Draft Report on the Permitting Regime and Obstacles to Investment in the Energy Infrastructure Projects in Bosnia and Herzegovina

December, 2015

The views expressed in this report do not necessarily reflect the views of the United States Agency for International Development or of the United States Government.

1 This document is the first draft report, which has been developed for the purpose of discussion with relevant stakeholders, and will be continuously updated throughout the project cycle.
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**Acronyms**

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<th>Acronym</th>
<th>Description</th>
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<tbody>
<tr>
<td>BiH</td>
<td>Bosnia and Herzegovina</td>
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<td>BD</td>
<td>Brcko District of Bosnia and Herzegovina</td>
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<td>DSO</td>
<td>Distribution System Operator</td>
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<td>EnC</td>
<td>Energy Community</td>
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<td>EIA</td>
<td>Environmental Impact Assessment</td>
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<td>EP</td>
<td>Power Utility Company</td>
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<tr>
<td>FBiH</td>
<td>Federation of Bosnia and Herzegovina</td>
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<td>FERC</td>
<td>Federation Energy Regulatory Commission</td>
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<td>FMERI</td>
<td>Ministry for Energy, Mining and Industry of the Federation of Bosnia and Herzegovina</td>
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<td>HPP</td>
<td>Hydro Power Plant</td>
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<td>ISO</td>
<td>Independent System Operator</td>
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<tr>
<td>MIER</td>
<td>Ministry of Industry, Energy and Mining of Republika Srpska</td>
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<tr>
<td>MOFTER</td>
<td>Ministry for Trade and Economic Relations of Bosnia and Herzegovina</td>
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<tr>
<td>MSPCEE</td>
<td>Ministry for Spatial Planning, Civil Engineering, and Environment of Republika Srpska</td>
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<tr>
<td>PCI</td>
<td>Project of Community Interest</td>
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<td>PECI</td>
<td>Project of Energy Community Interest</td>
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<td>RES</td>
<td>Renewable Energy Resources</td>
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<td>RS</td>
<td>Republika Srpska</td>
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<tr>
<td>RSERC</td>
<td>Regulatory Commission for Energy of Republika Srpska</td>
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<td>SERC</td>
<td>State Electricity Regulatory Commission</td>
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<td>TPP</td>
<td>Thermal Power Plant</td>
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<td>Transco BiH</td>
<td>Electricity Transmission Company of Bosnia and Hercegovina</td>
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1. Introduction

1.1 Environment for Investment

The energy sector is central to the Bosnia and Herzegovina (BiH) economy and considered its greatest long-term development potential, since the country is a surplus generator and one of only two countries in the South East Europe region that exports electricity. BiH has significant reserves in fossil fuels and potential in renewables, especially hydropower, where only an estimated one third of the total potential is being used currently. Almost no significant generation infrastructure has been built in more than 25 years; the aging infrastructure reduces the security of BiH’s energy supply and threatens its revenue-generating surplus electricity exports. As a result, the country must focus on a major overhaul of its existing plants and the development of new generation capacity. BiH has extraordinary potential for the substantial expansion of generation if it can attract the needed investment. Since hydropower is the most under-utilized natural resource, the expansion in construction of both small and a large (Drina River) hydro power plants could be the most significant. The construction and operation of this additional generation capacity would create many new jobs, which are sorely needed in BiH.

At present, the number of private investors in BiH is low despite the country’s great potential and several other factors that make the country an attractive destination for investors, such as competitive labor cost, low corporate taxes, and convenient (close) access to major European consumer markets. Out of the many investors who have tried to invest in BiH, including the well-respected German company RWE and the Czech company CEZ, only one is currently poised to succeed in building a bigger plant. EFT, a London-based trading company with a large office in Belgrade and long-standing ties to Elektroprivreda Republike Srpske (EPRS), has moved through the permitting process and commenced building the coal-fired plant Stanari. There has been some investment in renewable generation facilities in the past years, such as solar power plants, small and medium hydro power plants, and wind farms. Some investors have succeeded in completing their projects, while others have had their projects stalled for years (e.g., the Solar Power Plant “Hodovo”, near the town of Stolac and wind farm “Mesihovina”, near the town of Tomislavgrad, both in the Federation of BiH).

