must be effective in the sense that it ensures the full independence of the public body controlling the transmission system operator of any other state entity controlling generation and supply activities.<sup>42</sup>

In the Energy Community, the Secretariat accepted that a ministry and a government may attain the required level of separation and independence, provided that additional measures are implemented. In the case of *CGES* (the electricity TSO in Montenegro), the Secretariat requested that the national regulatory authority of Montenegro performs an in-depth analysis of potential

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<sup>36</sup> Council Regulation (EC) No 139/2004 of 20 January 2004 on the, Official Journal L 24, 29.01.2004.

<sup>37</sup> Government Decision no 50-6306/18 for transferring ownership structure through the transfer of shares of the Electricity Transmission System Operator of the Republic of North Macedonia, Joint-Stock Company for Electricity Transmission and Power System Management, under state ownership, from the Ministry of Transport to the Ministry of Energy, Mining, and Mineral Resources.

<sup>38</sup> Article 3(1) of the Law on use and disposal of state property and municipal property, according to which the Government of North Macedonia disposes of the state property used by state bodies and public legal entities, if not regulated otherwise.

<sup>39</sup> Commission's Opinion on certification decision of *Affärsverket svenska kraftnät* C(2012) 3011, p. 3.

<sup>40</sup> Commission's Opinion on certification of *VÜN*, *supra*.

<sup>41</sup> Commission's Opinion on certification of *Fingrid-Fingrid Oyj* C(2014) 329, 17.01.2014.

<sup>42</sup> Energy Community Secretariat's Opinion 1/24 on the Certification of *NOMAGAS*, p 7.



influence by the Government, the Prime Minister and the President over the ministry which owned the TSO *CGES*, investigates the influence of other state-owned energy companies into the operation of the TSO and imposes measures to avoid conflicts of interest.<sup>43</sup> In its 2019 opinion on certification of *MEPSO*, the Secretariat stated that *"the fact that the minister representing the owner of the transmission system operator – the ministry as a body of state administration, is a member of another collegial public body, the Government as owner of electricity generation companies, remains critical against the objective of Article [9] of the Electricity Directive, i.e., to avoid conflicts of interest. [...] This requires safeguards, even more than in constellations where the two public bodies in question were established on the same hierarchical level, to effectively exclude any interference by the Government (and any of its individual members) with the exclusive control by one ministry over the transmission system owner."*<sup>44</sup> In the case of *NOMAGAS*, the Secretariat, after reviewing the applicable legislation (on the functioning of the government and ministries), agreed with ERC that, in the specific situation at that time in North Macedonia, the ministries are responsible for the areas for which they are established, and independent of the Government and/or the Prime Minister.<sup>45</sup>

In the Preliminary Decision, ERC explains that, according to the Constitution of the Republic of North Macedonia, the Government, consisting of a president and ministers, is elected by the Parliament, and each of the ministers and the president are accountable before the Parliament for their work.<sup>46</sup> Ministries derive their rights and competences from the Law on Organization and Operation of the State Administration Bodies, according to which a ministry is formally separated from the Government. What is decisive for the purpose of compliance with Article 43(5) of the Electricity Directive, however, is whether the Government and the Ministry of Energy are materially separated from each other, and the extent to which the Government controls the way in which the Ministry of Energy exercises its ownership rights in the TSO *MEPSO*.

The fact that the minister controlling the TSO *MEPSO* is at the same time a member of another collegial public body, the Government which controls the electricity generation company *ESM*, remains critical against the objective of Article 43 of the Electricity Directive, i.e., the avoidance of conflicts of interest, which may stem from the subordination of one public body on the other of which it forms part. Furthermore, the fact that the public body controlling *MEPSO* is also responsible for the formulation of energy policy raises additional concerns regarding the independent operation of the TSO.

i. The TSO is not engaged in generation/supply activities

The ownership unbundling provisions require that a TSO (or the body exercising control over it) may not be engaged in the production of energy nor in its supply.

The Ministry of Energy itself is not engaged in production or supply of energy, as these activities are controlled by the Government. Also, *MEPSO* is not engaged in generation or supply of

<sup>43</sup> Energy Community Secretariat's Opinion 1/18 on the Certification of *CGES*, p 15.

<sup>44</sup> Energy Community Secretariat's Opinion 3/19 on the Certification of *MEPSO*, p 9.

