

Decision Enacting the Law on Amendments to the Law on Transmission of Electric Power, Regulator and System Operator of Bosnia and Herzegovina

In the exercise of the powers vested in the High Representative by Article V of Annex 10 (Agreement on Civilian Implementation on the Peace Settlement) to the General Framework Agreement for Peace in Bosnia and Herzegovina, according to which the High Representative is the final authority in theatre regarding interpretation of the said Agreement on the Civilian Implementation of the Peace Settlement; and considering in particular Article II.1. (d) of the last said Agreement, according to the terms of which the High Representative shall “Facilitate, as the High Representative judges necessary, the resolution of any difficulties arising in connection with civilian implementation”;

Recalling paragraph XI.2 of the Conclusions of the Peace Implementation Conference held in Bonn on 9 and 10 December 1997, in which the Peace Implementation Council welcomed the High Representative’s intention to use his final authority in theatre regarding interpretation of the Agreement on the Civilian implementation of the Peace Settlement in order to facilitate the resolution of any difficulties as aforesaid “by making binding decisions, as he judges necessary” on certain issues including (under sub-paragraph (c) thereof) measures to ensure the Peace Agreement throughout Bosnia and Herzegovina and its Entities;

Noting that the supply of electric power to the Brčko District of Bosnia and Herzegovina was never regulated by a law of Bosnia and Herzegovina, nor was a mechanism established which could provide for any long lasting and satisfactory solution to this issue;

Considering that the issues of relevance for the transmission and international trade of electric power are regulated by the Law on Transmission of Electric Power, Regulator and System Operator of Bosnia and Herzegovina (“Official Gazette of Bosnia and Herzegovina”, nos. 07/02 and 13/03), the Law Establishing an Independent System Operator for the Transmission System of Bosnia and Herzegovina (“Official Gazette of Bosnia and Herzegovina”, no. 35/04) and the Law Establishing the Company for the Transmission of Electric Power in Bosnia and Herzegovina (“Official Gazette of Bosnia and Herzegovina”, no. 35/04);

Considering further that the issues of relevance for the generation, distribution, supply and trade, including intermediation in the trade of electric power, are all regulated by the Electric Power Law of the Federation of Bosnia and Herzegovina (“Official Gazette of the Federation of Bosnia and Herzegovina”, nos. 41/02 and 38/05) and the Electric Power Law of Republika Srpska (“Official Gazette of the Republika Srpska”, nos. 66/02, 29/03, 86/03, 111/04, 60/07, 114/07, 8/08 and 34/09);

Considering further that, even though the Brčko District of Bosnia and Herzegovina implicitly falls within the frame of the electric power transmission system, none of the above-mentioned laws regulates the generation, distribution, supply and trade, including intermediation in the trade of electric power, for the Brčko District of Bosnia and Herzegovina, nor is it possible for any public or private company in the Brčko District of Bosnia and Herzegovina to hold the license required for the performance of some of the above activities;

Mindful that, as part of the mandatory public service, the entity level power generators supply electricity to all consumers in their respective entity but have no obligation in relation to the citizens and legal persons in the Brčko District of Bosnia and Herzegovina;

Considering that one of the main objectives of all regulations related to the electric power is the establishment of a single electric power market, including the reliable supply to customers of high quality electric power without any kind of discrimination;

Aware that, insofar as the Brčko District of Bosnia and Herzegovina does not have its own generation capacities, there is no economic justification for the establishment of a separate regulator for Brčko District of Bosnia and Herzegovina regardless of the complete absence of regulation in the areas of generation, distribution and supply for the territory of Brčko District of Bosnia and Herzegovina;

Noting that as a result of the situation described above, the Brčko District of Bosnia and Herzegovina is forced to

procure electric power for its consumers in a manner that is not regulated at either state or entity levels, or within the Brčko District of Bosnia and Herzegovina;

Recalling that the competent authorities in Bosnia and Herzegovina have repeatedly been invited to settle this issue by ensuring a proper and legally grounded supply of electric power to the consumers of the Brčko District of Bosnia and Herzegovina and that the Steering Board of the Peace Implementation Council, in its Communiqué of 30 June 2009, gave the competent authorities the deadline of 15 September 2009 to settle the issue;

Deploring that within the said timeframe the competent authorities neither initiated any activity to settle the issue nor proposed any solution that ensures an appropriate and legally grounded supply of electricity to the Brčko District of Bosnia and Herzegovina;

Considering that the only feasible and relevant way to enable supervision over the performance of all activities related to electric power, to prescribe a supply pricing methodology and to enable the licensing of a legal person that would deal with certain activities related to electric power in the Brčko District of Bosnia and Herzegovina is to extend the responsibilities of the State Electricity Regulatory Commission;

Bearing in mind that insofar as the tariff for activities related to electric power, such as electric power generation, distribution, supply and trade, including also intermediation in the trade of electric power, is set by the entity level regulators, the extension of the responsibilities of the State Electricity Regulatory Commission would only relate to the setting of tariffs for electricity distribution services which would be added to the tariffs already set by the entity regulators;

Considering that the only way towards establishing a single electric power market in Bosnia and Herzegovina is to equally distribute the obligations to the electric power generators who have capacities and generate surpluses on top of the set mandatory quantities, in line with the recommendations of the State Electricity Regulatory Commission;

Bearing in mind that the above distribution can only be achieved through amendments to the Law on Transmission of Electric Power, Regulator and System Operator of Bosnia and Herzegovina, the entity Electric Power Laws and the decisions establishing a legal person in charge of electric power related activities in the Brčko District of Bosnia and Herzegovina.