Private investors claim that the process of investing in BiH is so opaque that they have difficulty determining what exactly the permitting and approval steps are, as these tend to vary by region, by case, and even by officer in charge within the same institution. The construction of some new types of renewable generation facilities, such as a biogas power plant, raises additional uncertainties due to the use of new technologies, for which almost no expertise exists locally. Similarly, the three public utility companies – the Elektroprivredas (EPs), EPBiH, EPHZHB, and EPRS, which have been the major investors in the post-war period in the BiH energy sector, argue that a fragmented and
non-harmonized legislative framework, which is implemented by numerous multi-level authorities in a non-uniform manner (particularly in the Federation of BiH), are the key obstacles to investment. According to the EPs, it is the combination of these factors that contribute to a slow, unpredictable and bureaucratic permitting procedure. This kind of investment environment contributes to excessive discretionary powers of authorities, which are often exercised through multiple requests for an “additional document” to be submitted by an investor, such as an additional study, approval, consent, opinion, or certificate. Through this practice, which is not specifically required by the regulation, but rather vaguely defined as “submission of other documents as necessary,” the authorities extend the deadlines for the issuance of permits and thereby prolong the overall permitting procedure. In addition, an overabundance of documents and papers are requested throughout the permitting procedure; in fact, often the very same documents are requested in each of the permitting processes and steps within the same permitting procedure. One of the EPs mentioned one project as an example, where obtaining “the preliminary approval for construction of building complexes”\(^2\) involved more than 80 different permits and approvals.

1.2 Purpose and Content of the Report

The purpose of this report is to identify the key processes and steps of the existing permitting procedure for the construction of the energy infrastructure facilities in BiH at a high level and to highlight historical obstacles to investment in the BiH energy sector. The report illustrates and maps the permitting procedures for construction of both conventional and renewable generation facilities, outlining the main challenges.

Additionally, this report describes other steps of the authorization framework\(^3\) for construction of energy infrastructure projects in BiH, such as the designation of the status of a project being in the public interest, spatial planning, and securing the land or right to use the land. Further, the report includes a comprehensive list of legislation governing the issuance of various permits at the state, entity, Brcko District of Bosnia and Herzegovina (BD), and Federation of BiH cantonal level in several areas relevant for permitting. A list of relevant laws and regulations is attached to this report in the Annex.

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\(^2\) The stage in acquiring a construction permit, envisioned in the procedure for construction of complex structures (facilities) such as larger power plants, prescribed by Article 61 of the FBiH Law on Spatial Planning and Land Utilization (“Official Gazette of the FBiH,” Nos. 02/06; 72/07; 32/08; 4/10; 13/19 and 45/10).

\(^3\) For the purpose of this report, the term “authorization framework” is used to define steps that have a direct impact on the development of a project from the identification of the need for expanding the energy infrastructure to the operational stage of the constructed facility.
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Whereas the focus of this report is on construction of generation facilities, the permitting procedures for both transmission and generation are the same, although some of the permitting steps are more technically complex in generation permitting.

1.3 Methodology

The information in this report is presented according to the structure of permitting, developed by the EC Roland Berger Study/Report, entitled “Permitting Procedures for Energy Infrastructure Projects in the EU: Evaluation and Legal Recommendations,” dated July 31, 2011 (the Berger Study).4 The Berger Study developed a generic framework for the authorization framework, with the permitting procedure as its core: it defines the four steps of the authorization framework typical for all EU Member States. Hence, following the same structure of permitting, this report enables the evaluation of the permitting procedures in BiH within the EU context.

This report has been prepared on the basis of desk research coupled with legislative analyses, as well as interviews with stakeholders, including competent institutions at all government levels in BiH (state, entities, BD, Federation BiH cantons and municipalities), EPs, domestic and foreign private investors, and NGOs. In addition, findings from the qualitative analysis conducted in the process of development of a Report on Administrative, Legal and Financial Obstacles for Implementation of the Projects of Energy Community Interest (PECI) and Projects of Common Interest (PCI) on the Territory of BiH (the PECI Report)5 were also used for the preparation of this report.

Following the Constitutional division of competences in the energy sector between the state and entities, this report focuses on the authorization framework for the development of energy infrastructure facilities at the state level and the level of entities - the Federation of BiH (FBIH) and the Republika Srpska (RS). The key features of the BD authorization framework are also included.

2. Authorization Framework

2.1 EU Authorization Framework: The Berger Study

The Berger Study covers data on permitting from a survey of 13 EU Member States: Austria, Denmark, France, Germany, Hungary, Ireland, Italy, the Netherlands, Poland, Slovenia, Spain, Sweden, and the United Kingdom.

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Sweden and the UK. Although the Berger Study is focused on transmission permitting process, the basic authorization permitting processes and steps for both transmission and generation are the same.

As noted earlier in the text, the Berger Study established a generic framework for the authorization process. The meaning of the phrase “the authorization of energy projects” for the purpose of the Berger Study includes the development of a project from the identification of the need for expanding the energy infrastructure to the start of construction of an energy infrastructure project.  

The four steps typical for the authorization framework of energy infrastructure projects in all EU member states are defined, as illustrated in the figure below. The four identified steps are as follows: 1) the definition of projects of public interest; 2) spatial planning; 3) the actual permitting procedure; and 4) securing the land or the right to use the land required to construct and operate the facility.

**AUTHORIZATION FRAMEWORK**

1. **Definition of projects of public interest:** In many countries, the government or the Parliament identifies the need for expanding the energy infrastructure (transmission or generation facilities). Energy infrastructure projects for which legislation was passed or incorporated in planning documents are considered to be of public interest.