<sup>45</sup> Energy Community Secretariat's Opinion 1/24 on the Certification of *NOMAGAS*, p 10.

<sup>46</sup> Article 95 of the Constitution of the Republic of North Macedonia.



electricity, but it is the founder and sole shareholder of *MEMO*,<sup>47</sup> the electricity market operator. *MEMO*'s functions include the management of the electricity market based on bilateral agreements, calculating imbalances, delivering data on electricity transactions, keeping records of market participants, monitoring of market participants.<sup>48</sup>

Both the European Commission<sup>49</sup> and the Secretariat<sup>50</sup> held that the holding of shares in companies engaged in facilitating trade of electricity and gas on exchanges does not create an obstacle to certification, and the Secretariat is satisfied that *MEPSO*'s ownership of a market operator does not raise compliance issues.

When the Secretariat delivered its 2019 opinion on the certification of *MEPSO*, *MEMO*'s license had not yet been issued. Nonetheless the Secretariat concluded that *MEPSO*'s future shareholding in a power exchange will not represent an obstacle for ownership unbundling if such a company only facilitates trade and is not engaged in buying or selling electricity. The Secretariat further requested ERC to "to ensure and monitor that the activities of *MEMO* in its capacity as future as operator of the organised market, do not raise any issues resulting in a potential conflict of interest in relation to supply of electricity or gas."<sup>51</sup> The Preliminary Decision is silent as to whether this requirement has been fulfilled or not.

However, the Preliminary Decision notes that, in certain circumstances, *MEMO* can trade electricity produced by renewable sources at feed-in tariffs.<sup>52</sup> The Preliminary Decision does not include an analysis on whether *MEPSO* controls the daily operations of *MEMO*, and hence whether *MEPSO*'s ownership of *MEMO* causes any conflicts of interest between the transmission and supply functions. The requirement to separate the transmission from supply function is not without a degree of flexibility. Derogations may be possible where such activities are "truly incidental to the core activity of an undertaking ..., and the quantity of energy is also insignificant".<sup>53</sup>

As conflicts of interest may arise in this constellation, the Secretariat requires that, in its final decision on certification, ERC assesses whether and to what extent *MEMO*'s trading activities could affect *MEPSO*'s independence and, where appropriate, imposes mitigating safeguard measures.

## ii. Separation and independence of public bodies

To be considered not only formally but also materially independent of the Government controlling *ESM*, the Ministry of Energy needs to have exclusive competences, instruments, and resources to exercise its ownership over *MEPSO* independently from the Government.

From the perspective of public law, the Constitution of the Republic of North Macedonia stipulates

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<sup>47</sup> Registered in the Central Register of the Republic of North Macedonia on 8 October 2018. *MEMO*'s license was issued by ERC on 25 September 2019.

<sup>48</sup> Preliminary Decision, pp 37-38.

<sup>49</sup> Commission's Opinion on certification of *Energinet (gas)* (C(2012) 88, 09.01.2013 p.3.

<sup>50</sup> Energy Community Secretariat's Opinion 3/19 on the Certification of *MEPSO*, p 11.

<sup>51</sup> Secretariat's Opinion 3/19 on the certification of *MEPSO*, p 11.

<sup>52</sup> Preliminary Decision, p 38.

<sup>53</sup> Commission's Opinion on certification of *Thanet*, C(2013) 2566 final of 26.4.2013.



that the Government consists of a president (the prime minister) and individual ministers.<sup>54</sup> Article 91 of the Constitution lists the competences of the Government, which include deciding on the policy for the implementation of legislation, proposals for legislation and adoption of secondary legislation. At the same time, Article 96 of the Constitution requires that ministries perform the assignments *"within their competence independently and on the basis of the Constitution and laws and are responsible in front of the Government"*. Moreover, individual ministries are obliged to inform the Government about acts adopted which relate either to constitutional rights of the citizens, the directions of the Government for implementation of the policy or the use of financial resources.<sup>55</sup>

