



REPUBLIC OF ALBANIA
ENERGY REGULATOR AUTHORITY



Board

DECISION

No.43, of date 15.03.2017

ON

APPROVING THE FINAL CERTIFICATION OF “TRANSMISSION SYSTEM OPERATOR” FOR ELECTRICITY TSO COMPANY IN CONFORMITY WITH ARTICLE 54, POINT 6, OF LAW NO. 43/2015, “ON POWER SECTOR ” AND ARTICLE 9, POINT 6, OF DIRECTIVE 72/2009 EC AFTER RECEIVING THE OPINION OF ENERGY COMMUNITY SECRETARIAT

In conformity with article 3 point 8; article 16; article 54 and 58 points 1,2, 3, 6 and 7 of Law no.43/2015 “On Power Sector”, Ministerial Council decision no. D/2011/02/MC-EnC, Energy Community Treaty, ratified with law no. 9501, of date 03.04.2006, as well as articles 6, 8, 9 point 1, article 10, 11, 12 and 14 of the “Regulation on the Certification of the transmission system operator for electricity”, approved with ERE Board decision no. 154 of date 11.12.2015, article 3 point 1 letter “b” and article 15 of the “Regulation for ERE organization, operation and procedures” approved with ERE Board decision no. 96 of date 17.06.2016, ERE decision no.160, of date 05.10.2016, and Energy Community Secretariat Opinion of date 24 January 2017,

Considering that:

- Law no.43/2015 “On Power Sector” is aligned with 2009/72/EC Directive of the European Parliament and of the Council, of date 13 July 2009, “On the common rules of the internal market in electricity, including the certification of transmission system operators;

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- Based on article 54 point 1, law no.43/2015 “On Power Sector”, the Transmission System Operator exercise its own activity independent of other activities in the electricity sector, namely generation, distribution, trade and supply of electricity, and in accordance with the principles and requirements prescribed by this law.

- On article 58 Law no.43/2015 “On Power Sector” it is defined that the transmission system operator, before being licensed to perform the activity of operation of the transmission system, shall be certified according to the procedure laid down in this Article. ERE determines the requirements of the application for the certification of the Transmission System Operator, including the necessary documentation proving fulfilment of the conditions under Article 54 of this Law. The application for certification is presented by the Transmission System Operator, in accordance with the requirements approved by the ERE. Also in this article it is determined that:

- ERE adopts a decision on the certification of the Transmission System Operator within a period of 4 months from the date of application and submission of all required documents and information.

- ERE may request from the Transmission System Operator any information relevant for fulfilment of this obligation.

- ERE notifies Energy Community Secretariat for the preliminary certification of the Transmission System Operator and takes a final decision within 2 months from the date of receiving the opinion from the Energy Community Secretariat, taking into account its recommendations.

- If ERE final decision, is different from the opinion of the Energy Community Secretariat, ERE shall publish and explain the reasons for not accepting them, and shall inform the Secretariat of this decision.

- ERE monitors the compliance of the Transmission System Operator activity with the requirements foreseen in the provided by the Power Sector Law. ERE reviews the certification procedure referred to in paragraph 1 of this Article in the following cases:

- a) upon notification by the Transmission System Operator pursuant to paragraph 8 of this Article;

- b) on its own initiative, when there is reasonable doubt that a planned change affects the rights or control of the Transmission System Operator and may lead to an infringement of the provisions of Article 64, or where such an infringement may have occurred;

- Based on article 54 points 3, 4, 5, 6 Law no.43/2015 “On Power Sector” it is determined that: Starting from 01 January 2016, the same entity is not entitled that at the same time to:

- a) exercise control directly or indirectly over a licensee performing any of the functions of electricity and natural gas generation or supply, and to exercise control or exercise any right over the Transmission System Operator or over the transmission network;

- b) exercise control directly or indirectly over the Transmission System Operator or over the transmission network, and exercise control or exercise any right over an licensee performing any of the functions of electricity and natural gas generation or supply;

- c) to appoint members of the supervisory council, the managing board or other bodies legally representing the Transmission System Operator or the transmission network, and directly or indirectly exercise control or any right over a licensee performing any of the functions of electricity and natural gas generation or supply;

- ç) be a member of the Supervisory Council, the Management Board or other bodies representing the licensee with the licensees performing any of the functions of

electricity or natural gas generation or supply, and that of the transmission system operator or transmission network.

- Article 54/4 of the Law: The prohibitions provided in letters “a”, “b” and “c”, of the above mentioned paragraph shall apply in particular to:

- a) the ability to exercise voting rights;
- b) the competence to Appoint Members of the Supervisory Council, the Managing Board or other bodies representing the licensee;
- c) the right to hold a majority share.

• Article 54/5 of the Law: The obligation set out in the above paragraph of this article, is deemed fulfilled if two or more companies, who have their transmission networks, have established a joint venture, which acts as a transmission system operator in two or more countries. No other company may be part of this joint venture, unless the company is defined as independent operator of the transmission system and has been certified pursuant to the conditions defined in this law.

• Article 54/6 of the Law: Where the person referred to in the above paragraph is a state-controlled public body, the two separate public bodies that exercise control, one over a transmission system operator or over a transmission network on the one hand, and the other over the licensee that performs any of the functions of generation or supply on the other, shall be deemed not to be the same person.

• Article 53 of Law no.43/2015 “On Power Sector” requires that the Transmission System Operator shall be a legal entity licensed to conduct the activity of operating an electricity transmission system, which owns the transmission system and respect the independence criteria established by Article 54 of this law mentioned above.

What is mentioned above comply with the criteria regarding the incorporation of an operator in one of the legal forms provided and not having confusion about its identity, which shall be clearly distinguished from the one of other companies,

- Article 56 Law no.43/2015 “On Power Sector”, has determined the obligations of the Transmission System Operator in conformity with the obligations defined in the law.

- In each case, based on article 58 point 9 of Law no.43/2015 “On Power Sector” and in conformity with article 14 of the “Regulation on the Certification of Transmission System Operator company in the power sector”, approved with ERE Board decision no.154 of date 11.12.2015, ERE monitors the compliance of the Transmission System Operator for Electricity and reviews the certification procedure.

Considering that:

- In conformity with what is defined on article 8, letter “a” of the “Regulation on the Certification of the Transmission System Operator for Electricity” approved with ERE Board decision no. 154, of date 11.12.2015, where are defined the criteria, that shall be fulfilled by the applicant to enable its decision and certification from the Regulator, which above all consist in:

a) The legal entity that has ownership of the Transmission System Operator for electricity should not have the right to control directly or indirectly the generation, distribution, supply activities or vice versa;

- On article 7 of the above mentioned Regulation, it is defined that following the implementation of all requirements for the unbundling of electricity transmission system operator, the applying company shall inform ERE by writing and shall submit:

- written application for the certification of electricity transmission system operator;
- documents, data and information listed in Chapter III of the Regulation; and

- filled questionnaire for the certification of electricity transmission system operator, according to the model provided in the Annex to the Regulation, except in cases where the applying undertaking is the exempted TSO in the meaning of Law 43/2015 article 32, which exemption decision envisages an unbundling model not

defined in the Law, and the questionnaire will be drawn up by ERE in collaboration with the Secretariat.

- On article 8 of the Regulation on the Certification of the Transmission System Operator for Electricity, are set the criteria that should be met by the applicants to enable the decision-making and the certification. On article 11 it is defined that ERE shall certify the transmission system operator for electricity according to the procedures set on Law no.43/2015 article 58 “On Power Sector” and in conformity with this Regulation.

Referring to the “Regulation on the Certification of Transmission System Operator for Electricity” annex part, the applicant shall complete the Questionnaire for the certification of the Transmission System Operator for electricity, according to the model given in the annex of this Regulation.

- Submission of the application

- As mentioned above, the Electricity Transmission System Operator company, with the official letter protocol no. 4179, of date 13.07.2016, registered at ERE with protocol no.545, of date 13.07.2016, has submitted the request, for certification in Transmission System Operator activity (TSO-E), based on article 54 and 58 Law No.43/2015 “On Power Sector”.

- This request is accompanied with the necessary information, referring to the “Regulation on the Certification of Transmission System Operator for Electricity”, approved with ERE decision, no. 154, of date 11.12.2015, as well as point 4 of Council of Ministers Decision No 317, of date 27.04.2016 “On defining the Public Authority Representing the State as the Owner of Power Sector Companies” which define that: immediately after this decision enters into force TSO company shall apply at ERE for the certification based on article 58 of Law no.43/2015.

- For the purpose of this application TSO company has submitted at ERE, the following documents:

- The form where are identified the documents, data and/or the information submitted by TSO company, in the application, which shall be handled as confidential

information or commercially sensitive information.

- The Declaration of TSO company Administrator, and the Declaration of the Legal Department Director according to article 9.1/p/iii of the Regulation approved with ERE Decision no. 154, of date 11.12. 2015.

- Extract from the Central Business Register of Montenegro for SEE CAO of date 08.07.2016 (noterized copies in the Montenegrin, Albanian and English languages).

- This application is accompanied with the documentation provided on article 9 and the Annex of the “Regulation on the Certification of Transmission System Operator for Electricity”, approved with ERE decision, no. 154, of date 11.12.2015.

- The applicant has submitted full information for the name of the company, registration as legal entity, as well as the data regarding its identification as legal subject at the tax bodies (Unique Identification Number NUIS), data regarding the capital and its single shareholder, nominal value, contact data, address; the company representative in the relation with the third parties etc. Referring to the above submitted and in conformity with the Regulation the required General Information.

- Referring to point II of the Annex the applicant has completed the (Ownership Unbundling) form.

- Based on article 54/1 Law no.43/2015 “On Power Sector” the Transmission System Operator exercise its own activity independent from other activities of the Power Sector, such as generation, distribution, electricity trading and supply, in conformity with the principles and requirement prescribed in this law.

- Actually TSO company is licensed for electricity trading activity referring ERE decision no.24, of date 26.03.2009, “On license renewal in electricity transmission activity”. Regarding other activities such as electricity generation, distribution trading and electricity supply TSO company does not result to exercise these activities.

For what is defined on point 2 Council of Ministers Decision No 317, of date 27.04.2016 “On defining the Public Authority representing the State as the owner of the shares for Power Sector companies” currently as the single shareholder of TSO

company with a 100% state-own capital the Ministry of Economic Development, Tourism, Trade and Entrepreneurship (MZHETS).

Also on point 1 Council of Ministers Decision No 317 of date 27.04.2016 it is defined that:

The public authority representing the state as the owner of shares for the Albanian Power Corporation and the Electricity Distribution Operator (OSHEE) is the Ministry of Energy and Industry.

Following points 3 and 5 of Council of Ministers Decision No 317, of date 27.04.2016 it is defined that:

3. The Minister of Energy and Industry and the Minister of Economic Development Tourism, Trade and Entrepreneurship, appoint the members of the supervisory councils for the companies defined on points 1 and 2 within thirty days from the entry into force of this decision implementing the limitations defined on Law no.43/2015 “On Power Sector”.

5. The Ministry of Energy and Industry exercises its rights over TSO company in conformity with the provisions of law no.43/2015 “On Power Sector”, and its state responsibility area.

So the Ministry of Economic Development, Tourism, Trade and Entrepreneurship (hereinafter **“MZHETS”** or the **“Ministry of Economy”**) exercises direct control as the owner for “TSO” company;

The Ministry of Energy and Industry exercises direct control as the owner of the Generation Company (KESH) and the Electricity Distribution Operator (OSHEE). From the above mentioned being that the transmission, generation and electricity supply activities are developed from the companies organized in the form of entrepreneurs (state-owned joint stock companies), the above mentioned authorities

perform the function of the Shareholder Assembly for the respective companies taking any decision in the Shareholder Assembly authority in a public limited company according to the provisions of Law no.9901 of date 14.04.2008 “On Entrepreneurs and companies” as amended.

The Ministry Energy and Industry and the Ministry of Economic Development, Tourism, Trade and Entrepreneurship are the two high level bodies of the government organized according to Law no. 90/2012 "On the organization and operation of the state administration”.

Law no. 90/2012, “On the organization and operation of the state administration” regulates the organization and operation of the state administration under Council of Minister’s responsibility, by defining the criteria for the establishment and operation of the state institutions.

On article 4, the bodies and institutions of state administration it is defined that:

1. The prime minister and the ministers are high level bodies of the state administration. They govern and supervise the state administration within the respective area of the state activity.

2. The state administration is composed from these institutions:

- a) The Prime Ministry;
- b) The Ministries;
- c) the institutions depending on the Prime minister or the ministries;
- ç) direct units that provide the services;
- d) autonomous agencies;
- dh) major administration.

The relations between the ministries and the Council of Ministers are defined on article 5 the Ministries as follows:

1. Any ministry is governed and represented by the minister, hereinafter “the responsible minister”. The Minister is responsible in front of the Council of Ministers and the Assembly for the activity of the ministry, the institutions under its administrations and the autonomous agencies hereinafter “ministerial system” within the respective area of the state activity.

2. The Council of Ministers with the Prime minister proposal, defines the state activity area under the responsibility of each ministry, hereinafter “the state administration area”.

3. The ministry performs the administrative functions within the respective area of state responsibility, except those delegated to the depending institutions or that are charged by law to the autonomous agencies.

From all above mentioned each Ministry performs the administrative functions within the respective area of state responsibility. The respective responsibility area for the Ministry of Energy and Industry is defined in Council of Ministers Decision no. 833 of date 18.09.2013 “On defining the state responsibility area for the Ministry of Energy and Industry ” and respectively:

II. The Ministry of Energy and Industry drafts and implements the policies to guarantee the electricity supply of the country, utilising the energy and mineral resources in the function of economic stability development and public utility, as well as promoting industrial development in the friendly standards for the environment.

III. The Ministry of Energy and Industry performs its activity in these state responsibility areas, in conformity with the respective legislation:

1. Power Sector;
2. Hydrocarbon sector (oil and gas);
3. Mining and geology sector;
4. Non food industry sector.

The respective legislation based on which the Ministry of Energy and Industry exercises its activity on power sector is law no. 43/2015, "On Power Sector" and the secondary legislation issued on its implementation.

Concretely the role of the Ministry of Energy and Industry relating to TSO company is defined on the articles below of Law no. 43/2015, "On Power sector";

On article 4 "Power sector policies"

1. The Council of Ministers shall be responsible for the overall policy of power sector of Albania consistent with policies of economic development of the country and respective policies developed in other sectors.

2. The Ministry responsible for energy:

a) drafts the National Energy Strategy, which is approved by the Council of Ministers and is updated at least every five years. The National Strategy of Energy defines the objectives of the energy sector development and the ways of their accomplishment, providing a sustainable development of the national economy in a medium and long term period;

b) drafts midterm programs for development of the power sector, which are approved by the Council of Ministers in compliance with the National Energy Strategy;

c) assess the necessity of constructing new generation capacities and strengthening the grids, in compliance with the midterm programs, taking in consideration:

i) the general expected electricity balances for the future;

ii) the security and stability of electricity supply;

iii) the cost, including any mechanisms for costs minimization, for such new generation capacities;

ç) supervise the implementation of policies and programs of power sector development, in line with economic and social development of the country.

On article 5 "Data and information on electricity balance"

1. Any physical or legal entity that produces, transmits, distributes, imports, exports or supplies electricity is obliged to submit data related to its activity to the responsible ministry for energy in order to support the drafting of power sector development policies and communication with specialized institutions in the frame of international commitments of Albania as well as preparation for publications of annual energy balance.

2. The minister responsible for energy approves the the type and format of data reporting.

On article 6 “Rules on security of electricity supply”

1. The Council of Ministers shall, upon proposal of the responsible Minister of Energy, in collaboration with other relevant institutions or undertakings in the energy sector, approve rules on electricity security of supply, which include:

- a) measures for providing the supply with electricity;
- b) measures to be taken in cases when security of supply is at risk;
- c) measures to be taken in case of emergency situations
- ç) role and obligations of electricity market participants, regarding the security of electricity supply.

On article 31 “Construction of new inter-connection lines”

1. The new interconnection lines constructed by Transmission System Operator or private investors, shall be approved by the Council of Ministers with the proposal of the responsible minister for energy.

On article 33 “Direct lines”

1. All electricity producers and suppliers within a given territory may supply their facilities, branches and clients, via a direct line

2. Direct lines, constructed for electricity export purposes by domestic producers to connect customers outside the country, are subject to Council of Ministers approval, after the given opinion from ERE.