2. **Spatial Planning:** The spatial planning procedure includes two steps: 1) deciding on the location of planned energy infrastructure projects or the route they follow; 2) deciding on whether and how to adjust the existing spatial plan to be compatible with official spatial planning documents. In practice, these two steps are often inseparably linked. With regard to the first step, the location and/or route must in many countries be compatible with official spatial planning documents. The spatial plan determines for what purpose land may be used. In the process of detailing the location and/or route of the planned energy infrastructure project, the results of an Environment Impact Assessment (EIA) also play a significant role. With regard to the second step, the following

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6 Berger, op. cit., p. 15.
7 Ibid., pp. 15-16.
8 Ibid., p. 15.
9 Ibid., pp. 15-16.
considerations apply: for land to be used for building and operating energy infrastructure, the spatial plan must first be adapted to reflect the location of the energy infrastructure or its approximate route. Adapting the spatial plan can be done by decision of the legislator, and/or through a separate spatial planning procedure at a regional or local level.  

3. Permitting Procedures: At its most fundamental level, the basic authorization framework for permitting energy infrastructure generally consists of a permitting procedure. The permitting procedure for the construction and operation of energy infrastructure (i) examines its technical characteristics, safety, environmental and social impact on the basis of detailed application documents compiled and submitted by the developer; (ii) examines and considers comments from stakeholders (the relevant authorities, NGOs, interest groups, people affected and the general public); and (iii) the responsible authority decides whether permit(s) will be issued.

4. Securing land, or the right to use land: The developer needs to obtain the land (or the right to use the land) required for construction and operation of the project. Affected landowners receive financial compensation.

The Berger Study tracks what it considered to be the eight key challenges to permitting procedures, noting in general that public opposition and complex permitting procedures are the most important causes of delays, at least from the perspective of investors (developers). The key challenges are as follows:

1. Number of Processes and Process Steps: The risk of duplicated work (meaning that the same documents are checked and assessed by two or more different levels of jurisdiction) and the risk of inconsistency between decisions, decreases with fewer processes and process steps. Further, the simpler the process, the less time the authority and the developer need to invest in coordinating interfaces between the different processes. The Berger Study indicates that Italy has one process, Germany two processes, and Hungary up to seven processes, five of the seven authorities being on more than one level.

2. Processes in Parallel or in Sequence: When one process step requires the result of another step as input means that the two processes cannot be performed in parallel, which increases the complexity of and time to complete the process.

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10 Ibid., p. 16.
11 Ibid., p. 16.
12 Ibid., p. 16.
13 Ibid., p. 22.
14 Ibid., pp. 25-27.
15 Ibid., pp. 24-27.
3. **Number of institutions having the competence for the issuance of permits and approvals**: The number of authorities involved in the permitting process impacts the complexity of the permitting process: the more streamlined and transparent the process, usually meaning fewer authorities, the shorter and more efficient the process tends to be. Whereas in England and Wales, the Netherlands, and Italy only one authority holds overall responsibility for the permitting procedure, in Poland more than ten authorities may be responsible for a single process and no single institution has overall responsibility for driving the procedure and controlling the quality of output. Hungary and Slovenia have 4-5 responsible authorities; and France, Germany Denmark and Sweden have 2-3.16

4. **Involving and Informing Stakeholders**. The EIA Directive17 makes mandatory the involvement of authorities that are likely to be concerned by a project because of their environmental responsibilities or local and regional competences. Similarly, to ensure the effective participation of the public concerned, the public must be informed by appropriate means “early in the environmental decision-making procedures.”18

5. **Application Documents**. The documents submitted as part of the permit application are crucial to the permitting procedure, as they are utilized during the public consultation and provide the basis for the permit. Interestingly, the EIA Directive requires a non-technical summary of the project application that can be understood by non-experts. Approximately 80% of the documentation submitted with the application consists of environmental documents and analyses, which typically take two years or more to prepare.19

6. **Resources**. The lack of resources – both technical (technical, environmental and legal) and process-handling (experience with permitting processes, working with stakeholders and communications) in the responsible permitting authorities – causes delay in permitting processes.20

7. **Duration**. Duration of the permitting process holds back many infrastructure investments and causes additional costs for developers in terms of financing arrangements and under-utilized resources or equipment. The Berger Study found that the average length of the procedure is more or less four years.21

8. **Cost**. Both the permitting authority and the developer incur costs during a permitting procedure. The main cost driver for the authority was personnel, particularly during the public consultation stage, and at the permit issuance stage. From the developer’s point of view, costs can accumulate due to delay,

16 Ibid., p. 16
18 Ibid., Article 6.
20 Ibid., pp. 49-52.
21 Ibid., pp. 52-56.
resulting from penalties from construction companies and unused equipment and unrealized cash flows.\textsuperscript{22}