The Government is bound by the legislation adopted by the Parliament, including the Energy Law conferring control over *MEPSO* exclusively to the Ministry of Energy, and the competence to independently adopt decisions related to exercising the ownership rights.<sup>56</sup> Article 13 of the Law on Government stipulates that the *"minister shall independently manage the ministry they have been appointed for, shall monitor and shall be responsible for the implementation of the laws and other prescriptions."* Based on Article 55 of the Law on Organisation and Operation of the State Administration Bodies, the minister is empowered to adopt secondary legal acts, including decisions when empowered to do so by law. In ERC's interpretation, this means that the Minister of Energy does not have an obligation to notify the Government of the acts it adopts in exercising the function of sole shareholder of *MEPSO*, but only regarding secondary legislation adopted to implement the Ministry's areas of competence.<sup>57</sup> ERC further states that, by independently selecting the members of the Supervisory Board, the Ministry of Energy ensures the independent operation of *MEPSO*. Similarly, ERC acknowledges that, while both the Government and the Prime Minister can give instructions and guidelines to individual ministers, these can only refer to the performance of the functions of the State, and not regarding the rights and obligations arising from ownership of companies the Government does not own.<sup>58</sup>

The Secretariat agrees that, in general, the Ministry of Energy enjoys a high degree of independence when exercising its shareholder rights in *MEPSO*.

However, when it comes to *MEPSO*'s Supervisory Board, described in the Preliminary Decision as the shield against undue influence from the Government or the Prime Minister, the Secretariat is not convinced that the Supervisory Board has enough instruments to act independently. Its members are appointed directly by the Ministry of Energy and, out of seven, only two are independent. This does not suggest a strong, independent Supervisory Board, that, once appointed, is able to prevent other state stakeholders from interfering with the operations of the TSO *MEPSO*.

The Secretariat requests ERC to perform an additional assessment on the independent operation of the Supervisory Board in the final decision on certification. The assessment should consider the selection procedure for the Supervisory Board members, including transparency and selection criteria, as well as any existing safeguards for ensuring they can perform their duties in an

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<sup>54</sup> Article 89 of the Constitution.

<sup>55</sup> Article 31(1) of the Law on Government.

<sup>56</sup> Article 134(1) of the Energy Law.

<sup>57</sup> Preliminary Decision, p 58.

<sup>58</sup> Preliminary Decision, p 54.



independent manner. ERC should also review the independence of the so-called “independent” members of the Supervisory Board and whether, indeed, they can act without interference from various state actors. Should ERC find the existing framework unsatisfactory in this regard, the Secretariat requests ERC to impose adequate conditions with a view to strengthen the independence of the Supervisory Board.

iii. The Ministry of Energy as shareholder and policy setter

Conflicts of interest may arise also from the fact that, unlike the previous shareholder of *MEPSO* (the Ministry of Transport and Communications), the Ministry of Energy is leading the policy making and the implementation of policies in the energy sector of North Macedonia, which includes measures affecting the generation and supply of electricity. The consequences of such a setting have been discussed at large by the Secretariat in its opinions on the certification of the Moldovan and Ukrainian electricity TSOs.<sup>59</sup> In those cases, the Secretariat supported the creation of either a separate department within the ministry (in the case of *Ukrenergo*), or the appointment of deputy minister (in the case of *Moldelectrica*) in charge of managing the shares in the TSO. Additional safeguards were also introduced to ensure the independence of the unit/person managing the shares of the TSO from the minister.

No such ring-fencing exists in the case of *MEPSO* and therefore a high risk of conflicts of interests and discriminatory behaviour exists. *MEPSO*'s independence from interventions by the Minister of Energy and staff of the Ministry of Energy which are also involved in the setting and implementation of energy policy measures is affecting the interests of generation and supply companies.

The Secretariat requests that, in its final decision on certification, ERC imposes effective measures to ensure that no influence can be exerted by the Ministry of Energy personnel in charge of developing and implementing policies for generation and supply of electricity over the TSO.

iv. The governance of the TSO and the public bodies involved in the energy sector allow for full independence in day-to-day decision-making

Article 43(5) of the Electricity Directive does not only require structural changes between the public bodies involved in the energy sector but also within the TSO itself and within individual public bodies to the extent this is required by the achievement of the objective of ownership unbundling, the prevention of potential and actual conflicts of interest. While a formal separation of competences on the level of government and ministry constitutes an important condition for unbundling of state-owned TSOs, full independence of network operation from supply and generation interests also requires measures related to the elimination of exchanges of any confidential information on a daily basis. The State must have effective measures in place to prevent discriminatory behaviour and undue dissemination of confidential information, including

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<sup>59</sup> Energy Community Secretariat's Opinion No 2/23 on the certification of *Moldelectrica*, 12 May 2023; Energy Community Secretariat's Opinion No 4/21 on the certification of *Ukrenergo*, 25 November 2021.