3. Direct lines constructed for the connection of e internal market by domestic producer to connect customers inside the country, or supply company which supplies its assets or eligible customers, as well as lines connected to the transmission system for maintenance purposes, are subject to responsible Ministry’s approval, after the opinion given from ERE.

4. Council of Ministers shall approve the criteria and procedures for granting of authorizations for the construction of direct lines.

5. The Minister authorizes the construction of a direct line even in the case that applicant is refused access to the grid for cases defined in Article 29of this law, or in case a procedure for dispute settlement has been initiated, as set forth under the Article 24 of this law;

6. The Minister may refuse to grant its authorization for the construction of a direct line if the granting of such authorization would obstruct the fulfilment of public service obligations and customer protection, defined by the provisions of this law. The explanations for such a refusal should be fully justifiable and are notified to the applicant.

On article 34 “Technical standards and safety standards in the power sector”

1. Technical rules for design, construction and operation of the plants producing electricity, transmission system, distribution system, interconnection lines or direct lines in Republic of Albania, including the rules of technical safety, are developed by the ministry responsible for energy in cooperation with General Directory of Standardizations and are approved with the Council of Ministers decision.

4. The control of implementation and observation of technical rules provided for in paragraph (1) of this article in the electricity sector shall be carried out by the responsible inspectorate subordinate to the ministry responsible for energy, in compliance with the legislation in force.

On article 60 “Transmission network development”

1. The Transmission System Operator drafts a ten-year network development plan in consultation with the stakeholders and present it for approval of ERE.

6. In case ERE finds out that the transmission system operator does not meet the projected investment, which according to the 10-year plan should have been carried out in three successive years, and if ERE based on demand forecasts, estimates that the investment is needed and can be financed without impeding the normal operation of the network, then the ERE takes at least one of the following measures:

- a) require to execute the investment in question;
- b) require to organize a competitive procedure open to any investors for executing the investment in question;
- c) require to accept capital increase to finance the necessary investments.

7. When ERE exercises its authority according to paragraph (6), letter (b) of this Article, it may oblige the transmission system operator to agree to one or more of the following:

- a) ensure financing by any third party;
- b) require construction by any third party;
- c) manage new assets after construction.

In these cases the relevant tariffs shall cover the costs of the investments in question.

8. ERE on exercising its competences provided at paragraph (1), (6) and (7) of this Article shall take the opinion from the responsible minister on energy.

Lastly on article 97 “Electricity market”

3. Minister responsible for energy in collaboration with other stakeholders in electricity sector and after the opinion given from Competition Authority, shall develop an Electricity Market Model, which is adopted by decision of the Council of Ministers, defining at least:

- a) the ways the participants of the electricity market cooperate
- b) relevant contractual relationships
- c) the main required information and data exchanges between market participants

The respective responsibility area of the Ministry of Economic Development, Tourism, trade and Entrepreneurship is defined on Council of Ministers Decision no. 835 of date 18.09.2013 “On defining the state responsibility area for the Ministry of Economic Development, Tourism, Trade and Entrepreneurship” as amended.

Regarding the role of the Ministry of Economic Development, Tourism, Trade and Entrepreneurship regarding with TSO company we explain as follows:

It result that Transmission System Operator, OST company is organized in the form of a joint stock company with 100% state capital. This is in conformity with the definitions of Law no.43/2015, “On Power Sector”, where on article 53 it is defined that:

- Transmission System Operator

1. The Transmission System Operator shall be a legal entity licensed to conduct the activity of operating an electricity transmission system, which owns the transmission system and respect the independence criteria established by Article 54 of this law.

3. The Council of Ministers shall appoint the public authority representing the state as owner of its the shares of the Transmission System Operator, which needs to be independent of any production or supply activity according to the provisions of Article 54.

Implementing point 3 article 53 of this law it is approved Council of Ministers Decision no.317 of date 27.04.2016 “On defining the Public Authority representing the State as the owner of the company shares for the Power Sector“ which is defined as follows:

1. The public authority, representing the state as the owner of the shares for the Generation company (KESH) and Electricity Distribution Operator company, is the Ministry of Energy and Industry.

2. The public body, representing the state as the owner of shares of the Transmission System Operator, (TSO company), is the Ministry of Economic Development, Turism, Trade and Entrepreneurship.

3. The Ministry of Energy and Industry and the Minister of Economic Development, Turism, Trade and Entrepreneurship appoint the members of the supervisory councils for the companies defined on points 1 and 2, implementing the limitations defined on Law no. 43/2015, "On Power Sector"

- Also on article 1 Law no. 8/2016 "For an addition and an amendment on Law no. 7926, of date 20.4.1995, "On transforming the state companies in entrepreneurs", as amended is defined that:

"Exercising the right of the state property owner representative, including the right to appoint the supervisory council members, in power sector companies, shall be in conformity with the definitions of Law no. 43/2015, "On Power Sector", and natural gas companies shall be in conformity with the definitions of Law no. 102/2015 "On Natural Gas Sector."

So from all above results that each of the mentioned ministries shall perform the function of the share owner in the respective companies. Before this amendment, it was the Ministry of Economic Development, Turism, Trade and Entrepreneurship which exercise the function of the shares owner (the public Authority, representing the state as the owner of the shares) in the three companies.

Furthermore, should be clarified that the organization of the economic activity in Albania is regulated by Law no.9901 of date 14.04.2008 "On Entrepreneurs and Companies" as amended. This Law defines and regulates the entrepreneurs status for the establishment and administration of entrepreneurs, the rights and obligations of the founders, partners and shareholders, the reorganization and liquidation of entrepreneurs. This law is obligatory even for the state companies.

TSO from the legal organization point of view is subject to Law No. 9901 of date 14.04.2008 "On Entrepreneurs and Companies" as amended. So the Ministry's of

Economic Development, Tourism, Trade and Entrepreneurship role as the public Authority, representing the state as the owner of the shares for TSO company is the ownership of 100% of the shares. For TSO company this ministry exercises the rights and obligations as any other private owner performs to the shares of the joint stock company that in Albania operates based on Law No. 9901 of date 14.04.2008 “On Entrepreneurs and Companies” as amended.

So the Ministry of Economic Development, Tourism, Trade and Entrepreneurship has the role of the only shareholder taking every decision in the authority of the General Assembly in a share-holder company according to the provisions of Law No. 9901 of date 14.04.2008 “On Entrepreneurs and Companies” as amended.

This role for the Generation Company (KESH) and the Electricity Distribution Operator (OSHEE), based on article 1 of Council of Minister Decision no.317 of date 27.04.2016 “On defining the Public Authority representing the State as the owner of the shares for the Power Sector is performed by the Ministry of Energy and Industry.

It results that the Generation Company (KESH) and the Electricity Distribution Operator (OSHEE), have performed all the procedures to fulfill this obligation, fulfilling in this way the obligation for the independence of Transmission System Operator from the generation or supply activities, within the meaning of article 54 of the Law.

Regarding the Supervisory Council on article 135 Law no. 9901 of date 14.04.2008 “On Entrepreneurs and Companies” as amended it is defined that:

2. The general assembly takes the decisions for the following issues of the company:

- a) defining the trading policies;
- b) statute amendments;
- c) the appoint and dismissal of administration council members (one level system) and (two level system) of supervisory council members.

On TSO company statute (article 13 the Supervisory Council), it is defined that:

The Supervisory Council is composed of 6 (six) members appointed from the General Assembly.

So the Ministry of Economic Development, Tourism, Trade and Entrepreneurship appoints the members of the TSO company Supervisory Council. It results that the Ministry of Economic Development, Tourism, Trade and Entrepreneurship as the

General Assembly of TSO company and implementing point 3 of Council of Ministers Decision no.317 of date 27.04.2016 “On defining the Public Authority representing the State as the owner of shares for Power Sector companies“ where it is defined that:

The Ministry of Energy and Industry and the Ministry of Economic Development, Tourism, Trade and Entrepreneurship appoints the members of the supervisory councils for the companies defined on points 1 and 2, implementing the limitations defined on law no. 43/2015, "On Power Sector"

The Ministry of Economic Development, Tourism, Trade and Entrepreneurship has approved with Decision no. 4911, of date 14.06.2016 “On the amendment of the Supervisory Council” the new member of TSO company Supervisory Council.

Also the Ministry of Energy and Industry as the owner of the Generation Companies (KESH) and the Electricity Distribution Operator (OSHEE) implementing point 3 of Council of Ministers Decision no.317, of date 27.04.2016 “On defining the Public Authority that represents the State as the owner of the shares for Power Sector companies” with Order no.210 of date 30.06.2016 has approved the members of the Generation Company (KESH) Supervisory Council and with Order no. 209 of date 30.06.2016 has approved the members of Distribution company (OSHEE) Supervisory Council.

For the above mentioned, we conclude that the Supervisory Council members of TSO company are appointed by the Ministry of Economic Development, Trade, Tourism and Entrepreneurship (MZHETTS) respecting the limitations imposed by article 54 Law no.43/2015, "On Power Sector"

- Based on article 54, on points 3, 4, 5, 6 it is defined that:

3. Beginning from January, 1, 2016, the same entity is not entitled that on the same time to:

a) exercise control directly or indirectly over a licensee performing any of the functions of electricity and natural gas generation or supply, and to exercise control or exercise any right over the Transmission System Operator or over the transmission network;

b) exercise control directly or indirectly over the Transmission System Operator or over the transmission network, and exercise control or exercise any right over an licensee performing any of the functions of electricity and natural gas generation or supply;

c) appoint members of the supervisory council, the managing board or other bodies legally representing the Transmission System Operator or the transmission network, and directly or indirectly exercise control or any right over a licensee performing any of the functions of electricity and natural gas generation or supply;

ç) be a member of the supervisory council, the management board or other bodies representing the licensees with the licensees performing any of the functions of generation or supply, or of the transmission system operator or transmission network.

4. The prohibitions in letter “a”, “b”, and “c” of paragraph 3 of this Article shall apply in particular to:

a) the ability to exercise voting rights;

b) the competence to appoint members of the supervisory council, the managing board or other bodies representing the licensee;

c) the right to hold the majority share.

5. The obligation set out above, is deemed fulfilled if two or more companies, who have their transmission networks, have established a joint venture, which acts as a transmission system operator in two or more countries. No other company may be part of this joint venture, unless the company is defined as independent operator of the transmission system and has been certified pursuant to the conditions determined in this law.

6. Where the person referred to in the above paragraph is a state-controlled public body, the two separate public bodies that exercise control, one over the Transmission System Operator or over a transmission network and the other over the licensee that performs any of the functions of electricity generation or supply, shall be deemed not to be the same person.

As evidenced above based of Council of Ministers Decision no.317, of date 27.04.2016 "On defining the Public Authority representing the State as the owner of the shares for Power Sector companies" results that the Ministry of Economic Development, Tourism, Trade and Entrepreneurship is the holder of 100% of the TSO shares while the Ministry of Energy and Industry is the holder of 100% of the shares of the Generation company (KESH) and Distribution System Operator (OSHEE) that respectively perform the electricity generation and distribution and universal supply activities.

In this way because of TSO company ownership unbundling results that this unbundling is performed according to the provisions of point 6 article 54 of Law no.43/2015 “On Power Sector” as well as in conformity with what is defined on article 8 letter “a” of the regulation “On the Certification of Transmission System Operator for Electricity” where it is defined that the criterias that should be fulfilled from the applicant to enable the decision-making and the certification from the Regulator is: a) the legal entity that owns the Transmission System Operator for electricity should not have the right to control directly or indirectly the generation, distribution and supply activities or vice-versa;

On article 8, point 2, letter “b”, of the Regulation it is defined that: The legal entity that owns the Transmission System Operator for Electricity does not appoint, control or is a member of the board or management structures in the generation, distribution, supply activities or vice versa, as well as does not have the right to vote or the right of the majority of shares;

This request of the regulation, has found a solution within the provisions of Council of Minister Decision no.317, of date 27.04.2016 “On defining the Public Authority representing the State as the owner of Power Sector Companies”, explained above in details.

On letter c, point 2 article 8 of the regulation “On the Certification of Transmission System Operator for Electricity” it is required to be guaranteed the confidentiality of the commercial information that the Transmission System Operator for Electricity owns and the non-transfer of Transmission System Operator staff to enterprises/entrepreneurs of generation or supply;

Referring to the internal acts of the company, (Ethics Code of TSO company No. 3952 protocol of date 01.07.2016) results that any employee of the TSO company shall respect above all the protection of confidential information even after leaving the company. Especially on article 14 of the Ethic Code it is defined as follows:

To protect any confidential information, guarantee the protection of the received information and not make it public without the respective authorization but without violating the implementation of the obligations deriving from law no.119/2014 “On the right to information” not using the information collected for personal usage, to take measures to prevent and protect the flow of information, not receiving the information and giving the information for different benefits or when it is the cause

for interest conflict during work relations, not to give, publish or issue for public use the materials that have to do with the policies or TSO company activities if they are not authorized.

Also referring to article 64 of Law no. 43/2015, “On Power Sector” TSO company is obliged to protect the commercial sensitive information. In this article it is defined that:

The Transmission System Operator, while in compliance in each case with the definitions of article 47 of this law, or any other legal obligation regarding provision of information, shall preserve the confidentiality of commercially sensitive information provided during the exercise of the activity and shall prevent discriminatory disclosure of information on its activities, used to gain a commercial advantage on another party. 2. TSO shall not disclose any commercially sensitive information to any other licensee, unless this is necessary for carrying out a business transaction. In order to ensure the full respect of the rules on information and division of activities, ERE shall ensure that the transmission system operator and any other licensees do not use joint services, such as joint legal services, apart from purely administrative or IT functions. 3. The Transmission System Operator shall not, while carrying out its activity, misuse commercially sensitive information obtained from third parties in the context of providing or negotiating access to the system. 4. The information necessary that guarantees competition and the normal functioning of the market shall be made public.

As required above from the Law it is reflected on the internal acts of TSO company, explained in details on the above mentioned paragraph.

- On article 8 point 2 letter “d” it is required: Having available the necessary financial resources, technical, physical and human resources to carry out Transmission System Operator for Electricity activity. Regarding this criteria of the regulation in analyzing the documentation submitted by the applicant it results that:

The Albanian Parliament, on April/30/2015 approved Law no. 43/2015 “On Power Sector”, which marked an important step for all of the Albanian legislation in general as an evidence of the approximation with the European legislation, but it has a special importance for the power sector, regarding its organization and operation. This law reflects the provisions of the third European legislative package in electricity field and as a consequence sets the new criteria for the organization and operation of the power sector companies and electricity

market. An important place at these legal provisions, is hold by the Transmission System Operator, as the power sector company that is obliged to guarantee the security of all Albanian Power System. For this reason TSO company shall ensure its independence from other power system companies by the certification process, transparency in the transmission capacities allocation process, ensuring the electricity for the losses and ancillary services in the electricity market by competitive and transparent procedures, ensuring the balance of the system by organizing and operating the imbalances market, ensuring transparent tariffs for the access in the transmission grid, active participation in the organization and operation of the electricity market. It is clear that the new law, as well as the aim for full rights membership at ENTSO_E, sets TSO company facing many obligations and as consequence before a new prospective, which require the adoption of TSO company with an european transmission company. Which means TSO development not only as a company that meets all the technical and legal european criteria, but also as a full human resources that make it possible the fulfillment of these criteria. Even the organizational chart of TSO company is designated taking into consideration the above mentioned, with some directories that perform administrative functions depending on the Administrator of the company and the three directories that are directly related with the fulfillment of above mentioned legal objectives and concretely:

- System Operator Department, Market Operator Department, the Development Planning Department and that of the Transmission Department were organized in the form of the Departments which includes some directorates as follows:

- System Operator Department which includes 4 directories: The Planification and Code Implementation Directory; Operative Direction Directory; Technical Services Directory; the Energy Balancing Market Directory and the Directory for the Grid Losses. In this way it is ensured that the functions of the operation system include even the transmission plannification (office/sector), a function that before was included in the Development Planification Directory, as a sector directly related with the data provided from the system operation. On the other side the establishment of a separate directorate within the System Operator Directory charged for ensuring electricity for the losses and ancillary services in the electricity market by the competitive and transparent procedures and ensuring the balancing of the system by the organization and operation of the disbalances market, is considered as a necessary

imposed by the new law for power sector and also a necessary condition for the well functioning of the power sector in a transparent way and avoiding any discrimination.