\textbf{2.2 Authorization Framework in BiH}

According to the Constitutional organization of Bosnia and Herzegovina, the jurisdiction for conducting processes and steps within the authorization framework for the development of infrastructure projects is divided among different government levels in Bosnia and Herzegovina (the state, entity, and BD). A typical authorization framework, as defined by the Berger Study, which includes four steps: 1) definition of project of public interest; 2) spatial planning; 3) permitting procedure; and 4) securing the land or right to use the land, can be identified at the entity level. Thus, the permitting procedure for the development of energy infrastructure projects as the core part of the authorization framework is primarily regulated at the entity level: the Federation of BiH (FBIH), and the Republika Srpska (RS). Further, due to the division of competences between the Federation BiH and its ten (10) cantons, established by the FBIH Constitution,\textsuperscript{23} many relevant permitting areas in FBIH are regulated by both FBIH and cantonal legislation (e.g., concessions, spatial planning). Consequently, the permitting procedure in FBIH is conducted at the FBIH and/or cantonal level. In contrast, the permitting procedure in the RS is more centralized at the entity level. Local authorities are also involved in some specific permitting processes and steps in both entities.

Although the typical authorization framework (as defined by the Berger Study) is implemented at the entity level, the issuance of some important approvals and permits are within the competence of the state level institutions/bodies, such as concessions in cases when the law authorizes the state to issue concessions, and connection to the transmission network (110 kV, 220 kV, and 400 kV). The role of the state-level institutions in implementing energy infrastructure projects is likely to become more prominent given that almost all planned and bigger energy infrastructure projects will have an inter-entity and/or inter-state (regional) element (i.e., construction of hydro power plants on rivers running through both BiH entities and between countries such as the HPPs on the Drina River or transmission from BiH to Serbia and Croatia), for which the jurisdiction is at the state level pursuant to the BiH Constitution.

The role of the state level institutions in the permitting procedure is particularly important in light of the future implementation of Projects of Energy Community Interest (PECI), which are planned to be constructed on the territory of BiH and its neighboring counties, Serbia and Croatia. Specifically, the Energy Community (EnC) Ministerial Council adopted a list of Projects of Energy Community Interest (PECI) on October 24, 2013, including seven projects on BIH territory, with a

\textsuperscript{22} Ibid., pp. 56-57.

\textsuperscript{23} Chapter III, FBIH Constitution (“Official Gazette of the FBIH,” Nos. 1/94, 13/97, 16/02, 22/02, 52/02, 63/03, 9/04, 20/04, 33/04, 71/05, 72/05 and 88/08).
total estimated value of EUR 1.627 billion for five electricity generation plants\textsuperscript{24} and EUR 28.8 million for two transmission lines, one to Croatia and one to Serbia.\textsuperscript{25} Thus, seven PECI projects located on the BiH territory are currently on the EnC list. Out of those seven, five projects relate to the construction of new energy facilities, and two relate to construction of transmission to neighboring countries, Croatia and Serbia.

Moreover, the EnC Ministerial Council adopted the Decision on Implementation of the Regulation (EU) No. 347/2013 on Guidelines for Trans-European Energy Infrastructure in the EC (Regulation 347) on October 16, 2015. Regulation 347 established a comprehensive framework for speeding up and simplifying the permitting procedure for construction of Projects of Common Interest (PCI) in the EU as well as for the distribution of costs between the Member States. Since October 16, 2015, the measures prescribed by Regulation 347 are binding for all signatories of the Energy Community Treaty, including BiH, and applicable to implementation of the PECI projects. BiH is, therefore, obliged to harmonize its legislative and regulatory framework (laws, regulations and administrative procedures) with the adapted text of Regulation 347, by December 31, 2016. The promoters of PECI projects and all respective institutions in BiH are required to secure the fastest possible legal treatment in their implementation. Some of the measures that need to be included into the legislative framework in BiH are as follows: i) the designation of the status of the “highest state importance” to PECI projects and their prioritized treatment in the permitting procedure, including spatial planning and the Environmental Impact Assessment (EIA); ii) the designation of one state institution (body) that will be responsible for enabling and coordination of the permitting procedure for PECI projects in line with one of the three proposed schemes (i.e., integrated, coordinated, collaborative\textsuperscript{26}); iii) definition of the procedure for implementation of PECI projects, which will consist of two parts (two procedures), the combined duration of which cannot last longer than

\textsuperscript{24} Electricity generation plants: 1) Co-generation plants KTG Zenica (BiH); 2) Hydro Power Plant Dabar (BiH); 3) Hydro Power Plant Dubrovnik (Phase II) (BiH-HR); 4) Hydro Power Plant Gornja Drina (HE Buk Bijela, HE Foca, HE Paunci, HE Sutjeska); 5) Hydro Power Plant Srednja Drina (HE Tegare, HE Rogacica, HE Dubravica) (BiH-Serbia).

\textsuperscript{25} Transmission: 1) 400 kV Power line Banja Luka (BiH) – Lika (HR); 2) 400 kV Power line SS Bajina Basta (RS) – SS Pljevlja (ME) – SS Visegrad (BiH).

