



## USAID | Regulatory and Energy Assistance

This letter responds to the Opening letter ECS Case 08-11. A summary of the state of play in Bosnia and Herzegovina is given below; as a result of the deadlock between the Entities, Bosnia and Herzegovina requests the assistance of the Secretariat in breaking this deadlock. Once the deadlock is broken, the offer of the Secretariat's assistance in bringing gas legislation and regulation in accord with the *Acquis* is gratefully accepted.

The Secretariat's letter in Footnote 3, p. 2 basically summarizes the positions of the two Entities. To ensure clarity on the positions, they are fully laid out below as articulated in the "Report on Work of the Expert team for development, coordination and harmonization of the regulations in the natural gas sector in Bosnia and Herzegovina – April-July" 2010:

### **1. Position of representatives of Republika Srpska in the Expert Team**

Members of the Expert Team from the Republika Srpska prepared a document under the title "Analysis of situation in the natural gas sector in Republika Srpska with proposal solution for organization of gas market in BiH". This document proposes the following organization:

1. Regulatory bodies should remain on the entity levels, while the State Regulatory Commission (hereinafter: SERC) would expand its jurisdiction to the natural gas sector when it comes to the following:
  - international cooperation in regard to cross-border issues in the natural gas sector,
  - international regulatory reporting,
  - approving of the Rules for Congestion Management on Gas Transport Network on Interconnections and allocation of capacity for cross border trade,
  - harmonization of the methodology for calculation of tariffs for use of transport network;
2. The jurisdiction of SERC should be expanded through amendments to the Law on Transmission, Regulator and System Operator for Electricity in BiH, without issuing a Framework Law on Gas in BiH;

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3. Transport System Operators for natural gas should remain on the entity level with an obligation to unbundle the activity of supply;
4. Regulations on Security of Supply are to be issued on the entity level;
5. Legal unbundling of natural gas import from the regulated activities;
6. Laws and secondary legislation acts, approval and monitoring of construction of the new gas infrastructure should be in jurisdiction of entity bodies, and technical rules that regulate this field would be harmonized between the two entities.

## Position of representatives of FBiH in the Expert Team

The Expert Team members from FBiH prepared a document entitled: „Proposal for organization of the natural gas activities in Bosnia and Herzegovina“. This document proposes the following organization:

1. Issue Law on Gas on the BiH level;
2. DERK should expand its jurisdiction to include the gas sector:
  - The jurisdiction of SERC to be determined in the same or similar way as is the case in the electricity sector:
    - i. determination of a single tariff methodology for the transport system,
    - ii. licensing, including licensing of the companies for international trade,
    - iii. international cooperation, and
    - iv. harmonization and approval of inter-entity development plans for development.
  - The regulation of distribution should be on the entity and local level;
3. Formation of public corporations for gas transport (TSO) owned by entities, implementation of the Agreement on Establishment of Public Corporations of BiH (Annex 9. of the Dayton Peace Agreement)
  - The Public Corporation should have all the jurisdictions of a transport system operator;
4. Initiation derogation for market opening pursuant to Article 28, paragraph 4. Directive 2003/55/EC.

In summary, the two entity positions are opposite to each other, particularly with regard to two issues: (i) SERC's jurisdiction, and (ii) the structure of the transport of gas (the TSO(s) issue). The FBiH Government insists that one TSO be organized on the state level with SERC regulating the TSO and international matters. The RS Government insists that the TSO be organized at the entity level with the entity regulator regulating the TSOs and SERC regulating international activities. The RS Government does not see any need for development of the State Law, while the FBiH Government insists upon a State Law. The RS Government thinks that the harmonized two entity laws could replace any need for the State Law along, with an amendment to the Law on Transmission, Regulator and System Operator for Electricity System to expand SERC's.

Since 2007, several formulations of Working Groups on this issue have been tasked with work on the State Gas Law, all without success. This is because Working Group members are tasked in

a certain way by their Governments, without authority to negotiate off of the Government positions.

It is time to elevate the problem gas restructuring issues to a higher, decision-maker level within Bosnia and Herzegovina, at least to draw the broad outlines of the gas sector according to the *Acquis*. For this reason, Bosnia and Herzegovina requests assistance from the Secretariat (and, if advisable at least for this first stage, appropriate members from the European Commission) to assist in breaking the above deadlock. Once there is this broader compromise at the decision-maker level, then Bosnia and Herzegovina also requests assistance from the Secretariat in implementation of the compromise solution into legislation and regulations.

Attached hereto are Entity comments on the Preliminary Legal Assessment contained in the letter, beginning on p. 12.

Bosnia and Herzegovina is cautiously optimistic that the lack of compliance articulated in the Secretariat's letter can be resolved by sufficient effort and good will on all sides.