

Decision Enacting the Law on Amendments to the Law on Electricity

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, 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 the 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 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 appropriate supply of to the Brčko District of Bosnia and Herzegovina;

Considering that the only 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 the 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 laws 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 Electricity

(“Official Gazette of Republika Srpska, nos. 66/02, 29/03, 86/03, 111/04, 60/07, 114/07, 8/08 i 34/09)

The Law which follows and which forms an integral part of this Decision shall enter into force as provided in Article 3 thereof on an interim basis, until such time as the National Assembly of Republika Srpska 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 Republika Srpska” without delay.

Sarajevo 18 September 2009

Dr. Valentin Inzko

High Representative

LAW ON AMENDMENTS TO THE LAW ON ELECTRICITY

(Official Gazette of Republika Srpska number 66/02, 29/03, 86/03, 111/04, 60/07, 114/07, 8/08 and 34/09)

Article 1

Article 35 shall be amended by adding after paragraph (1) new paragraphs (2), (3) and (4) that read:

'(2) Pursuant to the provisions of the Law on Electric Power Transmission, Regulator and System Operator of Bosnia and Herzegovina and for the purpose of ensuring a single electricity market in Bosnia and Herzegovina and non-discriminatory treatment of citizens of Bosnia and Herzegovina with regard to electricity distribution and supply, this Law and relevant licenses shall establish the obligation to provide sufficient quantities of electricity to all legal or physical persons under its jurisdiction under equal conditions. Notwithstanding what is stipulated by provision of Article 54, and in accordance with the provisions of Article 63 of this Law, the Regulatory Commission shall, by the appropriate license or amendments to the license, include the obligation to supply consumers within the Brčko District of Bosnia and Herzegovina, as specified by the provisions of Paragraphs (3) and (4) of this Article.

(3) Elektroprivreda RS shall have the obligation to provide electricity in sufficient quantities to meet the demands of non-eligible and eligible customers in Republika Srpska. Elektroprivreda RS shall also have the obligation to provide 50 percent of the electricity supply required by the Brčko District of Bosnia and Herzegovina, in accordance with the Information on projected annual demands that the Regulatory Commission shall deliver to this producer by not later than 30 November of the current year for the following year.

(4) Elektroprivreda RS shall provide electricity in the amount as referred to in paragraph (3) of this Article to the Brčko District of Bosnia and Herzegovina under identical terms and conditions and, in particular, under the tariff applicable to the same category of customers in Republika Srpska, provided that the costs for the distribution of electricity may be taken away from the global cost.

The current paragraph (2) shall become paragraph (5).

Article 2

Provision of Article 11, paragraph (4) shall be deleted.

Article 3

This Law shall be published in the Official Gazette of the Republika Srpska without delay and shall enter into force on the day following its publication, whereas the implementation of the obligation of supplying electricity as provided by Article 35, paragraphs (2), (3) and (4) of this Law shall commence on the 1st January 2010.