\textsuperscript{26} Regulation (EU) No. 347/2013 on guidelines for trans-European energy infrastructure, Legal Analysis, Justice and Environment, p. 7: “Integrated scheme: the comprehensive (final) decision is made by the competent authority as the sole legally binding decision resulting from the statutory permitting procedure (other authorities concerned may provide their opinion as input to the procedure, which is taken into account by the competent authority). Coordinated scheme: the comprehensive (final) decision comprises multiple individual legally binding decisions issued by several authorities concerned. This scheme comprises special mechanisms for delayed decision-making (e.g., decision making powers devolve to another authority). Collaborative scheme: the comprehensive (final) decision is coordinated by the competent authority. The competent authority sets out and monitors compliance with the time limits.”

three (3) years and six (6) months. PECI projects are of crucial importance for the sustainability of the BiH energy system, increased security of supply, and connecting the BiH energy market with the markets of the EnC Treaty signatory countries, and the EU Member States.

Furthermore, the role of the state level institutions in the permitting procedure for the development of energy infrastructure projects needs to be considered in light of the size and volume of investment: namely, credible financial institutions, ability to provide a high level of funds, and request for guarantees for the repayment of their loans. A previous experience with a similar project in the energy sector in 2011, when the Italian investor SECI ENERGIA negotiated the construction of the HPPs Middle Drina (one of the projects from the PECI list) with the RS and then BiH authorities showed that international financial institutions are likely to request guarantees from the state, and not the entity, because of the Constitutional competences of the state in granting concessions comprising inter-state and inter-entity elements.

Hence, despite the fact that the entity level authorization framework is the main focus of this report, the relevant part of the authorization framework and permits pertaining to the construction of energy infrastructure projects at the state level are highlighted in this Chapter. Given its special status, the key features of the BD authorization framework are also included.

2.2.1 State Level

The authorization framework at the state level, as well as at the entities and BD levels, is presented using the Berger framework, which consists of the four typical steps. In addition, the types of Project Documentation that an investor needs to develop and present to the relevant authorities at the different stages of the permitting procedure in the entities and BD are also identified under this chapter, since they are generic and applicable to all government levels in BiH.

Step 1 - Designation of Status of a “Public (General) Interest”: The state level authorization framework entails a few steps and processes relevant to the implementation of an energy infrastructure project in BiH. However, the legislative framework governing those steps and processes is not well developed. First, the procedure for designation of status of a “general (public) interest” to an energy infrastructure project (or any other project) at the state level is not defined by any law or regulation. Also, no regulation authorizes a body or an institution to designate such status. The BiH Law on Concessions prescribes the requirement for an “assessment of whether a general (public) interest exists,” and defines it as the responsibility of a competent state ministry where a bidder submits its proposal for a concession for which there was no public invitation (unsolicited proposal). However, the BiH Law does not identify the authorized body or institution

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27 BiH Law on Concessions (“Official Gazette of BiH,” No. 32/02 and 56/04).
28 Article 25, BiH Law on Concessions.
tasked to designate such status nor does it prescribe the procedure for it. Further, the legal framework at the state level does not define how such public interest is harmonized or coordinated with the entity public interest and that of other government levels in BiH. The procedure of determining the public interest is provided by entity laws: examples are the laws on entity governments, laws on spatial planning and construction and laws on expropriation.

Step 2 - Spatial Planning: The adoption of a Spatial Plan at the BiH level is not prescribed by the existing legislative framework. The adoption of Spatial Plans are the competences of Entities and BD; thus, this activity is stipulated by the respective entity and BD legislation. There has been no attempt thus far to coordinate the development or to harmonize Spatial Plans of entities and/or other government levels.

Step 3 – Permitting Procedures: There are two procedures at the state level that the investor is required to complete in order to develop an energy infrastructure project in BiH: the first procedure includes obtaining a concession from BiH, provided the state and not another level of government is authorized to grant such concession, and the second procedure pertains to the connection of new facilities to the transmission network.

Concessions: The BiH Law on Concessions is one of the fourteen (14) laws on concessions in BiH. Apart from the BiH Law on Concessions, there are two (2) entity laws on concessions, ten (10) cantonal laws, and the BD Law on Concessions. These laws are not harmonized and are often contradictory. The abundance of laws on concessions has been identified as a major obstacle for the development of the area of concessions in BiH by a comprehensive review conducted by OECD/SIGMA, funded by the EU (the OECD/SIGMA/EU Review). Although the review was carried out in the period 2008-2009, its findings are still relevant, since there have been a few changes to the legislative framework and practice in granting concessions in BiH. The OECD/SIGMA/EU Review identifies flaws in the system of concessions in BiH and highlights discrepancies with the EU Directives.

The term concession is a very broadly defined by Article 3 of the BiH Law on Concessions as the “right granted by a Conceding Party to provide the construction of infrastructure and/or services and to exploit natural resources under terms and conditions agreed on by a Conceding Party and Concessionaire.”