at the level of supporting staff and administration.<sup>60</sup>

According to Article 136(2) of the Energy Law, *MEPSO's* Supervisory Board is mandated to appoint a compliance officer. The compliance officer is required to monitor and assess the activities of the Supervisory Board and of the Management Board, take measures to prevent money laundering and corruption, notify the Supervisory Board of actual or potential conflicts of interest within *MEPSO*, monitor the implementation of *MEPSO's* compliance programme, and ensure appropriate data management. ERC notes that the compliance officer should also monitor the implementation of the compliance programme, the purpose of which is to ensure transparent, objective, and non-discriminatory actions by *MEPSO* towards the users of the electricity transmission system. The compliance officer should also monitor the compliance with data protection and confidentiality policies.<sup>61</sup>

Whereas the measures described above seem sufficiently effective, their proper implementation depends on the mandate of the compliance officer, appointed by the Supervisory Board, which in turn is appointed by the Ministry of Energy. In order to enable to police the implementation of data protection measures, as well as confidentiality, transparency and non-discrimination norms within the Ministry of Energy and the TSO it owns, the compliance officer must be selected transparently and enabled to act independently.

Much like in the case of the Supervisory Board, the Secretariat requests ERC to perform an additional assessment in the final decision on certification regarding the independence of the compliance officer. The assessment should consider the selection procedure for the compliance officer, including transparency and selection criteria, as well as any existing safeguards for ensuring the compliance officer can perform its duties in an independent manner. Should ERC find the existing framework unsatisfactory in this regard, the Secretariat requests ERC to impose adequate conditions with a view to strengthen the independence of the compliance officer.

#### IV. Conclusions

To fully comply with the requirements of the ownership unbundling model, the instances of incompliance described above must be addressed by a number of actions:

- a. *MEMO's* trading activities must not affect *MEPSO's* independence. If *MEPSO's* independent operation is endangered by its interests in *MEMO*, mitigating safeguard measures must be put in place.
- b. The Supervisory Board and of the compliance officer must operate independently from state interests. Should the existing framework be deemed insufficient to guarantee their independent and effective operation, adequate measures must be adopted.<sup>62</sup>
- c. Effective safeguards must be introduced to ensure that no influence is exerted by the Ministry of Energy personnel in charge of developing and

<sup>60</sup> See, for comparison, Commission's Opinion on certification of *Energinet* (gas) (C(2012) 88, 9.01.2012; Commission's Opinions on certification of *Vorarlberger Übertragungsnetze (VÜN)* C(2012) 2244 final of 29.3.2012.

<sup>61</sup> Preliminary Decision, pp 26-28 and 52.

<sup>62</sup> In the Secretariat's practice, a Supervisory Board may be regarded as independent only where a majority of its members are not affiliated with the State and are appointed through a public selection procedure conducted based on transparent and non-discriminatory criteria. To achieve this, amendments to primary legislation and the constitutive documents of *MEPSO* are likely necessary.



implementing policies for generation and supply of electricity over the TSO.<sup>63</sup>

Pursuant to Article 51(2) of the Electricity Regulation, ERC shall take the utmost account of the above comments of the Secretariat when taking its final decision regarding the certification of MEPSO. ERC shall also communicate its final decision to the Secretariat and publish its decision together with the Secretariat's opinion.

The Secretariat will publish this opinion on its website. The Secretariat does not consider the information contained therein to be confidential. ERC is invited to inform the Secretariat within five working days following receipt whether and why it considers that this document contains confidential information which it wishes to have deleted prior to such publication.

Vienna, 24 February 2026

A handwritten signature in black ink that reads "Artur Lorkowski".

Artur Lorkowski  
Director

A handwritten signature in blue ink that reads "Richter-Kuhnert".

Marie-Therese Richter-Kuhnert  
Deputy Director/ Head of Legal Unit

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<sup>63</sup> To ensure separation between the Ministry of Energy in its capacity as policy maker in the field of generation and supply of energy, on the one hand, and as the owner of the electricity TSO, on the other, personnel responsible for the management of the TSO must neither have access to nor participate in the formulation of energy policy. In practice, this separation may be achieved through the designation of a dedicated unit or specifically appointed individuals responsible exclusively for TSO management, the implementation of a rigorously monitored compliance programme, and the imposition of enhanced confidentiality obligations.