- Market Operator Department, composed of two Directories, is conceived as an entity that within 31.12.2017 shall be legally and financially separated from the TSO company. This department as the rights and obligations provided in the law shall be charged for the operation of the electricity market, with the organization and administration of financial statement of electricity between the market operators, keeping the accounts on the name of trade parties for the electricity sale-purchase transactions between the parties, the management of the registration process for the parties in the market; the management of the proposal process, approving any amendment of the Market Rules in conformity with the law etc.

- Transmission Department, includes Project Implementation and Engineering Directory as well as the Maintenance Utilization of the Transmission Directory. In this Department, are included two directories:

- Project Implementation and Engineering Directory, which guarantees the optimum implementation of the projects for the grid development, financed by the foreign donor community. It is responsible for the projection, construction and modification of the objects of the TSO Transmission Grid (the lines, substations, and ancillary objects) in conformity with the plans defined in the investment and reinforcements, adopting them with the requirements of the system Planning and the technical, financial and environmental specifications of the company. It defines the environmental policy of TSO company and ensures its implementation, to minimize the impact in the environment of its activities and objects. Performing the legal actions for the draft of necessary documentation for beginning the expropriation procedures and the registration of immovable properties of TSO company;

- Utilization and Maintenance of the Transmission Directory, utilizes and maintains 400 kV, 220 kV 154 kV and 110 kV the transmission lines, for the connection substations between each other and the substations near electricity generation resources with a high voltage 220 kV. Utilizes and maintains the telecommunication system in TSO company service. Utilizes and maintains the electricity metering system in the objects within TSO company. Maintains relay protection system and the control-monitoring systems of TSO substations.

• As mentioned above TSO company is organized in Departments and Directorates, as explained below:

- Cabinet
- Human Resources and Services Directory
- Procurement Directory
- Legal Directory
- System Operation Department
- Market Operation Department
- Transmission Department

Total number of employees is 725.

- The System Operation Department includes the dispatchers.

- The Transmission Department includes the employees in charge of the transmission network maintenance.

- All the financial resources of OST company are included in the economic program/budget of the related year, that is approved by the Supervisory Council of OST, in conformity with the provisions of Articles 20/2/h of the company (as cited in the explanations for article 8, point 2, letter m of these decision) and from the General Assembly (which means TSO owner, the Ministry of Economic Development, Tourism, Trade and Entrepreneurship - MZHETTS) in conformity with the provisions of Articles 9.2/ç of the company and Law no 9901 dated 14.04.2008 “For the Entrepreneurs and the Companies”, article 135/2/a.

- OST disposes all the technological means, softwares necessairie to perform its activities, as below described.

General overview of SCADA/EMS System

The *SCADA (Supervisory Control and Data Acquisition)* systems are the optimal control center solution to enable a secure and efficient operation of the electric power system. These systems are being used in all energetic infrastructures (generation, transmission and distribution). The Transmission System Operator of Albania, OST is using Network Manager SCADA/EMS (*Supervisory Control and Data Acquisition / Energy Management System*) as a control center solution, which in implemented in

November of 2012. Network Manager, upon being an efficient solution for the system operation, is also an energy information system that provides the decision makers with reliable process information

Network Manager provides an environment that encourages learning and an improved understanding of the power system and the EMS tools, thus enabling the Operators to manage the power system in an optimal way. Its open and versatile platform allows for easy integration with other utility information systems while maintaining high levels of IT security.

The Network Manager applications are built on an open platform in a component architecture and can be tuned for real-time control and analysis as well as for optimization and planning purposes. These powerful network operation tools facilitate a safe and efficient day-to-day operation while minimizing long term capital expenditures.

1. SCADA (Supervisory Control and Data Acquisition).

In the SCADA control system of the Transmission System Operator of Albania, OST sh.a., are being monitored and operated on real time all the 220/400 kV stations and most important 110 kV stations. Upon the SCADA applications we can mention the most important ones as follows:

- Data Acquisition functions which provide the integration with power system control equipment and a complete family of RTUs (Remote Terminal Units) and Station Control Systems. The protocol used communication with the RTUs and Station Control Systems is IEC 6087-5-104. The communication with other control centers is done through ICCP (Inter-Center Communication Protocol). Currently OST is using ICCP for the communication with the CGES (Montenegrin Control Center) and IPTO (Greek Control Center).

- Monitoring and events processing;
- Supervisory and Interlocking control;
- Data archiving;
- Reporting and calculations;
- Human-machine interaction.

2. EMS (Energy Management System).

Network Manager EMS offers a full Energy Management System capability. The EMS fulfills the objectives of optimizing energy transmission and operating costs, while maintaining security levels. Its functions comprise:

- Decision support regarding the grid management;
- Energy planning;
- Generation control and scheduling;
- Grid monitoring;
- Security assessment;
- Operation enhancement based on advanced optimal power flow schemes;
- Provides for forecast on demand.

Moduli i sistemit të menaxhimit të energjisë (EMS) është i përbërë nga disa aplikacione të rrjetit, ku secili nga këto aplikacione bashkëvepron me të tjerët, por menaxhohen në mënyrë të veçantë nga njeri-tjetri. Modulariteti i EMS-së ofron një lehtësim në menaxhimin e të gjithë paketës së tij. Aplikacionet e Rrjetit të cilat janë pjesë e EMS-së:

- The EMS module is composed of several network applications, each of these applications interact with the others but they are managed separately from each other. The modularity of the EMS offers facilities in the management of the whole package of EMS. The Network Applications which are part in the Network Manager EMS are:
 - *SNP-Telemetry Snapshot*: The Telemetry Snapshot is responsible for retrieving the telemetry required by the Status and Analog Retrieval and the other network applications (measurements and breaker status). It is also responsible for the Limit Update on Change, forwarding the manually entered or calculated limits from the measurand and process value file to the application database.
 - *SAR (Status and Analog Retrieval)*: The basic function of the Status and Analog Retrieval is to retrieve/update the real-time data used by the Network Model Builder (NMB), the State Estimator (SE), and the Dispatcher Power Flow (DPF).
 - *NMB (Network Model Builder)*: The function of the Network Model Builder is to determine the present topology (bus/branch model) of the network, based on the breaker status data. NMB also identifies the electrical networks in the power system. The topology is then used by the other applications.

- SE (State Estimator): State Estimator is the major component regarding the functionality in EMS and is used to assess and validate the overall state of the observed power system.
- SA (Security Analysis): Security Analysis is the application which is responsible for the contingency definition, analysis and validation.

3. Generation Management System-GMS

The Generation Control system contains real-time processes that regulate the generation of power in accordance with operational and economic constraints, and maintains system frequency and control area net interchange at their scheduled values. As Albania has hydro generating units, the Generation Control system provides real-time control and management of the hydro power and the associated water resources. Actually implemented in the control generation system we have three biggest power plants Fierza, Koman, Vau i Dejes.

In control center of TSO company only the AGC (Automatic generation Control) section is implemented. The Automatic Generation Control (AGC) regulates the output of electric generating units in order to maintain the power system frequency and/or control area net interchange to their scheduled values according to the operational handbooks published by ENTSO-E.

4. Other applications of the grid manager the primary objectives in power system operation are: security, quality, reliability and economy. To meet these objectives and to fulfill the standards of ENTSO-E, beside the three major components of Network Manager (SCADA/EMS/GMS) there are implemented other applications which are part of these components.

- ICCP (Inter-Center Communication Protocol): Real time data exchange between control centers is made easy and efficient with ICCP It provides an open environment and platform independence between control systems. The communication between control centers is managed with external dedicated equipments and secured by use of the firewalls (as required in operational handbooks of ENSTO-E).

- Load Shedding: The Load Shedding function provides the ability to shed and restore load from predefined lists of loads. The function also provides the ability to rotate the shed load to loads that are not currently shed.

- STLF-Short Term Load Forecast: The Short Term Load Forecasting (STLF) function provides a highly accurate prediction of the native load, with lead times up to 15 days ahead. STLF correctly processes the different patterns that characterize the system load (daily, weekly and seasonal) including the influence of weather variables. The accuracy of the forecast improves with the quality of the historical load/weather data used to build the forecast, as well as the accuracy of the weather forecast for the forecast period of interest.

- CF-Congestion Forecast: Congestion Forecast (CF) is a tool for the analysis of power system network conditions in the future including the calculation of MW limits for transmission corridors. It is a sequence of programs within NAC organized to run in an automated loop. The CF tool supports a day-ahead study (next 24 hours).

The major benefits of the Network Manager SCADA/EMS system for transmission operations include:

- Optimal utilisation of Transmission Network Assets.
- Enhanced network security and continuous monitoring of the system stability, with early warning of incipient operating conditions that could lead to widespread blackout.
- Advanced visualization and situational awareness for operators, leading to enhanced grid operation.
- Higher quality of supply.

General Overview of Market Management System; Electronic Platform for Market Management of the Albanian Transmission System Operator (OST).

This platform is organized in three main functional groups which are interconnected between them.

TSO function

- Accounting and settlement;
- Scheduling.

Transparency platform,

Market Operation Function

Below are represented all modules and their functions:

1.1 Accounting and settling process

This process shall fulfill the following functions of TSO:

- Read automatically from metering system or insert manually the tie line metering data;

- Exchange cross border meter measurement and accounting information horizontally between themselves and accounting and settlement information vertically between the different levels of the ENTSO-E RGCE hierarchical pyramid;
- Provides a standard enabling a uniform layout for the transmission of validated measurement, accounting and settlement data between the European electricity System Operators and all relevant organizations within the ENTSO-E RGCE hierarchy.

1.2 Scheduling process

The Scheduling system shall support all scheduling and reporting functions of OST as Transmission System Operator (TSO) in Albania and Control Block Operator (CBO) in AL Block.

The Scheduling systems shall enable the following functions of TSO:

- Sequencing of the processes according to the published schedules for the implementation of the Gates;
- Viewing the balance of local balance area;
- Viewing the balance of a local Balance Responsible Party (BRP);
- Viewing total plan of balance areas, Control area;
- Detecting and managing the mismatch and imbalance (provide audible and visual signals);
- Viewing energy exchanges between the balance areas;
- Managing production and consumption declarations;
- Detecting if entity in secondary regulation is out of range;
- TSO coordination (viewing of cross border declarations, import and export of TSO declarations);
- Submitting participants schedules by the upload of XML files;
- Modification of submitted schedules;
- Import of allocated transmission of capacity on daily level from Transmission Capacity Allocators;
- Import of capacity right contracts on daily level by the upload of XML files;
- Import and modification of capacity right contracts by entering the allocated transmission capacity on yearly, monthly, weekly, daily and intraday levels;
- Check if capacity right contracts exceeded;

- Viewing and download (as XML files) of Schedules and Reports (acknowledgement, anomaly and confirmation);
 - Overview of events, messages, logs;
 - Viewing information about availability of entities;
- Postponing the gate closure;
- Comparing intraday allocated capacity with nomination;
- Comparing imbalance of new schedule with previous accepted schedule;
- Statistical reports;
- Hourly NTC;
- SO-SO matching;
- Transmission of CAX to affected Control Block and Transmission Capacity Allocators;
 - Sending and acceptance of total plan;
 - Generation of documents necessary for Reporting process;
 - Calculation of tertiary reserve based on schedules

2. Transparency platform

Having regard to Regulation (EU) No 543/2013 of 14 June 2013 on submission and publication of data in electricity markets, it has now become mandatory for European Member State data providers and owners to submit fundamental information related to electricity.

This platform has several major domains such as:

- Generation;
- Load;
- Transmission;
- Congestion management;
- Outages;
- Balancing for publication through ENTSO-E transparency platform.

Transparency of market information is essential for the implementation of the Internal Electricity Market and for the creation of efficient, liquid and competitive wholesale markets. It is also crucial for creating a level playing field between market

participants and avoiding the abuse of market power, and it also increases the security of energy supplies.

The transparency module shall enable the following functions of TSO:

- Data Sources: Specific data sources which contains data that is required by EU regulation to be published. (First it has to be defined the data owner for each data item. For example for some data is responsible TSO itself, some data are under responsibility of the Power supplier or Distribution system operator, or even SEE CAO which submits data on behalf of TSO).

- Data Integration: Module which extracts required data from Data Sources, transforms them into a specific data model and store them into ETP Data flows Connector database.

- Process-Scheduler: Ensures that data will be gathered from data sources (like metering or SCADA system) and published to the platform on desired time.

- Data Flows Transformation: Transforms the required data into well defined XML structures, previously defined by ENTSO-E, and then publishes them to transparency platform via MADES protocol. (** XML document shall comply with ENTSO-e standards).

- MADES: MADES communication channel is used for submitting data to TPC Central node, as well as for receiving acknowledgements about data processing.

- “Acknowledgement” Process: As a result to the submitted file, an “Acknowledgement” will be received for every data flow, in order to ensure that the files are processed, received and have no technical (syntax) or application problem (for example: bidding zone not recognized).

3. Market Operator Functions (3.1 Interconnection capacity allocation) This component manages the overall process of allocating interconnection transmission capacities, including the definition of capacities and flexible to integrate with regional platforms for regional capacity allocation.

In this context, the transmission capacities are essentially forward options. A successful bidder has the right, but not the obligation, to take up the assigned capacity. The capacity is essentially a bundle of one or more blocks where each block consists of a capacity (MW) at an available period. The successful bidder can decide to either use the right to take up or to forego the assigned capacity.

3.2 Contract notification

This module collects and stores the data and information regarding concluded contracts in respect of bilateral and centralised trade amongst the market participants. It serves as a repository for all contract data and information. The data is to be included as a subset within the main Data Warehouse.

The Contract Notification Module shall enable the following functions of TSO

- To hold data regarding all concluded contracts;
- To link with the Energy Data Management component;
- To link with the scheduling and nomination components;
- To be a subset of the data warehouse component.

3.3 Scheduling and nomination

This component manages the scheduling and nomination process.

A nomination is a request to a supplier for a physical quantity of electricity according to the terms of a specific contract.

Scheduling allocates the nomination by time into a daily schedule.

The Scheduling and Nomination Module shall enable the following functions of TSO:

- To provide reporting on the assessment of the physical feasibility of all concluded contracts
- To provide reporting on the technical validation of all concluded contracts
- To provide reporting on the verification of the nominations with the trading party
- To produce definitive accepted bids
- To consolidate all feasible, valid and verified contracted nominations
- To schedule the terms of every supply contract into each hour / user defined interval of the day ahead
- To schedule load shedding intervals where demand cannot be met
- To link with a Regional Day Ahead forecasting system, when / if this functionality is operational during the life of the system.

- To provide scheduling information to Control Block leader

- To link with the Demand Forecasting System of SCADA (STLF-Short Term Load Forecast). The output files from STLF are in xml format based in a specific xsd schema or can be extracted in .xls format.

3.4 Energy data management

This is the main module that collects, processes, manages and archives all the energy data necessary for the financial settlement process. The component should include a settlement invoicing module and a settlement publication module.

The settlement process is to be undertaken on a daily basis for the previous day.

The managed data is to be included as a subset within the main data warehouse.

The Energy Data Management Module shall enable the following functions of TSO:

- Settles contracted supplies;
- Settles the imbalanced supplies;
- Issue data that serve as basis for settling the invoices;
- Tracks payments including producing an age analysis;
- Stores and archives all current and historical energy data;
- Stores and archives all current and historical invoiced data;
- Publishes actual consumption data by trading parties;
- To link with the Contract Notification component;
- To link with the Balancing Mechanism component.

3.5 Data warehouse /reporting

This module receives and formats all the data that is to be used for analysis, reporting and publishing. Specific sub sets of the data are to comprise the following:

- a) Foreseen data;
- b) Auction data;
- c) Bilateral contract data;
- d) Trading party data;
- e) Contract data;
- f) Schedule data;
- g) Balancing data;
- h) Settlement and invoicing data;

i) Interconnector block data.

The data Warehouse/reporting Module shall enable the following functions of TSO:

- To provide a standard, consistent, clean and integrated form of data.
- To provide suitably structured data to be able to support all the various reporting and analytical requirements.
- To provide and manage data dictionaries to support access and semantics.
- To provide tools to support data extraction, conversion and the loading of data.
- To provide tools to manage metadata. (a group of data that describes and give information regarding other data)
- To provide tools to support Business Intelligence (reporting and querying, dashboards, online analytical processing etc.)

