



## **Legal Issues to the Establishment of the Coordinated Auction Office in South Eastern Europe**

The Greek Law firm presented the result of its work that dealt with legal issues on the establishment of the CAO in SEE. The final draft document has not been published yet but the presentation gives some basic information on eventual actions which each signatory party must undertake in order to enable the establishment of the SEE CAO in Montenegro. The following text considers possible obstacle in regard to establishing SEE CAO which appear from BiH legislatives and administrative provisions.

It is obvious that MOFTER must initiate and coordinate further actions in order to eliminate the legal and regulatory obstacle as to establishing SEE CAO.

The first step that must be undertaken is a detailed analysis of the final document in order to see eventual obstacles. Based on the analyses the Implementation Plan must be developed where responsible bodies and timing have to be determined.

Some of elements, but not limited to, which must be analyzed, are the following:

### The TSOs participating in the SEE-CAO

Task 1: Check if respective laws/provisions require a decision of the owner of the TSO/ISO that the SEE CAO to be established?

- Most jurisdictions do not allow their TSO to assign any right regarding the allocation of available cross border transfer capacity. With the exception of Albania, all jurisdictions implicitly allow their TSOs to enter into agreement with the SEE-CAO to carry out auctions in the name of the SEE-CAO but on behalf of the TSOs, under certain conditions.
- In other jurisdictions (Serbia and BiH), although no formal procedure exists, the Regulator requires to approve certain aspects (i.e. financial).

### Supervisory –Regulatory Authority

Task 2: Check how a national regulator can monitor and enforce its decision as to capacity allocation mechanism? Check which reporting mechanism has to be negotiated when establishing SEE CAO. How to ensure the SEE CAO auction rules to be approved by all regulators?

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- The only currently available way for the Regulators to monitor and enforce their decisions will be through their licensed TSOs. In order for the Regulators to be able to monitor and enforce their decisions, each TSO must put forward, when negotiating the various agreements to be signed among all TSOs and the SEE-CAO, the specific national reporting obligations each one has vis a vis their Regulators so as to ensure that the SEE-CAO assumes the contractual obligation to facilitate such reporting requirements.
- If the SEE-CAO undertakes auctions, the auction rules will need to be approved by the national Regulators. This does not create a problem but rather an administrative requirement.

### License issues

Task 3: Check if ISO is duly licensed and based on this license they can participate in the SEE-CAO?

### Cooperation among Regulators

Task 4: How to solve problems, if any, in regard to cooperation among regulators which is to monitor SEE CAO operation? Are there obstacles in the cooperation of SERC with other regulators?

- According to the legal regime of several of the jurisdictions, the Regulators cannot enter into legally binding agreements with other regulators for common monitoring of the SEE-CAO.
- Two main obstacles related to the ability of Regulators to effectively cooperate: (i) limitation from sharing “confidential” information with third parties that are not national authorities; (ii) the absence of uniform rules regarding what constitutes “confidential” information;
- The above issues could be resolved if national legislation were amended in SEE

### Capacity Allocation Auction Rules

Task 5: Harmonization the issues of limitation of liability and force major is needed. Check to what extent BiH limitation differs from other jurisdictions?

- The national legislations have some general similarities but specific differences regarding the issue of limitation of liability and force majeure. These differences constitute an obstacle in creating a single market and operating the SEE-CAO.

### Confidentiality

Task 6: Check to what extent BiH criteria and rules for clarifying information as confidential differs from other jurisdictions? Is it possible to share “confidential” information with others and how to overcome this obstacle if any?

- Legal obstacles in creating an “integrated Internal Electricity Trading Market” through the proper operation of a SEE-CAO are:
  - the existing national legal obligations regarding “confidentiality” and the rigid administrative rules preventing the TSOs and the Regulators from effectively

sharing “confidential” information (e.g. the majority of jurisdictions provide for the ability to divulge information only to national state authorities, organizations and institutions under certain conditions) and

- the different criteria and rules for classifying information as “confidential”.

### Antitrust and Competition

Task 7: Check if the ISO must file notification with the Competition Authorities as regard to establishment of the SEE CAO?

- Some jurisdictions (i.e. BiH, Croatia, Hungary, Romania, Italy) will likely have to file notifications with their national Competition Authorities.

### Dispute Settlement

Task 8: Is it necessary to amend the national law in order to agree on arbitration issue which will apply in SEE CAO contracts?

- Regulators cannot agree to arbitration by a panel of experts as a means of resolving disputes with other regulatory authorities. Amendments to national laws would be required.

### Legal issues from Montenegro as host country for SEE-CAO

Task 9: Can ISO be shareholders of SEE CAO?

- TSOs can be shareholders and do not need to be registered in Montenegro.