30 Article 3, BiH Law on Concessions: “Conceding Party” – all relevant ministries or authorities of Bosnia and Herzegovina designated by the Council of Ministries of Bosnia and Herzegovina to grant a concession as referred to under Article (1) of the BiH Law on Concessions.
Article 4 of the BiH Law on Concessions prescribes the authority for the BiH Council of Ministers to make decisions on the type and subject of the concession to be granted, subject to approval by the BiH Parliamentary Assembly. As to the institutional structure in the area of concessions at the state level, the BiH Commission for Concessions is established and functions as an independent regulatory legal entity, which, pursuant to the BiH Law on Concessions, has an important role in the procedure for granting concessions. Finally, the BiH Law prescribes two methods for granting concessions: 1) public tender, and 2) unsolicited proposal.

The BiH Law on Concessions was adopted in 2002, while the BiH Commission on Concessions commenced its work in 2005. No concession has been granted by BiH thus far. Besides a complex political structure and continued debates over the competencies of the state and entities, many other pending issues contribute to the inefficiency of the concession-granting process at the state level. One of them is an ambiguity of the provisions of the BiH Law on Concessions.

As noted earlier in the text, the BiH Law on Concessions does not define a body or a procedure for the designation of a public (general) interest in the process of granting concessions. As an example, the state level Ministry for Foreign Trade and Economic Relations (MOFTER) received an unsolicited proposal for the construction of two mini hydro power plants (request submitted to MOFTER by the RS authorities), but the concession was not granted because it could not be established which body should make a decision that proposed projects satisfy a “public interest test” – the BiH Council of Ministers or a competent ministry.31 Further, the most disputed issue is related to competences for concession granting or, more specifically, whether the state or an entity is competent to grant concessions. The insufficiently clear wording of Article 1(2), read in conjunction with Article 6 of the Law on Concessions, contributes to a variety of interpretations.

Article 1(2) of the BiH Law on Concessions defines the competences of the state in the following way: “This Law sets forth the conditions under which local and foreign legal persons may be granted concessions that are under the jurisdiction of Bosnia and Herzegovina, pursuant to the Constitution32 and laws of Bosnia and Herzegovina and where it concerns the representation of the international subjectivity of Bosnia and Herzegovina, as well as in the cases where concession property extends to the Federation of Bosnia and Herzegovina and the RS for providing infrastructure and services, exploitation of natural resources and facilities used for their exploitation, financing, design, construction, rehabilitation, maintenance and/or operation of such infrastructure and all accompanying facilities thereto.”

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31 OECD/SIGMA, op. cit., p. 36.
Article 6 of the BiH Law on Concessions further prescribes that the BiH Commission for Concessions functions in the capacity of the Commission for Granting Concessions of Bosnia and Herzegovina when it performs duties and gives authorizations pertaining to concessions that fall under the exclusive competence of Bosnia and Herzegovina. In addition, the BiH Commission for Concessions functions in the capacity of a Joint Commission for Granting Concessions pertaining to concessions that do not fall under the exclusive competence of BiH, and in disputes arising from concession granting between BiH and/or Republika Srpska.

Article 1(2) of the BiH Law on Concessions does not distinguish “exclusive competences of BiH” from those “that are not exclusive.” However, the functioning of the BiH Commission for Concessions in Article 6 is derived on this basis. Although the exclusive competences of BiH can be drawn implicitly from the reading of Article 1(2) and are sufficiently clear, the investment projects initiated in the past showed that there was not a common understanding of what the “exclusive competences” of the state in granting concessions are. First, there was a disagreement over the issue when the unsolicited proposal was submitted by a local power utility EP BiH to MOFTER to construct a hydro power plan on the Drina River (HPP Tegare). An administrative dispute was initiated, which ended in a BiH Court decision that the state was competent for the issuance of the concession in that case. Similarly, it was raised again when an Italian investor - SECI ENERGIA was involved in negotiation for the same project with the RS and BiH authorities.

A different understanding generated by the interpretation of Article 2(1) with regard to competences of the state to grant concessions, which fall under category of “unexclusive competences of BiH” or “joint competences of BiH and other government levels” is even more apparent. The understanding of the meaning of what should be included under the wording “when property extends to the Federation of BiH and Republika Srpska . . .” is the focus of debate. One interpretation advocates that such wording should be interpreted to encompass any case of the construction of generation facilities on rivers that flow through both entities. According to proponents of this interpretation, the construction of a hydro power plant on any part of the river that runs through both entities affects the entire river’s flow and impacts both entities, and therefore, BiH Institutions should be authorized to grant concessions in those cases. On the other hand, another group of proponents supports a narrow interpretation, under which the BiH Institutions should be authorized to grant concessions only if a generation facility is to be built directly on an inter-entity border, or within a few meters distance from an inter-entity border; in all other cases, concessions are in the jurisdiction of the entities. To sum up, the implementation of a

33 Article 6, BiH Law on Concessions.
34 Article 4, BiH Law on Concessions. Interestingly, Article 4 does not prescribe the jurisdiction of the Joint Commission for disputes arising between BiH and FBiH.
35 Article 1 (2), BiH Law on Concessions.
concession project that requires the approval of government levels in addition to BiH, is likely to be stalled for years.