3.6 Balancing mechanism

TSO owns the balancing market price calculation (BMPC) Modules, responsible for the functionality needed for the OST market to calculate schedules and prices.

The following requirements should be met

- Market Participant Interface (MPI), responsible for the functionality needed for the Market Participant Interface.
- Market Participant Registration (MPR), responsible for the Market Participant Registration functionality.

The BMPC finds the optimum economic dispatch schedules for Balancing, given:

- Physical nominations;
- The energy incremental/decremental bids and offers;
- System load (off-take) forecast.

The BMPC schedules and prices are stored in the OST Market database and subsequently published to the Market Participants. These schedules, along with market clearing prices, are also made available to the settlement system.

The Balancing Mechanism Module shall enable the following functions of TSO:

- To calculate the power imbalance (in MW/MWh) between the scheduled and actual delivery in respect of each supplier contract for the day.
- The calculation to be undertaken on a real time basis for the previous day.
- To apply the agreed contractual pricing policies (e.g. - escalating rates for uninstructed positive (purchase) imbalances and decreasing compensation rates for uninstructed negative (supply) imbalances. Imbalances instructed by the SO need to be removed before the determination of the use of any escalating rates for uninstructed positive imbalance and any decreasing compensation rates for uninstructed negative imbalances.
- To provide manual intervention to imbalance pricing.
- To broadcast the calculated imbalance liabilities to the market participants.
- To link with the contract notification component.
- To provide contracted and imbalance data to Energy Data Management component.

3.7 Ancillary services

This component manages the trading in this mechanism including the process of calculation. The ancillary services include frequency control, regulation of active power through primary, secondary and tertiary reserves, and regulation of voltage and reactive power.

The Ancillary Services Module shall enable the following functions of TSO:

- To calculate the ancillary services (in MW/MWH) scheduled and actual delivery in respect of each supplier contract for the day.
- The calculation to be undertaken on a real time basis for the previous day.
- To apply the agreed contractual pricing policies
- To provide manual intervention to ancillary services pricing.
- To broadcast the calculated ancillary services liabilities to the trading party.
- To link with the Contract Notification component.
- To provide contracted and ancillary services data to the Energy Data Management
- Software for automatic day ahead congestion forecast for South-East European TSOs.

Founded by KfW bank, EKC and DMS Group developed the automatic software solution for DACF, for the TSOs of South-East Europe. The project executing agency was OST Albania, and TSOs WG CMMI (Congestion Management and Market Integration) was monitoring the development process.

Main functions of the software includes:

- Preparation of individual FO (forecast) models, on the basis of SN (Snapshots) models and planning data.

- Merging and adjustment of regional and/or Interconnection models
- DACF analyses on the merged models

PSS®E 33.1- Power System Simulator for Engineering (PSS/E)

Power System Simulator for Engineering (PSS/E) is a software tool used for electrical transmission networks. It is an integrated, interactive program for simulating, analyzing, and optimizing power system performance and provides probabilistic and dynamic modeling features. The software provides for transmission planning and engineers a tool for use in the design and operation of reliable networks.

Main functions of the software includes:

- Fast and robust power flow solution for network models up to 200,000 buses
- Lightning-fast steady-state contingency analysis, including automatic corrective actions and remedial action scheme modeling
- Full node-breaker support for detailed modeling of substation topology. Automated PV/QV analysis with plot generation
- Powerful program automation and customization with full-featured Python® API
- Balanced and unbalanced fault analysis, contingency analysis (deterministic and probabilistic)
- Graphical reconstruction of controlling models according to the user.
- Modern graphical interface.
- Comprehensive power flow and dynamics model library including emerging technologies such as advanced FACTS devices and wind turbines.

- Code-based, user-written model building
- Powerful, easy-to-use integrated plot facility.
- Graphical construction of user defined controller models.

EAS (ENTSO-E- Awareness System)

Is a centralized system which is managed by two hosting entities (Amprion and RTE) and it is shared with other partner TSOs using the Electronic Highway .It is an information platform which displays to partner TSOs a global and real time overview of European Transmission Network.

There are a lot of cases where the use of this platform is very helpful for the every day work of dispatchers, for example in the case of of disturbance it is possible to identify the origins and to be helpful in problem solving. Furthermore in a case a stressed situation arises, we can gain a better comprehension of the conditions and reasons that led to this situation.

In this platform it is realized the share all information that is required for our transmission system. There are shared two kind of information:

- Automatic real time measurements and data for an objective overview of the physics.
- Manual indications for factual and for first step analysis: system states and/or preformatted messages and/or short free text messages.

As for the criteria defined according to 714/2009 EC regarding the cross border issues TSO company fulfills these criteria.

TSO is signatory of ITC Agreement.

OST allocates all the interconnected capacities on its interconnection lines for all the borders, through the auctions organized from SEE CAO. The only exception is the board Albania-Kosovo, due to the fact that Kosovo is not yet recognized as a control zone (and Serbia does not participate in SEE CAO).

The charges for access to the network are prepared from OST and submitted for approval to the Regulatory Entity, according to the Electricity Transmission Tariff Calculation Methodology and also to the Guideline on application and tariffs for new connection, or modification of existing connection in the electric grid of TSO.

The above tariffs are transparent, they take into account the need for network security and reflect the real costs incurred insofar as they correspond to those of an efficient and structurally comparable network operator and are applied in a non-discriminatory manner.

On article 8 point 2 letter “e” Commitment of the Transmission System Operator for Electricity to fulfill a 10-year development plan of the network, monitored and approved by the regulator;

Regarding the fulfillment of this obligation Law no. 43/2015 “On Power Sector”, has made some provisions which include and compose TSO company obligation regarding the draft of the 10-year development plan, what shall it contain, the approval, review procedure and the report obligation regarding these plan at ERE and concretely:

Article 60 Law no 43/2015 “On Power Sector” – transmission network development.

1. The Transmission System Operator drafts a ten-year network development plan in consultation with the stakeholders and present it for approval of ERE.
2. The network development plan should take in consideration:
 - a) the demand and existing and forecasted capacity;
 - b) urban and regional planning of the area where the transmission line will be located;
 - c) investment plans for the regional networks of the Energy Community;
 - ç) legislation on the environmental protection;
3. The grid development should contain:
 - a) efficient measures in order to guarantee the system adequacy and security of supply;
 - b) financial sources foreseen for the investment in the transmission system;
 - c) all the investments already decided and identify new investments which have to be executed in the next three years;
 - ç) defined timeframe on all projects and investment;
 - d) information on the market participants for the main transmission infrastructure that needs to be built or upgraded over the next ten years;
4. ERE review the ten-year network development plan and in case notes that the defined conditions/requirements in the points 1,2 and 3 of this article are not fulfilled, requires from

Transmission System Operator to fulfil and/or change its ten –years network development plan.

5. The Transmission system operator shall submit to the ERE, along with the tariff filing, the updated investment plans for the coming year. In case the Transmission System Operator files a rate application for a regulatory period greater than 1 (one) year, the investment program will provide an analysis of planned investments in the relevant regulatory period.

6. In case ERE finds out that the transmission system operator does not meet the projected investment, which according to the 10-year plan should have been carried out in three successive years, and if ERE based on demand forecasts, estimates that the investment is needed and can be financed without impeding the normal operation of the network, then the ERE takes at least one of the following measures:

- a) require to execute the investments in question;
- b) require to organize a competitive procedure open to any investors for executing the investment in question;
- c) require to accept capital increase to finance the necessary investments.

7. When ERE exercises its authority according to paragraph (6), letter (b) of this Article, it may oblige the transmission system operator to agree to one or more of the following:

- a) assure financing by any third party;
- b) require construction by any third party;
- c) manage new assets after construction. In these cases the relevant tariffs shall cover the costs of the investments in question.

8. ERE on exercising its competences provided at paragraph 1, 6 and 7 of this Article shall take the opinion from the responsible minister on energy

9. ERE shall develop and adopt, a regulation on the procedures of submission and approval of the development plans.

Article 56 – Duties of Transmission System Operator- The Transmission System Operator has these main duties: reports every four months at ERE, for:

- ii) the requirements of Transmission System Operator and the system users for the development of the transmission grid;

Also the law has provided (article 60 point 9) ERE obligation to draft and approve a regulation of the procedures to submit and approve the investment plan (actually it is in approval process the new regulation) as well as ERE rights to TSO company regarding the plan:

Article 20 – ERE rights - ERE has the following rights:

d) reviews and approves the investment plans of transmission and distribution system operators and monitors their application in compliance with the respective rules and ensures that their drafting be consistent with least cost planning principles;

Moreover, the new organizational chart and the new regulation for TSO company operation has clearly reflected by the division of the duties for each directory (see the description of the duties of the Transmission Department) and TSO engagement to fulfill the development plan.

Article 8 point 2, letter “P” of the “Regulation for the certification of transmission system operator for electricity” approved with ERE Board decision no. 154 of date 11.12.2015, **The ability of the Electricity Transmission System Operator to fulfill the obligations laid down in Regulation (EC) No. 714/2009 and Law no.43/2015, “On Power Sector”;**

Referring to the documentation deposited at ERE from TSO company results that TSO company manages the transmission lines in the voltage levels beginning from the 110 kV to the 400 kV, the substations with a high voltage level 220 kV and 400 kV, as well as other installations used for electricity transmission. The transmission system has 14 substations with an installed transforming capacity of 3876 MVA. The two main substations respectively 400/220 kV Tirana2, and Elbasan2, with an installed capacity of 600 MVA each of them, which are the two main nodes of the transmission system for the transit electricity from the 400 KV grid (coming from the interconnection lines) in the 220 kV grid. The loading nodes of the transmission system are mainly the 110 kV submissions of the distribution system and some customers directly connected with the transmission grid. There is only one 400/110 kV with installed capacity of 300 MVA. The Transmission Lines: The lines complexity of the transmission system is composed from that of 110 kV, 150 kV, 220 kV and 400 kV voltages. The length of the transmission lines, according to the voltage levels are as follows:

- Transmission lines 400 kV, 445 km (including even Tirana 2 - Kosova b new line);
- Transmission lines 220 kV, 1145.5 km;
- Transmission lines 150 kV, 34.4 km;
- Transmission lines 110 kV 1418.0 km.

Part of the transmission lines mentioned above include the interconnection lines with the neighboring countries in the Albanian territory as follows:

- Interconnection line 400 kV Zemblak (AL) - Kardia (GR), 94.751 km;
- Interconnection line 400 kV Tirana 2 (AL)- Podgoricë (ME), 154.706 km;
- Interconnection line 220 kV Fierzë(AL) -Prizren (KS), 68 km;
- Interconnection line 220 kV Koplík (AL) -Podgoricë (ME), 37.765 km;
- Interconnection line 150 kV Bistrica (AL) -Myortus (GR), 63.4 km;
- A new interconnection line 400 kV, Tirana 2 (AL) - Kosova b (KS), 242 km is terminated on June 2016, but is not in operation yet. The main resources for electricity generation with a total capacity of 1475 MW are connected with the 220kV grid, as well as some other important generation units which are in process that shall be connected with the 220 kW grid.

400 kV grid is developed later, mainly for the interconnections with the neighboring systems. This is the main grid through which it is performed the electricity exchange with the neighboring countries (in the region), while any national electricity generation plant is not connected with it. Energy flow coming from the interconnection 400 kV lines goes for the users mainly from two transforming levels: 400/220 kV and 220/110 kV.

TSO performs the managing of the limited capacity in conformity with the respective Regulation approved by ERE with decision no. 124, of date 21.07.2016.

Electricity generation plants.

Electricity in Albania is actually generated 100% from the hydropower plants. The biggest part of the country's electricity generation is performed by Drini cascade: Fierza, Koman and V.Deja HPP-s connected with the 220 kV grid. This cascade has a total installed capacity of 1350 MW and reaches an average of about 77% of all

electricity generation. The other part belongs to the small HPP-s connected in the 110 kV grid and these ones connected in the distribution system grid.

The HPP-s with total installed capacity of about 223 MW are connected in the 110 kV grid and the small HPP-s with total installed capacity of 181 MW are connected in the distribution system. In this way the total capacity of the generation system in Albania is about 1851 MW.

Article 8, point 2, letter “g” of the “Regulation for the certification of transmission system operator for electricity” approved with ERE Board decision no. 154 of date 11.12.2015, **the authorities of the Transmission System Operator for Electricity on granting and managing third-party access, as well as operation, maintenance and development of the system in order to meet long-term demand through investment planning, construction and commissioning of infrastructure including authorization procedure;**

On article 27 Law no.43/2015 “On Power Sector”, the Transmission system operator shall ensure the connection with the transmission grid on non-discriminatory conditions. ERE in cooperation with grid operators, approves the rules which determine the costs to be charged to the user related to specific conditions of the connection point. Transmission system operator shall not be entitled to refuse the connection of a new power plant on the grounds of possible future limitations to available grid capacities, such as capacity limitations in distant parts of the transmission system. Transmission system operator shall not be entitled to refuse a new connection point, on the ground that it will lead to additional costs linked with necessary capacity increase of system elements in the close-up range to the connection point. ERE shall approve the regulation for new connection procedures proposed by the licensee, where it is included the methodology of calculating the costs, and the standard connection agreement, that are transparent and efficient to ensure the nondiscriminatory connection of every user to the transmission and distribution system. These rules and procedures also specify the mutual rights and obligations of the respective system operator and a party requesting the connection, in particular procedural conditions for connection, deadlines, metering points, ownership points between the system and the system user. Actually the application way and form and the respective tariffs according to which are paid the new connections, modifications or the capacities increase of the existing connections, in the TSO electricity grid are regulated by Decision no. 2 of date 10.01.2011

“On approving the Guideline for the application and the tariffs for the new connection or the modification of the existing connection in the TSO company transmission grid”. This guideline shall be object of review in conformity with the definitions of Law no.43/2015 “On Power Sector”.

Article 8, point 2, letter “h”, of the “Regulation for the certification of transmission system operator for electricity” approved with ERE Board decision no. 154 of date 11.12.2015, **support and information from the owner of the Transmission System Operator for Electricity to fulfill the tasks; financing or approval of investment funding approved by the regulator; liability coverage for network assets; providing the guarantees to facilitate, enable the financing of network expansion;**

Regarding this criteria of the regulation, results that according to Law No.9901, of date 14.4.2008 “For the traders and trading companies”, article 135, point 2 letters dh, e, ë, f, g...:

The general assembly of the companies takes decisions for the following issues of the company:

- dh) approval of annual financial statements and the reports for the performance of the activity;
- e) the distribution annual earnings;
- ë) increase or reduction of the registered capital;
- f) division of the shares and their cancellation;
- g) amendments in the rights, related to the actions for specific types of categories;

In conformity with the provisions of TSO Statute, article 9, the General Assembly (which means TSO company owner), takes the decision that are on its competence according to the provisions of law No. 9901 of date 14.04.2008 “For the traders and the trading companies”.

The above approvals result to be approved according to:

- Official letter protocol No. 536/1 of date 05.02.2016 MZHETTS Ministry “The Approval of the Economic Program of the company for 2016”.

- Official letter protocol no. 3104/1 of date 28.04.2016 of the MZHETTS Minister “The Approval of the changes in the Economic Program of the company for 2016”.
- Official letter no. 6027/1 of date 28.07.2016 of the MZHETTS Minister “On the approval of the accounting balance and distributing the result for 2015”

As explained until now according to Article 8, point 2 letter h, it results that TSO company has all the necessary support from the owners to fulfill the obligations, financing and approval of the financing for the investments approved by the Regulator; cover the responsibilities for the grid assets; ensuring to facilitate /enable the financing to extend the grid;

- The Official Letters mentioned above and those mentioned below are documents that certify this support:

- The official letter protocol no. 536/1 of date 05.02.2016 from the Ministry of Economic Development, Turism, Trade and Entrepreneurship (MZHETTS) “On the Approval of the Economic Program of the company for 2016”, for the Economic Program of the Company for 2016, where are planned all the expenses and investments expected for the companies, based on the financial means.

- The official letter protocol no. 3104/1 of date 28.04.2016 from the Ministry of Economic Development, Turism, Trade and Entrepreneurship (MZHETTS) “On the approval of the amendments at the Economic Program of the company for 2016”, the amendments approved in the Economic Program of the company for 2016 (from the official letter above with protocol no. 536/1 of date 05.02.2016). It shows that any approved amendment of the Economic Program is transmitted to TSO company owner and is submitted for the necessary legal approval.