Having considered, borne in mind and noted all the matters aforesaid, the High Representative hereby issues the following:

DECISION

Enacting the Law on Amendments to the Law on Transmission of Electric Power, Regulator and System Operator of Bosnia and Herzegovina

(“Official Gazette of Bosnia and Herzegovina”, nos. 07/02 and 13/03)

The Law which follows and which forms an integral part of this Decision shall enter into force as provided in Article 6 thereof on an interim basis, until such time as the Parliamentary Assembly of Bosnia and Herzegovina adopts the Law in due form, without amendment and with no conditions attached.

This Decision shall come into effect forthwith and shall be published in the “Official Gazette of Bosnia and Herzegovina” without delay.

LAW ON AMENDMENTS TO THE LAW ON TRANSMISSION OF ELECTRIC POWER, REGULATOR AND SYSTEM OPERATOR OF BOSNIA AND HERZEGOVINA

(Official Gazette of Bosnia and Herzegovina no. 07/02 and 13/03)

Article 1

In Article 4 "*State Electricity Regulatory Commission (SERC)*", paragraph 4.1 "*Establishment and Objectives*", subparagraph (2) shall be amended to read as follows:

"The Law establishes the State Electricity Regulatory Commission (SERC), having the jurisdiction and responsibility over transmission of electricity, transmission system operations and foreign trade in electricity, as well as over the matter of electricity generation, distribution and supply of customers in the Brčko District of Bosnia and Herzegovina, in accordance with international norms and European Union standards."

Article 2

In Article 4 "*State Electricity Regulatory Commission (SERC)*", paragraph 4.2 "*Scope of Responsibility*", a new subparagraph (2) shall be added to read as follows:

"The responsibilities of the State Electricity Regulatory Commission (SERC) vis-à-vis the Brčko District of Bosnia and Herzegovina shall be as follows:

- a. Supervision and regulation of the relationship between generation, distribution and supply, on the one hand, and electricity customers, including electricity traders, on the other hand;
- b. Stipulation of the methodology and criteria for establishing electricity supply prices for non-eligible electricity customers;
- c. Regulation of tariff items for the users of distribution systems and tariff items for non-eligible customers;
- d. Issuance and revocation of electricity generation, distribution, supply and trade licenses;
- e. Issuance of prior licenses for construction and licenses for usage of electricity facilities intended for generation, distribution and supply of electricity;
- f. Regulation of general conditions for electricity supply."

Article 3

In Article 4. "*State Electricity Regulatory Commission (SERC)*", paragraph 4.8. "*Tariffs*", subparagraph 1, after item 1, a new item 2 shall be added to read as follows:

"Tariffs for providing the services of generation, distribution and supply shall, pursuant to the provisions of paragraph 4.2, subparagraph (2) of this Law, be regulated and approved by the State Electricity Regulatory Commission."

Article 4

In Article 7 "*Licensing*", paragraph 7.1 "*Activities Covered*" shall be amended by adding in the end of the provision a new item d. that reads as follows:

"d. activities of electricity generation, distribution and supply of legal persons seated in the Brčko District of Bosnia and Herzegovina."

Article 5

Article 8 "*Market*" shall be amended by adding to it a new paragraph 8.1 that is titled as "*Single electricity market*" and reads:

"To achieve the objectives of this Law, particularly to establish a single electricity market based on free and equal access to the transmission network, and to protect customers by ensuring continuous supply of electricity under defined quality standards, the entity laws on electricity shall oblige Elektroprivreda BiH and Elektroprivreda RS to evenly supply the Brčko District of Bosnia and Herzegovina at the rate of 50 percent each.

The quantities of electricity needed for the Brčko District of Bosnia and Herzegovina shall be established based on the Information on the projected annual electricity demands of the Brčko District of Bosnia and Herzegovina by no later than the end of September of the current year for the following year.

The electricity distribution license holder in the Brčko District of Bosnia and Herzegovina shall deliver the Information to the State Electricity Regulatory Commission of Bosnia and Herzegovina and to the Independent System Operator of Bosnia and Herzegovina by the set deadline.

With regard to the obligation to supply Brčko District of Bosnia and Herzegovina in the following year, the electricity producers may agree on a different rate of supply by no later than 30 October of the current year. Such agreement shall be notified to the respective entity electricity regulator and the State Electricity Regulatory Commission. In case there is no such an agreement by the set deadline, the supply rate established by this Law shall apply.

Article 6

This Law shall be published in the Official Gazette of Bosnia and Herzegovina forthwith and shall enter into force on the day following its publication in the Official Gazette of Bosnia and Herzegovina, whereas the obligation on electricity supply as specified in Article 5, paragraph 1 of this Law shall apply as of 1st January 2010.