Finally, it needs to be noted that many other issues are closely related to the inability of the system for concessions to function at the state level. Some are of a political nature, such as the lack of cooperation between the state and entities; resistance to reaching political compromises over projects that would be located on the territory of both entities; missing strategies and/or parallel and often conflicting strategies at the state and entities levels; and an undefined inter-entity border. In addition, unresolved issues over state-owned property, land registries that are not up-to-date, the organization of state level structures, and the lack of capacities, expertise and financial resources of the state level institutions, are important factors to consider.

Connection to the Grid: The Transmission Company “Elektroprenos BiH,” headquartered in Banja Luka (Transco BiH), was established by the Law on Establishing the Company for Transmission of Electric Power in Bosnia and Herzegovina. The main competences of Transco BiH include electricity transmission, maintenance, construction and expansion of the electricity transmission network in BiH. This is the only company for the transmission of electric power in the BiH market. Transco BiH operates at the state level, and its activities are regulated by the State Electricity Regulatory Commission (SERC).

Depending on the installed capacity, an electric power facility requires a connection either to transmission or distribution network of Bosnia and Herzegovina. Transco BiH is the only company authorized for the issuance of permits for connection to the transmission network in BiH.

The connection procedure is regulated by the Connection Rules (Rules) adopted by SERC. The technical aspects of the connection are prescribed by the Independent System Operator in BiH (ISO BiH) and approved by SERC in the Grid Code.

The Grid Code prescribes the procedure as follows:

1. Connection of new facilities to the transmission network at 400, 220 and 110 kV;
2. Connection of facilities to 35, 20, 10 and 6kV medium voltage level at 110/x kV substations of the Transmission Company;

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37 Unless a facility is built only for the purpose of self-consumption of electricity.
3. Existing facilities in case of an increase in granted capacity, upgrade or reconstruction of facilities;

In order to connect new facilities to the transmission network, reconstruct or upgrade existing capacities, an investor must obtain the documents and approvals from Transco BiH throughout the permitting procedure. The role of Transco BiH and stages of the issuance of the connection approvals and documents in relation to the Urban Permit and the Connection Permit are illustrated by Figure 2, and explained in the text below.

![Diagram of BIH level – Transco: Documents and Approvals](image)

**1. Conditions for Connection of the User to the Transmission Network (Connection Conditions)**

The Connection Conditions define the minimum technical, construction and operation criteria that must be fulfilled for an investor to connect to the transmission network. This is a document that contains the necessary technical parameters for a connection to the transmission network in accordance to the Grid Code, such as: basic user data, location of connection, granted capacity, technical conditions for the billing-metering point nominal voltage and validity period.

The Connection Conditions define the technical criteria required by a Project Analysis of the Technical Solution for Connection (Project Analysis). The Project Analysis is a document prepared by Transco BiH (or other competent institution) on the basis of technical standards prescribed by the ISO BiH.
Application for the issuance of Connection Conditions must be accompanied by an urban permit issued by a competent authority in an entity. Connection Conditions are to be issued by Transco BiH within 90 days from the day of application.

Sometimes authorities competent for the issuance of an urban permit in entities (entity level ministries and/or local authorities – municipality (RS) and canton/municipality (FBiH)) require a pre-approval permit for connection to confirm the possibility of connection to the transmission network. If required, Pre-approval for Connection may be issued by Transco BiH.

2. Connection Contract

A Connection Contract is signed between an investor and Transco BiH after the issuance of a construction permit and includes the terms specified under the conditions for connection. The Contract regulates technical, legal and economic conditions for connection to the network and other details of connection construction, such as: work and equipment for construction of connection, connection fees, and technical parameters for the connection point, ownership relations, and the like. The Connection Contract also determines future relations in regard to operation and maintenance of the connection.

3. Approval of Connection

After a facility has been constructed, an on-site inspection is performed by the Transco BiH. If an investor has completed all technical and legal conditions stipulated by the Contract, then the Transco BiH will issue an Approval of Connection. This is the final approval for connection to the network and includes all relevant data, such as nominal voltage of the connection point; granted capacity; annual consumption and generation of electricity; technical characteristics of the billing-metering point; equipment parameters, and the like. The Approval of Connection verifies that all aspects of connection to the transmission network have been met in accordance to the Rules and Grid Code.

Step 4 - Securing Land, or the Right to Use Land: There are no laws or procedures at the state level that would facilitate the acquisition or the right to use land or construct on land in the development of energy infrastructure projects in BiH. The laws regulating property and other subject matters are adopted at the entity and BD level.