- The Official letter with protocol no. 6027/1 of date 28.07.2016 from the Ministry of Economic Development, Turism, Trade and Entrepreneurship (MZHETTS) “On the approval of the financial balance sheet and sharing the profit for the year”, for the balance of the company for 2015.

Article 8 point 2, letter i) of the “Regulation on certification of transmission system operator” approved with ERE Board decision no. 154 of date 11.12.2015, **having the assets required in the ownership of the Transmission System Operator for**

Electricity, equipment, staff and commercial identity (brand) clear and distinguished from other operators;

Regarding this request of the regulation in conformity with what is submitted from TSO company in the certification application results that TSO company owns all the assets listed in details on point 8.2 f), according to TSO company balance and the detailed asset inventory of the company as follows:

For the purpose of the ownership documentation of the transmission systems owned by company (including those under construction) are submitted as follows: Ownership certificate with the respective number issued from the Respective Real Estate Registration Office, according to the location of the property numbers. On the analysis of this documentation about the assets of TSO company and the respective verifications performed on their registration at the Real Estate Registration Office, results that the applicant (TSO) has the necessary capacities to perform electricity transmission activity.

The applicant TSO company performs its activity in the framework of the Regulations, guideline, manuals relating with the organization, operation, the activity or subcontracting the services, acts that include: a) the statute b) regulation for TSO operation c) ethical code d) the regulation for the new connections e) transmission code f) metering code g) market rules h) regulations for the interconnection auctions of capacities allocation SEE CAO 1.3 version approved with Decision no. 135 of date 13.11.2015 “ On allocating the interconnection capacities in Kosovo border, TSO shall implement ERE Board Decision No. 140 of date 22.11.2013 “On approving the regulation for interconnection capacities”, as amended.

It results that TSO, the Generation company (KESH) and the Distribution one (OSHEE) have their logos and naming separated and clearly distinct from each other. Each of these companies has its unique identification number (VAT number) in the system.

Article 8 point 2, letter j) Organisation according to legal forms specified in Article 1 of Directive 68/151 / EEC and the national legal framework in force;

In conformity with the legal framework in force the Transmission System Operator, (as follows TSO company), operates as a joint stock company, registered as a legal entity with Decision No. 31935, of date, 14,07.2004, of the District Court in Tirana.

Name of the Company: “Transmission System Operator”, (OST), with the Identification Number K42101801N, 100% state owned capital with the only shareholder the Ministry of Economic Development, Turism, Trade and Entrepreneurship. The capital is 9.694.008.000,00 ALL, number of shares 9.694.008,00 , nominal value 1 000.

Article 8, point 2, letter k: IT systems, buildings where the activity is exercised by the Transmission System Operator for Electricity or security and access systems cannot be used together with enterprise of generating or vertically integrated supply undertakings or to contract the same provider of these services;

Regarding this criteria of the regulation results that the Construction of the new National Dispatch Center and TSO Headquarters as well as the construction of the new SCADA/EMS system with all its functions benefiting from the project financed by the Italian Corporation, on the amount 23 million euro is without doubt the most important, the essential and decisive project for the development of the transmission grid in conformity with the longterm provisions of the request for electricity and the development plans for the power system in general. The National Dispatch Center, which is responsible for the grid operation, is the main link of the Transmission System, including even the operation of interconnection lines, according to technical ENTSO-E standards. Also in following the ensurance of continuant and secure operation of the Transmission Grid according to ENTSO-E standards, on the National Dispatch Center are implemented a set of automatic systems which enable the control for all the System. Through these automatic systems it is enabled the monitoring in the real time of the Tranmission Grid and its operation from the distance All these systems and functions have a direct impact on the infrastructure where they are installed. The infrastructure enables a secure environment for the installation of automatic systems, by fulfilling the standards of the European Dispatch Center.

The headquarter of the TSO company is at “Autostrada Tiranë – Durrës, Km 9, Yrshek, Kashar, Tirane, Albania”, according to a simple extract of the company issued by the National Registration Center (QKR). Only TSO company has he right to own the assets of TSO ownership, as explained above.

Article 8, point 2, germa “f” The financial auditor of the Transmission System Operator for Electricity may not be the same entity that carries out the audit of enterprises/entrepreneurs of generation or vertically integrated supply;

The financial auditor of TSO company results to be the accounting expert Sabina Shytaj, Sokol Toska, Eneida Rrahmani, Remzi Sulo, Irena Pulo, appointed with the official letter no. 8775 protocol date 23.11.2015 of the MZHETTS Minister.

It is observed that the appointment of the financial Auditor for TSO company during 2015, is made before the entry into force of the Council of Ministers Decision no. 317 of date 27.04.2016 “On defining the public authority that represents the state as the owner of the shares for the power sector companies”.

Results that: According to Law no.9901, of date 14.4.2008 “On entrepreneurs and companies”, article 135, point 2 letter “ç”, and TSO company Statute, article 9, the appointment of the financial auditors of the company is the competence of the General Assembly. In the conditions where according to Council of Ministers Decision no. 317 of date 27.04.2016 “On defining the public authority that represents the state as the owner of the shares for the power sector companies”, the General Assembly of TSO company is the Ministry of Economic Development, Trade, Tourism and Entrepreneurship and the General Assembly KESH and OSHEE companies is the Ministry of Energy and Industry (MEI).

The financial audit of KESH and OSHEE are appointed by their General Assembly that means the Minister of Energy and Industry

Article 8, point 2, letter “m”, Configuration and powers of the Supervisory Council;

In conformity with the documentation submitted according to point 9.1/l) The list of the collegial bodies for the applicant company (supervisory council and/or the managing board) and of the electricity activities results that: the Members of TSO Supervisory Council, according to the Ministry of Economic Development, Tourism, Trade and Entrepreneurship Order No.4911 of date 14.06.2016 “On the amendment of TSO company Supervisory Council” are defined the Supervisory Council members.

In conformity with the provisions of Articles 20 of TSO company Statute, the Supervisory Council of TSO company, has these powers: The Supervisory Council appoints the administrator of the company.

The Supervisory council in the quality of the supervisory body, performs the implementation of trade Policies of the company and their conformity with the law and the statute. He has the power to:

a) control and supervise the implementation of the company trading policies by the administrator;

b) prepare, on the request of the General Assembly the taken of measures which are in the competence of the last one mentioned, to recommend it the necessary decisions that should be taken, and to implement the assembly decisions;

c) call the general assembly meeting when deemed for the company's interests;

d) take care that the company shall respect the law and accounting standards;

e) to review and control the accounting books, documents and the company assets;

f) ensure that the annual financial statements, reports for the performance of the activity, as well as other obligations of reporting and publication, obligatory according to the law or the statute, shall be executed accurately by the administrator. These documents shall be approved and signed by all the members of the Supervisory Council to be submitted at the General Assembly, together with a report of the Supervisory Council for approval and a description on supervising the management during all the financial year;

g) ensure that the audit of the books and accounting registrations shall be at least one time in a year by an independent authorized accounting expert and the audit report addressed to the general assembly to be available to all the members of the Supervisory Council and to the administrator. The report of the Supervisory Council mentioned on letter "F" of this point, shall contain even the opinion of the audit report;

h) approve the annual Program and its amendments, as well as the short, mid and long term activity of the company submitted by the administrator;

i) approve the opening of the activities and new units (branches, representation etc within and outside the Albanian territory) according to the legislation in force;

j) define the reward of the administrator;

k) approve the establishment of new companies and the participation in other company capital within the limits of the law according to the definitions of article point 5.1 of this Statute,

The Supervisory Council has the right to perform at any time the verifications and controls that it considers suitable and to be informed with the documentation that it judges necessary to fulfill its obligation. Within three months from the date of closing the financial execution the Administrator shall submit to the Supervisory Council the annual accounts for verification and control.

In the cases provided on points 3, 4 and 5 of article 136, Law No.9901, of date 14.04.2008 “On entrepreneurs and companies”, as amended the Supervisory Council shall immediately call the general assembly to review if the company shall be destroyed or taking other necessary suitable measures.

On article 23 of the statute are defined even the agreements that require the preliminary authorization of the Supervisory Council which are:

- All agreements made between the company and the administrator or any member of the company Supervisory Council;
- Agreements with which one of the above mentioned persons is indirectly connected, or from which it is connected with the company by an intermediary person,
- The agreements which act between the company and another economic entity, if the Administrator or one of the members of the company Supervisory Council is the owner, “unlimited” partner, administrator or directory member of the other economic entity.
- The agreements for obtaining and granting mid and long term loans according to the legislation in force.

Article 8, point 2, letter n) Ensuring the independence of the Transmission System Operator for Electricity in taking the decisions regarding the completion of its obligations and the power to raise funds through borrowing on the capital market;

Regarding this criteria, in the regulation, when it comes to the ensurance of the independence of the Transmission System Operator and the power to raise the funds in the capital market through borrowing it is directly connected with the investment plan for which we have spoken in details and are made the explanations for Article 8

point 2 letter “e” above coordinated even with the general policies for the development of the power sector in Albania, approved from the Council of Minister which serves as a basis on a borrowing process by TSO company. The procedure followed regarding the decision-making from the company bodies, or supported on the provisions made in the company statute and Law No.9901, of date 14.04.2008 “On entrepreneurs and companies”, as it is the provision of article 23 the last paragraph of TSO company statute, where it is said that the agreements for obtaining and granting mid and long term borrowings according to the legislation in force require the preliminary authorization of the TSO company Supervisory Council.

It is not expected that TSO company benefits from the Loans obtained from Government Bodies, in the form of Supplementary Loan as those from the Ministry of Finance, or in the form of Loan Agreements, guaranteed from the Ministry of Finance.

Article 8, point 2, letter o) The independence of the management and staff of the Transmission System Operator for Electricity based on the powers of the Supervisory Board of the Transmission System Operator for Electricity in relation to recruitment, compensation and termination of the agreements for the top managers or the administration after informing the regulator on procedures governing the above issues and if the regulator has not submitted any objection;

In conformity with the provisions of the TSO company Statute (article 20, point 1), TSO company Supervisory Council appoints the Administrator of the company. Based on Law No. 9901, of datë 14.04.2008 “On Entrepreneurs and Companies, as amended, the law no.7961 of date 12.07.1995 “Labor Code of the Albanian Republic”, Council of Ministers Decision no. 642, of date 11.10.2005 “For the supervisory councils of the state public limited companies”, the Guideline no.318, of date 8.4.2009 “On the appointment, operation and reward of the supervisory body of the state public limited companies”, connected between the Supervisory Council and the Administrator, company administration contract.

Actually as the result of the amendment made on Law no. 8/2016 “For an addition and amendment on Law no.7926, of date 20.4.1995, “On transforming the state-owned enterprises into commercial companies”, as amended, article 1, by the end of the first sentence it is added the sentence as follows,where it is provided that: “Exercising the right

of the owner representative for the state own, including the right of appointing the members of the supervisory councils, in power companies, is made in conformity with the definitions of Law no. 43/2015, “On Power Sector” , and natural gas companies is made in conformity with the definitions of Law no. 102/2015 “On Natural Gas Sector.”.

Lastly it is issued the Order of MZHETTS Minister no. 4911, of date 14.06.2016 “On amending the Supervisory Council of TSO company, based on which from the new Supervisory Council with Decision No.17, of date 30/06/2016 of TSO company Supervisory Council, “On the reappointment of TSO company Administrator” and Decision No.18, of date 30 /06 /2016 of the TSO company Supervisory Council,“On the contract connection of TSO company administration” it is appointed the administrator and it is signed the administration contract of the company.

According to this contract, some of the rights and obligations of the administrator are: undertakes to achieve the objectives that have to do only with the activity of TSO company, defined in the normative acts in force as well as the programs if TSO company economic development. Furthermore during the period that he is the Administrator he should be an shareholder, agent, consultant or employee in the companies that perform similar activities with TSO company and respect all other limitations provided from Law no. 43/2015 “On Power Sector”. Also through the declaration submitted for the certification process it is declared from the administrator that he is informed of the requirements and prohibitions defined on article 54 of Law no. 43/2015, “On Power Sector” and articles 8 and 9 of the regulation approved with ERE Board decision no.154, of date 11.12.2015 “Regulation for the certification of Transmission System Operator for Electricity” and in conformity with them, declares that he does not participate in the power company activities that are related with generation, distribution and/or electricity supply. This declaration is completed even by the directors of the company where all of them have declared that they do not participate in power company activities that are related with generation, distribution and or electricity supply.

Regarding the termination of the work contract there are provided the circumstances for the work contract termination. Regarding all TSO company employees results that the employment is made according to the TSO company Employment Criteria, they are proposed by the Administrator of the company and are approved by its Supervisory

Council. These criteria are reviewed and actually are in force the criteria approved with TSO company Supervisory Council Decision No 11, of date 06 /05 /2016, “On approving the Employment Criteria of TSO company”. By the end of the selection process the regulation of the employment contract at the TSO company is made by the individual employment contract. The standard employment contract is based on, Law no.7961 of date. 12.07.1995 “Labour Code in the Albanian Republic”, the effective collective Contract connected with the union that has the majority of votes from the employees, the legislation for social securities, legislation for the income tax, operational acts of the company where should be mentioned the regulation for the operation of the company, employment rules and technical security as well as the Ethic Code. The payment definition is made according to the payment structure and the guideline on their application at the TSO company proposed by the Administrator of the company and approved by the Supervisory Council and the Shares Assembly of the company. The employee shall perform in a reliable, qualitative way and effectively all the obligations given by the superiors, shall develop and protect the Employees interest and avoid anything that may put them into danger. Some of the rights and obligations of the employees are: Shall keep a high discipline at work in any direction and shall maintain and preserve the confidentiality for any information or regarding the Employer, is fully aware and agrees that during the employment he shall consider and implement all the standards, policies procedures and rules for the operation or internal ones which are into force or may be set by the Employer, etc.

Regarding the termination of the work relations in a standard individual contract, are provided that the respective circumstance and the procedure on article 10, 11 “The disciplinary measure and the Contract Settling”. These procedures guarantee that for the settling of the employment contract the employer respects and implements all the rules and procedures provided in the albanian labor legislation. On the ethic code there are clearly defined the principles of exercising the duty by the TSO employee which above all include the obligation of employee to protect the legitimate interests of TSO company; in performing its obligations in a reliable and efficient way taking into consideration only the interest of the company, respecting the directors, other employees, the health and work security, not to benefit in an unfair way through manipulation, concealment and information abuse in the damage of a person or any other company; not to claim or accept from anyone as a reward in

monetary value or valuable items to perform its duty; to protect the confidentiality of information even when leaving the Company, according to the legal definitions;

There are also defined the conditions for the conflict of interest for TSO company employee, foreign activities of TSO employee, the use and spread of confidential information.

Regarding the conflict of interest of the employee on article 2 “Conflict of Interest” of TSO company Ethic Code it is provided what will be considered as a conflict, which are the cases and how will be handled. Moreover :

- Conflict of interest shall be considered those cases when the self-interest of the employees, directly or indirectly intervene in the Company’s interests.

Self interest of the employee includes any advantage regarding himself, the family, relative up to the second degree, the persons or organizations with which the employee has or have had business relations or political relations. The conflict of interest also includes any financial or civil obligation of the employee.

- TSO company employees shall be informed and correctly implement the legal framework obligations regarding the conflict of interest prevention in exercising their duties.

- To prevent the conflict of interest and the risk to use the wrong information, it is necessary that the employees shall be consulted with the managers of the company and the responsible authority to prevent TSO company conflict of interest.

- These cases are handled by Law no. 9367, of date 07.04.2005 “On preventing the conflict of interest in exercising public functions” (as amended); law no. 9049, of date 10.04.2003 “On the declaration and control of the assets, financial obligations of the elected persons and some public employees” (as amended), the respective secondary legislation issued for their implementation and the internal regulation of the Company.

These definitions are provided on article 2 “Conflict of interest” of the Ethic Code of TSO company.

Also regarding the external activities of TSO employees on article 3 and 4 of the Ethic Code it is provided that:

- The employee shall not be engaged in an external activity that prevents the performance of his work processes, except the cases when this is provided in the institutional collaboration agreement and/or in external activities that damage the image of the company.

- The employee for each case inconsistent with the above, shall inform the Human Resources and Services Directory.

- The activities, in the framework of union activities or employee representation or teaching (instruction) activities, are allowed when they do not prevent the performance of the duty.

Furthermore on Article 14 of the Ethic Code it is provided that the responsibility to use and spread of confidential information as follows:

1. The employers are responsible to:

- a) To protect the security of TSO company confidential information;

- b) Guarantee the protection of information and not make it public without the respective authorisation, but without violating the implementation of the obligations deriving from law no. 119/2014 "For the information right";

- c) Protect the gathered information because of his functional duty or the duty charged and not use it for personal benefit, in contrary with the law and the ethic rules;

- d) Take measures to prevent and protect the flow of the information;

- e) Not to use the receiving and giving of information for different benefits or when it is a reason for conflict of interest during the work relations.

- f) Not to provide, publish or issue for public use the materials or information relating to TSO company policies or activities, if they are not authorized.

Article 8, point 2, letter p) Exclusion of the Transmission System Operator for Electricity staff from the right of financial benefits directly or indirectly from vertically integrated companies;

The provisions regarding the direct/indirect financial benefit from vertically integrated companies until this moment, the only provisions are those defined in the standard employment contract and the Ethic Code of TSO company. Moreover, the former vertically integrated companies in the Albanian power sector are state companies where 100 % of the shares are owned by the state, so the opportunity to benefit as the result of the ownership is zero. Also regarding the benefit from the employment opportunity, even this is impossible in the current conditions, as the result of the fact that they are state companies, the work organization way, the

working hours are referred to the definitions of the Labor Code, consequently make it impossible the double employment of the employees.

Referring to Law no.43/2015 “On Power Sector” article 3, definitions, the applicant does not result to be a vertically integrated undertaking. Specifically, “Vertically integrated undertaking” means an power company or a group of power companies where the same person or persons are entitled, directly or indirectly, to exercise control, and where the company or group of companies perform at least one of the functions of transmission or distribution, and at least one of the functions of generation or supply of electricity; the request of article 54/7 for TSO company ownership unbundling is realized by Council of Ministers Decision no.317 of date 27.04.2016, “On defining the public authority representing the state as the owner of power sector companies”.

Article 8, point 2, letter “q”, Decision making powers of the Transmission System Operator for Electricity for the connection of generators to the system under procedures approved by the regulator.

Based on article 27, of Law no.43/2015 “On Power Sector”, Transmission System Operator shall ensure the connection with the transmission grid on non discriminatory conditions in conformity with the rules approved by ERE. Currently TSO ensures the connection with the grid in conformity with the Guideline Approved by ERE with decision vendimin no.2, of date 10.01.2011. In this document approved by ERE are defined the methods, application form and the respective tariffs according to which are payed the new connections, the modifications or capacity increase for the existing line, in the TSO company electricity grid.

- For the effect of this application from TSO company, together with the written request for certification are submitted the documents provided on article 9 of the “Regulation on the Certification of the Transmission System Operator for Electricity”, approved with ERE decision no. 154, of date 11.12.2015.

- It results that an integral part of the TSO company structure, is the Market Operator Department which operates according to the new regulation for the company operation, approved with TSO company Supervisory Council Decision No. 8 of date 30.03.2016, according to ERE Board decision 154 of date 11.12.2015 “For the Operation of the Market Operator”.

- All the required documents, data and information required according to article 9, of the regulation are submitted at ERE in the Albanian and English Language electronically.

ERE protect the confidentiality of commercial sensitive information but may require from the Transmission System Operator any information regarding the certification referring to Law no 43/2015 article 58 point 4 “On Power Sector”.

- Article 9 of Ministerial Council decision no. D/2011/02/MC-EnC, Law no. 43/2015 article 58 point 6 “On Power Sector”, provides that ERE, shall inform Energy Community Secretariat for the expressed/unexpressed decision for the certification of transmission system operator.

- Referring to the request for the certification and the analysis to assess the documentation submitted from TSO company at ERE, based on Law no 43/2015 article 3 point 8; article 16; article 54 and 58 point 1, 3, and 5, “On Power Sector”, Ministerial Council decision no. D/2011/02/MC-EnC, Energy Community Treaty, ratified with Law no. 9501, of date 3.4.2006, as well as articles 6, 7, 8, 9 point 1, article 10 and 12 of the “Regulation on the Certification of the Transmission System Operator for Electricity”, approved with ERE Board decision no. 154 of date 11.12.2015, article 19 point 1 letter “b” of the “Regulation for ERE organization, operation and procedures:” approved with ERE Board decision no. 96 of date 17.06.2016, on their meeting of date 15.07.2016, after reviewing the report submitted by the Technical Directorates, on the application of TSO company for certification in electricity transmission activity, the Board has taken decision no.117, of date 15.07.2016 and has decided to begin the procedures for reviewing the application for certification in electricity transmission activity of TSO company.

- On article 54 Law no.43/2015 "On Power Sector" it is defined that Electricity Transmission System Operator exercises its activity separated from other activities on power sector like electricity generation, distribution, trading and electricity supply, in conformity with the principles and the requirements defined in this law. The applying TSO company following the implementation of all the requests for the division of electricity transmission system operator, has submitted at ERE the list with the documents, data and the information that shall be submitted by a power company which applies to be designated and certified as transmission operator in Albania. For the effect of this application the following documents are submitted:

- a) the written request for certification of electricity transmission system operator;
- b) the document, data and information mentioned on Chapter III of the Regulation; article 9

For all of the above mentioned ERE Board, with decision no.160 of date 06.10.2016 decided:

1. The preliminary certification of Transmission System Operator for electricity in conformity with article 54, point 6, of Law no. 43/2015, “On Power Sector ” and article 9, point 6, of 72/2009 EC Directive.

2. Within 12 months from the entry into force of this decision, in order to implement the provisions of articles 8 point 2, letters c, f, and l of the regulation “For the Certification of Transmission System Operator for electricity” TSO company shall submit to ERE certificates showing the guarantees regarding:

- The independence of the Financial Audit of the Transmission System Operator for Electricity which shall not be the same entity performing the audit of the vertically integrated generating or supply companies/undertakings.

- TSO company shall require to the General Assembly (the Ministry of Economic Development, Turism, Trade and Entrepreneurship) the ensurance to prevent the appointments of the same Financial Audits with the vertically integrated undertakings.

- Non transferring the Transmission System Operator for Electricity staff to the generating/supply companies/undertakings;

- TSO company shall draft the rules to fulfill the financial and legal unbundling obligation according to the provision of article 57/2 of Law No.43/2015 “On Power Sector”.

- TSO company shall take the preliminary measures and collaborate within its authority to implement the legal obligation defined in the law.

3. To submit this decision to Energy Community Secretariat, for opinion as defined on Law no.43/2015 article 58 “On Power Sector”,

4. To submit this decision to the Ministry of Economic Development, Trade, Turism and Entrepreneurship, to the Ministry of Energy and Industry as well as to the Competition Authority.

On 18 October 2016, ERE informed Energy Community Secretariat on the preliminary decision for the certification of *Transmission System Operator*, for electricity.

According to Article 10 2009/72/EC Directive (hereinafter “Electricity Directive”) and Article 3 of (EC) Regulation (EC) No 714/2009¹ (hereinafter “Electricity Regulation”) to Energy Community Secretariat it is required to review the Preliminary Decision and issue its Opinion for the conformity of this decision with Article 10(2) and Article 9 of Electricity Directive.

On 5 December 2016, based on Article 10(7) of the Electricity Directive and Article 3(3) of Electricity Regulation, the Secretariat send at ERE a request to submit additional documents necessary for the assessment of the compliance by TSO with the unbundling requirements. On 9 December 2016 ERE submitted the requested documents. On, 14 December a hearing, at which all relevant stakeholders participated, took place at the premises at the Secretariat in Vienna.

On 19 December 2016, the Secretariat received an Opinion on the Preliminary Decision by the Energy Community Regulatory Board, as requested pursuant to Article 3(1) of the Electricity Regulation.

On 24 January 2017, the Secretariat informed ERE for the Opinion on the Preliminary Decision of TSO certification. Below are the findings and the recommendations of the Secretariat as provided in its Opinion.

SECRETARIAT’S FINDINGS AND RECOMMANDATIONS

On this Opinion the Secretariat has underlined that at the assessment of the compliance of the Preliminary Decision for Certification with the unbundling model according to the definitions in Electricity Directive, has assessed as important the following aspects:

- *The applicant to be certified need to be the owner of the transmission assets (article 9 (1) a of Electricity Directive.)*

- *The applicant, to be certified, shall be unbundled from control and exercising the rights in the undertakings included in generation or supply of electricity and natural gas (article 9 (1) – (3), (6), (7) and (12) of the Electricity Directive).*

Regarding these criteria on its Opinion the Secretariat considers that:

Regarding point a) the Secretariat has no reason to doubt that in the case at issue, TSO is actually the owner of the transmission system.

Regarding point b), based on the long standing experience and cooperation with TSO, the Secretariat agrees with ERE findings that TSO satisfies the criteria for exercising the core tasks as transmission system operator.

Regarding point c) the Secretariat agrees with ERE that the Ministry of Economy and the Ministry of Energy, representing the state's shares in OST and KESH/OSHEE respectively in accordance with decision no. 317, in principle qualify as public bodies within the meaning of Article 9(6) of the Electricity Directive.

Therefore, the Secretariat agrees with ERE findings that in general, the Ministry of Economy and the Ministry of Energy have the necessary competences and tools to exercise control over TSO and KESH/OSHEE respectively. Both ministries are independent in terms of appointing the members of the corporate bodies of their respective companies as required by article 9 (1) (c) of Electricity Directive.

As a result, the Secretariat agrees with ERE Preliminary Decision regarding the financial audits of TSO which shall not be the same person with the audits that perform the audit of electricity generation and supply enterprises.

However, the Secretariat has submitted ERE the obligation to further elaborate and monitor on some issues, and also has recommended ERE to establish some additional requirements for the issue of the licence, as following.

A – The Secretariat requires that ERE, in its Final Decision on the certification of the TSO, to elaborate and monitor these issues:

1. The Secretariat invites ERE to monitor the compliance with the rules on legal and functional unbundling of the Market Operator and TSO involvement in the future in the electricity Exchange/market.

Regarding this request of the Secretariat, ERE Board considers that, the legal and operational independence of the Market Operator and Ensuring the respect of all the legal framework in force for this purpose, is provided on Law no. 43/2015 “*On Power Sector*”. Concretely, with reference to article 3 paragraph 51 of this law, “*Market operator*” means the entity responsible for the operation, organization and management of the electricity market.

Further, article 3 paragraph 60 provides that, “*Electricity market participant*” means any Legal person, Registered as an electricity market participant, which includes electricity generators, traders, suppliers, customers, Transmission System Operator, Distribution System Operator, closed distribution Systems, and market Operator. The Transmission System Operator and the Distribution System Operator are electricity market participants only for the purpose of providing the electricity needed to cover the losses in the Grid, the balancing and ancillary Services.

In addition, Article 57 of this law entitled “*Market operation*”, provides that: “*1. The operation of the electricity market is carried out by the market operator, licensed from ERE. The market operator is the responsible structure for the electricity market management and preparation of the financial statement for the settlement of mutual obligations for market participants, excluding the purchase or sale of electricity, in accordance to market rules.*

2. Market Operator is functioning in accordance with the electricity market rules and the specifications of this law. Within 31.12.2017, the Council of Ministers decides on the legal and financial split/ division of the Market Operator from the Transmission System Operator”.

So, according to the analysis of these legal provisions, Market Operator is considered as an independent entity and licensed separately to perform market operation activity, specifically to ensure transparency for preventing interdependence from other participants of the Market. In this framework Transmission System Operator is

evidenced as one of the electricity market participants, which as other participants, takes part in the electricity market to ensure electricity necessary to cover the losses in the grid, the balancing and the ancillary services.

On the other hand, electricity market operation that is managed by Market Operator is provided to be performed in conformity with the market rules. The Market Rules in conformity with article 19/“a” of Law no. 43/2015 “*On Power Sector*”, are approved by ERE, for which as provided on article 98/1, ERE collaborates with all power sector participants (although they are proposed by TSO).

Furthermore as provided on article 54 of the Law and the provisions of Directive 2009/72/EC, TSO unbundling and independence, for TSO certification, means the exercise of Transmission System Operator activity unbundled from other activities in the power sector such as electricity generation, distribution, trading and electricity supply. While the inclusion of TSO in any possible entity of the Albanian Exchange, is a wellknown european practice, that does not contradict the european and the national legislation that transposes this last one, which serves as a fact to ensure efficient cooperation between the exchange/market and the system operation.

Moreover, the Secretariat in connection with this kind of issues has already expressed that: *“Provided that legal and functional unbundling is ensured, the Secretariat does not consider it as a concern if OST owns the Market Operator or participates and owns shares in an electricity exchange as long as such a company only facilitates trade and is not engaged in buying or selling electricity”*. In that framework, the Secretariat notes that ERE required OST in the Preliminary Decision to draft the rules required for this unbundling.

Furthermore, in this opinion the Secretariat requests ERE to make the certification of TSO conditional upon the full transfer of tasks related to TSO to its sole shareholder, the Ministry of Economy. Such a process may require amendments in the primary and secondary legislation and a reasonable transitional time may be granted.

Regarding this opinion of the Secretariat, it is noticed that currently the powers of Energy and Industry Minister are regulated based on Law no. 43/2015 “*On Power Sector*” as specifically is explained on the above paragraphs of this decision. On the other

side, as it is known, Albania has ratified the Establishment Treaty of Energy Community and is a contractor party forced to undertake all the steps to ensure the fulfilment of the obligations deriving from this Treaty, and therefore it is crucial to take the measures for the necessary regulations of primary and secondary legislation which regulate the power sector, in conformity with Directive 72/2009 of the European Parliament.

Taking into consideration the fact that the main purpose of the Energy Community Treaty is the preparation of the power sector of this region to be integrated in the EU electricity market by adopting and implementing the *Acquis Communautaire* on energy field, as well as considering the Ministerial Council Decision of Energy Community of 6.10.2011 in Chinsinau, Moldavia, according to which, starting from the 1st January 2015, the Electricity Third Package shall be obligatory for all Contracting Parties of Energy Community, ERE accesses indispensable the necessity for amendments in the legislation based on EU third legislative package on electricity (Directive 2009/72/EC).

2. The Secretariat has requested ERE to verify the approval from the responsible ministries of the economic programs for KESH, OSHEE and OST companies for 2017.

Regarding this concern, following the preliminary decision for certification and following the Secretariat opinion, ERE considers that the financial plan of TSO company for 2017 has been approved by its sole shareholder, the Ministry of Economy, with reference to the official letter no. 9801/1 of 21.12.2016.

Regarding KESH and OSHEE companies, with the respective communication of KESH company on 07.03.2017, by the official letter no. 578/1, it follows that on 02.02.2017 the Ministry of Energy and Industry has approved the Economic Program for KESH company for 2017-2021 period. Also, referred to the communication of OSHEE company on date 07.03.2017, it was announced that on 03.03.2017 it is approved by the Ministry of Energy and Industry the Financial Program of OSHEE company for 2017.

From the above findings, ERE observes that for the year 2017 it is realized the adoption of the economic and financial programs for OSHEE , KESH and OST companies by the respective ministries in charge for the aforementioned companies.

3. The Secretariat accesses that ERE Final Decision shall analyse further the role of the Council of Ministers, the role of the Prime Minister or the President. This analysis according to Secretariat recommendation, shall take in account not only the law, but also the constitutional reality.

In relation to this concern of the Secretariat, ERE argues that regarding the role of the Council of Ministers and the Prime Minister in comparison with the Ministry of Economy and the Ministry of Energy and the relations of the Prime Minister with the other Ministries, these elements are defined by Law no. 90/2012 “*On the organisation of the state administration*”, which regulates the organisation and operation of the State administration under the responsibility of the Council of Ministers. This Law defines the criteria for the establishment and the operation of the State institutions.

On article 4 of this Law, named “*The organs and institutions of state administration*”, it is defined that:

- “1. The Prime Minister and the ministers are the highest bodies of state administration. They govern and supervise the state administration within the respective field of the state activity.*
- 2. The state administration is composed of the following institutions:*
 - a) The Prime Minister;*
 - b) the Ministries;*
 - c) institutions under the Prime Minister or the Ministers;*
 - ç) direct units offering the services;*
 - d) autonomous agencies;*
 - dh) major administration.*
- 3. The ministries and depending institutions that may have territorial branches in conformity with this law”.*

Whereas the responsibilities of the Prime Minister are defined on article 102 of the Albanian Constitution. Concretely, Article 102 of the Constitution defines that the Prime Minister has the following responsibilities:

- a. Represents the Council of Ministers and chairs its meetings;*
 - b. Outlines and presents the principal general policies of the state and is responsible for them;*
 - c. Assures the implementation of the legislation and of the policies approved by the Council of Ministers*
 - d. Coordinates and supervises the work of the members of the Council of Ministers and other institutions of the central state administration;*
 - e. Performs other duties prescribed in the Constitution and the laws*
- 2. The Prime Minister resolves the disagreements among the ministers.*
 - 3. The Prime Minister, issues orders in the exercise of his powers.*
 - 4. Within the general principal policies of the state, a minister, directs under his responsibility, activities within his competence. A minister issues orders and instructions in the exercise of his powers”.*

According to the provisions of the Constitution and Law no. 90/2012 “*On the organisation of the state administration*” as mentioned above, any legal gap can be noted that can allow the Prime Minister to influence in the powers of other ministries.

On the other hand the relations between the Ministries and the Council of Minister are defined by article 5 of Law no. 90/2012 “*On the organization and operation of the state administration*”. This article established that :

- “1. Each ministry is headed and represented by the Minister, hereinafter the “responsible minister”. The Minister is responsible before the Council of Ministers and the Assembly in respect of the activities of the ministry, subordinate institutions and autonomous agencies, herein the “ministerial system”, within the relevant field state activity.*

2. *The Council of Ministers, with the proposal of the Prime Minister, sets out the state's new field of activity in the responsibility of each ministry, hereinafter "areas of state administration".*
3. *The Ministry performs all administrative functions within the respective scope of the state responsibility, except those expressly delegated to subsidiary institutions or agencies charged by the law for autonomous agencies.*
4. *The ministry is also responsible for the coordination and according to the delegation of the Minister, for supervising the activities of the depending institutions and autonomous agencies within the respective field of ministerial responsibility.*
5. *The organization of the ministry includes the Ministry and its territorial branches, if it is the case".*

As it can be seen by these legal provisions, the Minister is responsible before the Council of Ministers and before the Parliament for the activity of the ministry, the institutions under its administration and autonomous agencies within the respective area of the state activity.

Whereas, regarding the responsibility of the Minister, it's the Council of Ministers which according the proposal of the Prime Minister, determines the respective state activity under the responsibility of each ministry, hereinafter the "*state administration field*". In this way, each Ministry performs all administrative functions in the respective field of state responsibility, except those functions expressly delegated to the depending institutions and autonomous agencies, within the respective field of ministerial responsibility.

From all the abovementioned findings, it can be concluded that each Ministry performs the administrative functions in the respective state responsibility.

While regarding the role of the Council of Ministers about TSO company, reference is made on the following provisions of Law no.43/2015, "*On Power Sector*".

Firstly, according to article 4 of this law, it is defined that *“the Council of Ministers shall be responsible for the overall policy of power sector of Albania consistent with policies of economic development of the country and respective policies developed in other sectors. The Council of Ministers approves the National Energy Strategy for Albania, which is developed by the respective ministry for energy”*.

According to article 6 of this Law, *“the Council of Ministers, with the proposal of the respective minister of Energy in cooperation with other relevant institutions or entities in the electricity sector, approves the rules to ensure electricity supply”*. Moreover, according to article 31 of this Law, *“the new interconnection lines are constructed by Transmission System Operator or the private investors, are approved by the Council of Ministers, with the proposal of the minister responsible for energy. The Council of Ministers approves the criteria and procedures to issue authorisations for the construction of direct lines”*.

While, according to article 34 of the this Law, it is established that *“the technical rules for drafting, construction and operating the electricity generation plants, the transmission, distribution systems, interconnection lines or direct lines in the Republic of Albania, including the technical security rules, are developed by the respective ministry for energy, in cooperation with the General Directorate of Standardization and are approved with the decision of Council of Ministers”*. According to article 97 of the Law, it is determined that *“the Minister responsible for energy in collaboration with the other stakeholders in the power sector and after the opinion issued by the Competition Authority, shall develop an Electricity Market Model, which is adopted with Council of Ministers decision”*

Furthermore, according to article 53 of the Law, it can be noticed that *“the Council of Ministers appoints the public authority representing the state as the owner of its shares of the Transmission System Operator, which need to be independent from any generation or supply activity according to the provisions of article 54”*.

Also on article 1 of Law no. 8/2016 *“For and addition and a change on Law no. 7926, dated as of 20.04.1995, “On transforming the state companies”, as amended”* it is expressly determined that:

“Exercising the state right to represent the property owner, including the right to appoint the members of the supervisory council, in power sector companies, shall be in conformity with the definitions of Law no. 43/2015, “On Power Sector”, and for natural gas companies shall be in conformity with the definitions of Law no. 102/2015 “On Natural Gas Sector”.

So, from all of the aforementioned legal provisions, it results that each of the respective ministries shall perform the function of the share owner in their respective companies.

As has been pointed out above, it is the Council of Ministers which, with the proposal of the Prime Minister, sets out the state activity scope under the responsibility of each ministry, thus the “*state administration scope*”. Whereas, the Ministry performs all administrative functions within the respective scope of the state responsibility, except those expressly delegated to subsidiary institutions or agencies charged by the law for autonomous agencies. On the other hand, the report of the Ministry of Economic Development, Tourism, Trade and Entrepreneurship and the Ministry of Finance has to be treated under the responsibility of “*the state administration scope*”, as issued from the respective administration bodies.

Thereby, ERE considers that the prevention of the Ministry of Economic Development, Tourism, Trade and Entrepreneurship to intervene at TSO company for the day-to-day operation, is regulated according to law no. 43/2015 “*On Power Sector*”. With this law are defined clearly the roles and the responsibilities of TSO company. The explanation for this issue is given on pages 6, 35 of the preliminary decision for certification and the present decision.

Based on article 55 and 56 of Law no. 43/2015 “*On Power Sector*”, the rights and duties of the Transmission System Operator are clearly defined, and as such all TSO company operations that shall be performed under the limitation of such Law. It can be appropriate to highlight once again that Article 53 of this Law determines that the Transmission System Operator shall be a legal entity licensed to conduct the activity of operating an electricity transmission system, which owns the transmission system and respect the independence criteria established by article 54 of this law.

Furthermore, it is worth mentioning that the role of the Council of Ministers regarding the investments plans of TSO company, is limited only in the capability of the Council of Ministers of the Republic of Albania for the approval of the new interconnection lines. ERE while approving the development of the ten year plan shall take in consideration the possible decision of the Council of Ministers in link with this issue.

Regarding the recommendation of the Secretariat for further elaboration on the evaluation of the the legal and functional autonomy of the ministries from the Prime Minister, the Council of Ministers or the President, we can consider the practical aspects regarding with the procedure for the appointment and the dismissal of a minister, as well as through an analysis of the decision-making process of a minister.

For the purposes of this further analysis, the following legal documents have been taken into consideration:

- (i) The Constitution of the Republic of Albania approved by Law no. 8417, dated 21.10.1998, “The Constitution of the Republic of Albania”, as amended (hereinafter the “Constitution”);
- (ii) Law no. 90/2012, of date 27.09.2012 “On the Organisation and the Functioning of the State Administration, (hereinafter the “Law on State Administration”);
- (iii) Law no. 9000, dated 30.01.2003 “On the Organisation and the Functioning of the Council of Ministers” (hereinafter the “Law on the Council of Ministers”);
- (iv) Decision of the Council of Ministers no. 833, dated 18.09.2013 “On determining the scope of state responsibility of the Ministry of Energy and Industry, as amended (hereinafter “DCM 833”);
- (v) Decision of the Council of Ministers no. 835, dated 18.09.2013 “On determining the scope of state responsibility of the Ministry of Economic Development, Trade and Entrepreneurship”, as amended (hereinafter “DCM 835”); and
- (v) The case law of the Constitutional Court of Albania.

Regarding the procedure and method the Minister is appointed and the procedure by which he is dismissed it is noted that: Article 98 of the Constitution states that a

Minister “*is appointed and dismissed by the President of the Republic, on the proposal of the Prime Minister, within 7 days. The decree is reviewed by the Assembly within 10 days*”.

This provision clearly defines that in the process of the appointment and dismissal of a Minister participate three decision-making bodies – a) the Prime Minister, b) the President of the Republic, and c) the Parliament. Specifically, it can be noticed that the Minister is “*appointed and dismissed*” by the President of the Republic, but the proposal must come from the Prime Minister, who may at all times undertake the initiative for appointing as well as dismissing a Minister. However, it should be noted that the Assembly plays an important role in this process, because the “*decree*” from the President must be reviewed by the Assembly within 10 days.

Albanian’s Constitutional Court, in its Decision No. 6, dated 18.01.2002 has analysed and expressed its opinion regarding the concept for the “review” process which belongs to the Assembly. In this case law, the Constitutional Court stated that: “with the word “review”, under Article 98 paragraph 2 of the Constitution, it is understood the Assembly’s right and obligation to discuss and debate the Decree of the President, and to take a decision regarding its approval or disapproval. The review of the Decree of the President of the Republic, issued in accordance with paragraph 2 of article 98 of the Constitution, is not limited to a formal review, but to a substantive review.

This means that, as a Parliamentary Republic, it is the Assembly which ultimately decides through vote for the appointment or dismissal of a Minister. Furthermore, in this Decision the Constitutional Court also analyzed the nature of the Decree of the President of the Republic regarding the appointment or dismissal of a Minister, its legal effect and the conditions necessary for its entry in force or its revocation. From this analysis, the Constitutional Court concluded that the presidential decree, “*as an individual act issued by a competent body, enters into force or it is revoked after the Assembly takes a decision on its approval or disapproval at the end of the review process*”.

Thus, based on the Decision, although the Prime Minister has the initiative to appoint or dismiss a Minister and makes such proposal to the President, it is the President who accesses such proposal and issues a Presidential decree, while the legal

effect of such decree commences only upon review of the Assembly as expressed through its vote.

Therefore, in theory there are limitations in the discretionary power of the Prime Minister to appoint or dismiss a Minister. The initiative of the Prime Minister is not sufficient since the Constitution requires the issuance of a decree by the President and the vote in favor of the Assembly.

However, a review of the political history of Albania demonstrates that a “*constitutional deadlock*” situation can occur very rarely. Even on cases when the appointment is proposed by a Prime Minister belonging to a political party that is in opposition with the President’s party, the President of the Republic has not refused so far to enact his proposals. On the other hand, in order for the Prime Ministers proposal and the Presidential decree to be rejected in Assembly, appointment or dismissal must be in conflict with the will of the governing majority in Assembly.

Given that the Prime Minister is nominated by a governing majority, such a situation in practice is extremely rare, and may appear in cases where the dismissal affects a particular minister who enjoys a broad support in the Assembly, or belongs to a party in the governing coalition, without the votes of which the decree of its dismissal cannot be approved.

In Albania’s recent post-communist history, a similar case has only occurred in 2002. At that time, due to conflicts within the majority, the Assembly overstepped the 10 days’ time limit set by the Constitution, refusing to review for a long time the Presidential decrees to appoint some new Ministers. While this political crisis was waiting to be resolved, the country was ruled for several months by the respective deputy ministers.

Although, in order to assess the degree of autonomy of a Minister, besides the procedure and method of his appointment and dismissal, his powers and decision-making activities must also be analysed.

As it is known, it is the Albanian Constitution that outlines the responsibilities of the Council of Ministers and the Prime Minister. Article 100 of the Constitution

states that, “*The Council of Ministers determines the principal directions of the general state policy*”. Furthermore, Article 95, paragraph 2 provides the Council of Ministers with a broad decision-making and discretionary authority. Thus, the Constitution determines that: “*The Council of Ministers exercises every state function that is not given to other bodies of State power or local government*”.

At the same time, the Council of Ministers is a collegiate body which is represented and chaired by the Prime Minister, who according to paragraph 1 of Article 102 of the Constitution, “*Outlines and presents the principal directions of general state policy and is responsible for them; assures the implementation of legislation and policies approved by the Council of Ministers; coordinates and supervises the work of the members of the Council of Ministers and other institutions of the central state administration*”. Furthermore, the Prime Minister has the authority to “*resolve disagreements between ministers*”.

The role of a minister is defined on paragraph 4 of Article 102 of the Constitution and it seems to be well defined in relation to the role of the Council of Ministers and that of the Prime Minister. According to this provision “*within the principal directions of general state policy, directs, under his responsibility, actions for which he has powers. The minister, in the exercise of his powers, issues orders and instructions*”. Thus, as it can be seen from the above provisions, the Constitution has set to the Council of Ministers the highest executive role. However, it is also clear and undisputable that the Prime Minister has a central executive role, which is exercised both through shaping the government policies that are object of approval to the Council of Ministers.

However, despite what is defined in the Constitution, to access the decision-making autonomy of a ministry, this autonomy shall be analysed under the responsibility field of the respective Ministry that he governs.

So, Article 4 of “State Administration Law” states that “*the Prime Minister and Ministers are the highest bodies of state administration. They lead and supervise the state administration within their respective field of state activity.*” While Article 3(5) emphasises “*the principle of clear allocation in defining the responsibilities*”, so that the allocation and assignment of administrative functions and tasks, between bodies, institutions and administrative

units shall be transparent and public.

Based on article 5 of this law, it is the Council of Ministers that upon the proposal of the Prime Minister determines the field of state activity and the responsibilities for each ministry. Further, on this law it is defined that “*each ministry is directed and represented by the Minister, who is responsible before the Council of Ministers and the Assembly for the entire activity of the Ministry*”. Also on article 22 of this law it is emphasised once again that each minister is responsible to supervise the activity of the ministry, the subordinate institutions and autonomous agencies within the state responsibility area.

From the above summary it is noticed a clear allocation of the hierarchical legal framework and the responsibilities of the Prime Minister, the Council of Minister and the Ministers.

Concretely, the Prime Minister proposes the field of activity, competencies and responsibilities for a particular Ministry in accordance with his vision for the state’s general policies. However, the Prime ministers proposal must be reviewed and decided upon by the Council of Ministers. This means that the responsibility field of each Minister is not defined only by the Prime Minister but it is defined by a collegial body, such as the Council of Ministers, which decides by a majority vote of its members, while recognizing the right of Ministers to express their opinions and to vote. Once such responsibilities are approved by the Council of Ministers, the direction and the representation of the ministry as an institution is carried out only by the responsible Minister.

Besides the Law on State Administration, regarding this concern it is important to analyse the Law on the Council of Ministers, which provides the organization and operation of this executive body.

The Law on the Council of Ministers under article 1 thereof, regulates the organization and operation of the “*Council of Ministers, the Prime Minister, the Deputy Minister, the Minister, of the institutions depending on their [...] bilateral relations, as well as the secondary legislation that these bodies issue*”. Similarly with the Law on State

Administration, this law also provides that the Prime Minister, the Minister and the Council of Ministers are separate and distinct entities from each other.

While the Prime Minister's duties are listed in Article 2 of this law. According to this law, the Prime Minister: *“a) represents and leads the premiership; b) requests explanations reports and administrative verifications from responsible ministers for issues that they cover; c) at his own initiative or at the request of the parties concerned, the Prime Minister suspends the implementation of acts of ministers, heads of central institution under his supervision or of the ministers, when it finds violations of the Constitution, laws, or acts of the Council of Ministers”*.

This provision defines as competence of the Prime Minister, the possibility that he could demand explanations to the Ministers, as well as the possibility to suspend the implementation of acts of Ministers, when violations of the legislation are found. It is worth mentioning that although to the Prime Minister is not explicitly recognized the right to change, withdraw, revoke or invalidate an act of the Minister, but the right of suspension of the act of the Minister by the Prime Minister, is however an important right that provides him with the power to influence in the activity of a minister.

Also, it is worth mentioning that the suspension itself is a temporary interruption of the legal effects of an act, which after suspension will continue to produce all its effects, while the revocation of an act shall mean the interruption of the legal effects, which is a greater competence that the law has not attributed to the Prime Minister. It shall also be added that the suspension of an act by a Minister must be based on the violation that the act in question has inflicted to the Constitution, laws or Decisions of the Council of Ministers, which means that the suspension of an act of a Minister remains relatively limited.

In the end of this analysis and in response to the Secretariat concern dealing with this issue, it is concluded that:

1. With regards to the appointment and dismissal of a minister, the Constitution of the Republic of Albania provides a procedure which requires not only the initiative of the Prime Minister, but also the agreement of the President and the

vote of the Parliament. Such a procedure, in theory provides a guarantee to the Minister in relation to its stability in office, in case of conflict with the Prime Minister.

2. The Constitution has also granted to the Ministers a degree of autonomy in decision-making processes on issues under their responsibility and that are undertaken within the internal state policies approved by the Council of Ministers.

3. The legal inability of the Prime Minister to abolish an act of the Minister may also be noted in the provisions of the Law on the Council of Ministers, which attributes to the Prime Minister only the right to suspend an act by a Minister, if he/she acts in contradiction with the Constitution and the laws of the country.

4. From the analysis and the conclusions reached herein, it is considered that the constitutional and legal framework in Albania, allows a certain level of autonomy to the Ministers in the exercise of their duties and powers.

5. On the other hand, taking into consideration the political leadership role of the Prime Minister on the formation of the Council of Ministers, his power in shaping the general state policies, his right to temporarily suspend an act of a Minister and the authority to resolve disagreements between ministers, and comparing it with the current political experience in Albania, we believe that it would be unusual for a case of technical nature to lead to a conflict between a Minister and the Prime Minister in case the latter would express the will to regulate in a specific form an issue, which is object of discussion.

Despite mentioned above it has to be emphasized the actual autonomy level of the activities of a minister from the authority of the Prime Minister depends on a number of other factors, such as the level of democracy in the country, the degree of democracy within the political parties, the degree of control and authority that the Prime Minister exercises on his Ministers, the political career path, the weight and the political importance of a particular minister as well as the emancipation of the society in general.

4. The Secretariat, in line with the ECRB, have demanded ERE that the ownership unbundling shall be implemented in all natural gas and electricity sectors.

Regarding this concern of the Secretariat, ERE provides that based on Law no. 102/2015 “*On Natural Gas Sector*”, Albgaz sh.a. company exercises its activity separated from other activities on Natural Gas Sector, like generation, trading and natural gas supply, in conformity with the principles and requirements defined in this law.

Currently MZHETS (the Ministry of Economic Development, Tourism, Trade and Entrepreneurship) results the sole shareholder of Albgaz company, with 100% state capital, as defined with Council of Ministers Decision No. 848, of date 7.12.2016 “*For the establishment of Albgaç company and the definition of the public authority representing the State as the Owner of Shares for Albpetro company and Albgaç*”. In this way, the Ministry of Economic Development, Tourism, Trade and Entrepreneurship exercises direct control as the owner of Albgaz company.

From the above and considering that the activity of the combined operator is developed by Albgaz in form of a commercial company (state joint stock company), it is concluded that the mentioned authority performs the function of the Shareholder Assembly for Albgaz sh.a. company, by taking any decision that is in the power of the Shareholder Assembly in any anonymous society (sh.a) according to the provisions of Law No. 9901 of date 14.04.2008 “*On entrepreneurs and companies*”, as amended.

In this context, it is worth mentioning that the Ministry of Energy and Industry and the Ministry of Economic Development, Tourism, Trade and Entrepreneurship, are two high institutions/bodies of the state administration organized according to Law no. 90/2012 “*On the organization and operation of the state administration*”. Based on Law no. 90/2012, each of these Ministries performs the administrative functions within the respective area of state responsibility. Concretely, the respective responsibility area for the Ministry of Energy and Industry is determined by the Council of Ministers Decision no. 833 of date 18.09.2013 “*On defining the state responsibility area of the Ministry*”

of Energy and Industry”, while for the Ministry of Economic Development, Tourism, Trade and Entrepreneurship this area is determined by the Council of Ministers Decision no. 835 of date 18.09.2013 “On defining the state responsibility area of the Ministry of Economic Development, Tourism, Trade and Entrepreneurship”, as amended.

Furthermore, regarding Albgaz sh.a. company, according to Council of Ministers Decision 848 dated 7.12.2016, it is the Ministry of Energy and Industry which exercises the rights over Albgaz Sha in conformity with the provisions of Law no. 102/2015 “On Natural Gas Sector”, and its state respective area.

Whereas, according on article 36 point 2 of the law, it is defined that: “to ensure the independence of ALBGAZ the same person/persons are not entitled that on the same time to:

a) directly or indirectly to exercise control over a licensed undertaking performing any of the functions of production or supply of natural gas and electricity, and to exercise control over decision making or exercise any right over the TSO or over the transmission system;

b) directly or indirectly to exercise control on decision making over the TSO or over the transmission system, and to exercise control on decision making or exercise any right over a licensee performing any of the functions of production or supply of natural gas and electricity;

c) to appoint members of the supervisory board, the administrative board or bodies legally representing the undertaking, of the TSO or the transmission system, and directly or indirectly to exercise control on decision making or exercise any right over a licensee performing any of the functions of production or supply of natural gas and electricity;

ç) to be a member of the supervisory board, the administrative board or bodies legally representing the licensee, to the licensees, performing any of the functions of production or supply and the TSO or the transmission system”.

Also, in the other legal provisions of this article, it is determined that:

“4. The restrictions stipulated in “a”, “b” and “c”, of point 2, of this law, shall be applicable in particular:

a) the power to exercise voting rights;

- b) the power to appoint members of the supervisory board, the administrative board or the bodies legally representing the licensee;*
- c) the right of holding a majority share.*

5. The obligation set out above, shall be deemed to be fulfilled in a situation where two or more undertakings which own transmission systems have created a joint venture which acts as one TSO in two or more countries. No other undertaking may be part of the joint venture, unless it has been designated as an independent TSO, and certified under the terms and conditions stipulated by the applicable legislation.

6. Where the person referred to in the above paragraph is a public body controlled by the state, then the two separate public bodies that exercise control over the TSO or over the transmission system on the one hand, and over an licensee, that performs any of the functions of production or supply of natural gas and electricity on the other, shall be deemed not to be the same person”.

Thus, in practice, as it is evidenced above according to Council of Ministers Decision No. 848 of date 07.12.2016 “On the establishment of Albgaz company and the definition of the public authority Representing the State as the Owner of Shares for Albpetrol and Albgaz companies”, it results that the Ministry of Economic Development, Tourism, Trade and Entrepreneurship is the 100 % holder of Albgaz shares, while the Ministry of Energy and Industry (MEI) is at 100 % the holder of Alpetrol company shares, which respectively exercise the activity of the combined operator for natural gas and natural gas generation.

In this way to unbundle the ownership of Albgas sh.a. company, in line with the Secretariat recommendation, ERE considers that this unbundling is performed according to the provisions of article 80 of Law no. 102/2015 and in conformity with the Certification Regulation, where are defined the criteria that shall be fulfilled by the applicant to enable the decision and the certification of the legal Entity that owns the Combined Operator for Natural Gas and shall not have direct/indirect control rights on generation, distribution or supply activities or vice versa.

Apart the need to further elaborate and to monitor the issues listed above, for the purpose of TSO company certification, the Secretariat in its Opinion has found appropriate to recommend ERE to impose some additional conditions on OST company.

B –The Secretariat requires ERE to impose some additional conditions for the certification of TSO.

1. The Secretariat invites ERE to request TSO company to implement a compliance program and to appoint a compliance officer.

In its Opinion, the Secretariat considers necessary to request TSO, beyond these measures, to implement a compliance program and to appoint a compliance officer. In this direction, the Secretariat concurs with ECRB which demanded that “*the concept of ownership unbundling in line with article 9(6) of Electricity Directive must at least be accompanied by strict compliance reporting and continuous regulatory monitoring*”.

The compliance officer and the compliance program should be developed following the requirements of Article 21 of Electricity Directive and shall include extensive rights related to investment decisions, and in particular should report to ERE and publish on the website a report about the relations between two public related bodies controlling TSO and KESH /OSHEE. These engagements should also be in line with Article 8(2) r) of ERE Regulation for Certification.

Regarding this recommendation of the Secretariat, as defined on article 21 of the Directive and article 8.2 letter “r” of the “Regulation for the certification of Transmission System Operator for Electricity, the certified operator shall establish and submit to the regulator authority ERE for approval the Compliance Program, which defines the measures taken to ensure the exclusion of discriminatory behaviour, and to ensure that the commercial and sensitive informations shall not be communicated to its shareholders.

In order to achieve the goal that the staff cannot change contrary to the recommendations, ERE will establish rules that the employees of OST who have had access to confidential information and/or commercial, economic and financial sensitive information, should not work to any competing third party for a period of 12 months after leaving their function, in order to ensure that all commercial, economic and financial interests of OST shall be preserved and are not damaged.

This goal is possible to be reached in three main directions.

First, TSO shall have the obligation to propose for approval to ERE, the categories of persons and/or their respective functions, which can be affected by this restriction.

Secondly, TSO shall take all necessary measures to amend and update the employment contracts with the category of employees who may be affected by this restriction, by introducing this restriction in their respective employment contracts.

Thirdly, ERE may consider the possibility that the prohibition of the employment of these persons can be placed on the criteria of licenses that ERE issues to third party operators which operate in the same industry that OST, by respecting the maximum term of such limiting, not exceeding 12 months as is allowed by the Labor Code of the Republic of Albania.

Furthermore, ERE assesses that the Compliance Program shall be submitted to the regulator authority ERE, not later than 6 months after assigning the Compliance Officer. While the Compliance Officer shall be assigned not later than 3 months after the final approval of the Certification Decision.

This Compliance Program shall at least treat as follows:

(i) The measures to avoid the discriminatory behavior in report with the market participants.

(ii) The obligations and rights of TSO company employees fulfill the purposes of the Compliance Program

(iii) The person or respective body for monitoring the Compliance program and the submission at ERE, for the Compliance Annual Report.

2. The Secretariat invites ERE to impose OST the provision of the evidence that the Ministry of Energy may not propose the approval (or rejection) to the Council of Ministers of any new interconnectors to be constructed by OST, by virtue of adequate primary or secondary legislation.

In connection with this request of the Secretariat, ERE concludes that this objective can be achieved through the promotion of inter-institutional cooperation by OST and the Ministry of Economy, for the implementation of amendments in the primary and secondary legislation, concerning the transfer of powers to the Ministry of Energy and Industry, to TSO sh.a. shareholder, i.e. the Ministry of Economic Development, Trade, Tourism and Entrepreneurship.

3. The Secretariat invites ERE to impose OST the provision of the evidence that the Ministry of Economic Development, Trade, Tourism and Entrepreneurship is exclusively empowered to issue opinions concerning the network development plan to ERE, by virtue of adequate primary or secondary legislation.

As explained above, in connection with this request of the Secretariat ERE concludes that this objective can be achieved through the promotion of inter-institutional cooperation by OST and the Ministry of Economy, for the implementation of changes in the primary and secondary legislation, concerning the transfer of powers to the Ministry of Energy and Industry, to TSO sh.a. shareholder, i.e. the Ministry of Economy.

At the end the Secretariat supports TSO certification in conformity with ERE Preliminary Decision, subject to the following remarks which are mentioned on the above paragraphs of this decision

In a summarized way the Secretariat requires ERE

a) to elaborate and monitor:

- The compliance with the rules on legal and functional unbundling of the Market Operator and the modalities of OST's involvement in any future power exchange;
- Whether the Ministry of Economy and Energy, respectively, approved budget of OST and KESH/OSHEE;
- The role of the Council of Ministers and the Prime Minister in relation to the Ministries of Economy and Energy;
- The application of the unbundling rules across the electricity and the gas sectors and their implementation in Albania.

b) imposes additional requirements on OST (within a timeframe not longer than 12 months) related to:

- the implementation of a compliance programme and appointment of a compliance officer;
- provide evidence that the Ministry of Energy may not propose the approval (or rejection) to the Council of Ministers of any new interconnectors to be constructed by OST, by virtue of adequate primary or secondary legislation;
- provide evidence that the Ministry of Economy is exclusively empowered to issue opinions concerning the network development plan to ERE, by virtue of adequate primary or secondary legislation.

Pursuant to Article 3 of the Regulation for certification of Transmission System Operator for Electricity, referring to what provided above, ERE shall take account even the above mentioned Opinions of the Secretariat when taking its final decision regarding the certification of TSO.

For all of the above mentioned ERE Board on their 15 March 2017 meeting,

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DECIDED

- The final approval for the certification of Transmission System Operator for Electricity, in conformity with article 54, point 6, of Law no. 43/2015, “On Power Sector” and article 9, point 6, of Directive 72/2009 EC.
- Within 12 months from the entry into force of this decision, to implement the provisions of article 8, point 2, letters “c”, “f” and “g”, and “p”, of the “Regulation for the certification of transmission system operator for electricity”, TSO company, shall submit at ERE evidences showing the guarantee regarding:
- **The Independence of the Financial Audit.** The financial audit of Transmission System Operator for electricity shall be independent, this is to say that the latter cannot be the same entity performing the audit of entities performing any of the electricity generating or supply activities. Regarding this issue, TSO shall require to the General Assembly (MZHETS) the assurance to avoid the appointment of the same financial Audits.
- **Non-transfer of staff.** The non-transfer of the Transmission System Operator for electricity staff to the entities performing any of electricity generation or supply activities, and regarding to the scope for imposing an obligation that a certain category of employees will not be able to work at other competing companies for a period of 1 year, TSO company shall review the current acts and shall elaborate new rules for labor relations in order to ensure the fulfillment of this condition for a 1-year period, and the financial compensation to the employees to whom the transfer is complete prohibition applies.
- **Unbundling of Market Operator.** In order to reach this objective, TSO company shall take all the preliminary measures and collaborate within its powers to realize the legal obligation defined in the law, to ensure the fulfillment of the legal obligation for financial and legal unbundling of the

Market Operator, as provided on article 57/2, of Law no. 43/2015, “*On Power Sector*”, in conformity with the market rules approved by ERE and Council of Minister decision for the unbundling of the Market Operator.

- **Inter-institutional cooperation for conducting legislative amendments and transfer of competences to the Ministry of Economy.** In order to comply with this obligation, TSO company will present to ERE prove of evidence that the necessary legal and secondary legislation amendments regarding the transfer of the competences of the ministry of Energy and Industry to the TSO company shareholder, i.e the Ministry of Economy have acured and are in full effect.
- **Compliance Program and Compliance Officer.** In order to achieve this goal, TSO company shall, not later than 3 months after the approval of the Certification Decision, assign the Compliance Officer subject of approval by ERE and also shall draft and submit at ERE the Compliance Program not later that 6 months from the assign of the Compliance Officer, in conformity with the definitions of article 21 of Electricity Directive and article 14 of the “Regulation for the certification of Transmission System Operator for Electricity”.

3. Failure of OST to comply with the obligation set forth in the paragraph 2 above, will result in the reopening of the certification procedures in accordance with the article 14 of the “Regulation on the Certification of the transmission system operator for electricity”, approved with ERE Board decision no. 154 of date 11.12.2015.

4. OST will report to ERE and Energy Community Secretariat, every 3 months regarding the fullfillment of its obligation and the process related to the transfer of the competences of the ministry of Energy and Industry to the Ministry of Economy.

5. To send this decision to Energy Community Secretariat.

6. To send this decision to the Ministry of Economic Development, Trade, Tourism and Entrepreneurship, to the Ministry of Energy and Industry and to the Competition Authority.

REPUBLIC OF ALBANIA

ENERGY REGULATOR AUTHORITY



Board



ERE Board vote for,

DECISION

No.43, of date 15.03.2017

ON

APPROVING THE FINAL CERTIFICATION OF TRANSMISSION SYSTEM OPERATOR FOR ELECTRICITY TSO COMPANY IN CONFORMITY WITH ARTICLE 54, POINT 6, OF LAW NO. 43/2015, "ON POWER SECTOR " AND ARTICLE 9, POINT 6, OF DIRECTIVE 72/2009 EC AFTER RECEIVING THE OPINION OF ENERGY COMMUNITY SECRETARIAT

Board Members	Pro-s	Con-s
Petrit Ahmeti	_____	_____
Adriatik Bego	_____	_____
Abaz Aliko	_____	_____
Entela Shehaj	_____	_____
Maksim Shuli	_____	_____

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