Project/Technical Documentation: Legislation in both entities and BD requires development of the Project/Technical Documentation, and prescribes the same type of documentation. Both terms – project and technical documentation – are used to identify the same type of documentation, and therefore have the same meaning throughout BiH. Thus, an investor needs to develop project

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40 This permit is also known as a spatial or location permit.
documentation for the planned construction of a generation facility and submit it to the competent entity/BD institutions, along with the applications for the most important permits in the permitting procedure: the Urban Permit (FBiH)/Location Conditions (RS), and the Construction Permit. The Project/Technical Documentation comprises architectural drawings, documents and studies, which illustrate the concept and the use of the facility and provide technical solutions for the construction.

The deeper the investor gets into the permitting procedure, the more detailed Project Documentation is required. The types and stages of the development of Project Documentation in the permitting procedure in relation to the Urban Permit (FBiH)/Location Condition (RS) and the Construction Permit are illustrated by Figure 3 and explained in the text below.

1. **Preliminary Project Design:**

The Preliminary Project Design comprises harmonized architectural drawings, documents and studies, which outline the basic architectural, functional and technical solutions for a planned facility on the specific location. The Preliminary Project Design must be prepared before an Urban Permit (FBiH)/Location Conditions (RS) is sought, and it becomes part of the issued Urban Permit or Location Conditions.

2. **Main Project Design:**

The Main Project Design includes harmonized architectural drawings, documents and studies, which outline (provide) technical solutions for the planned facility, ensuring that the key terms and
conditions for construction are met. The Main Project Design must be developed in accordance to the Urban Permit/Location Conditions and consistent with the Preliminary Project Design. Depending on the type of generation facility and proposed technical solutions, the Main Project Design comprises the following sections: i) architectural designs; ii) construction designs; iii) installation design, iv) technological process design; and v) steps for the installation of equipment. The Construction Permit is issued on the basis of the Main Project Design.

3. **Detailed Project Design**

The Detailed Project Design is a further-developed type of Project Documentation, which is required only if detailed drawings and textual explanation could not be provided under the Main Project Design, given the type of facility and other specific circumstances related to the construction. The Detailed Design elaborates technical solutions in detail and must be developed in line with the Main Project Design.

4. **As-Built Design**

The As-Built Design is an addition to the Main Project Design, which includes all changes and adjustments that occurred during the process of construction. The modifications should be in line with the Construction Permit. The technical inspection of the facility, which precedes the issuance of the Use Permit, is performed on the basis of the As-Built Design.

### 2.2.3 Entity Level Authorization Framework: Federation of BiH (FBiH)

**Step 1 - Designation of Status of a “Public (General) Interest”:** In a formal legal sense, the energy infrastructure projects in FBiH can get “public (general) interest” status. In compliance with legal provisions, the public interest is determined in a concession granting procedure as a “the grant of a concession in the public interest,” as well as in an expropriation procedure, which includes the “construction in the public interest for expropriation purposes.” In the case of expropriation, the public interest in FBiH is determined by the Law on Expropriation. All government levels in FBiH can determine projects in the “public or general interest” in accordance with their jurisdiction. Whether a project is in the public interest of FBiH is determined by the FBiH Government, and of a particular canton by the cantonal government.

**Step 2 - Spatial Planning:** There is no Spatial Plan for FBiH. The FBiH Spatial Plan Proposal (2008-2028), was discussed by the FBiH Parliament, but it has not been adopted yet. Until the adoption of the FBiH Spatial Plan, the Spatial Plan of the Socialist Republic of BiH (SRBiH) for the period from 1981 to 2000 has been applied, where it has not been contrary to the FBiH Constitution. The SRBiH Spatial Plan envisaged the construction of hydropower and thermal power plants but did not

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41 FBiH Law on Expropriation (“Official Gazette of the FBiH,” Nos. 70/07, 36/10 and 60/12).
foresee the construction of non-conventional renewable energy power plants. Given that the Spatial Plan of SRBiH was adopted back in 1981, for the entire territory of BiH, which had no entities, Cantons, and the BD, it is not clear to what extent such plan has been or, indeed, could have been implemented. In addition, there are local spatial plans that have been adopted at the lower government levels. Some of the 10 Cantons in FBiH have adopted a Spatial Plan (Sarajevo Canton, Zenica-Doboj Canton, Tuzla Canton, Una-Sana Canton, Bosnia-Podrinje Canton and Herzegovina-Neretva Canton), while other Cantons do not have Spatial Plans. Also, some municipalities in FBiH have Spatial Plans and some do not.

At present, certain power facilities are envisaged by the existing spatial planning documents in FBiH (such as the hydropower plants in the upper-Neretva River – Bjelimici, Glavaticevo and Konjic), but some are not. Also, the construction of (hydro) energy facilities is possible in some areas in accordance with the current spatial plans because the land use is broadly defined. However, the size and type of such facilities is often not defined by this plan, which prevents their construction.

The adoption and harmonization of Spatial Plans at all government levels in BiH is of critical importance for the construction of energy infrastructure projects, since an urban permit, which is one of the key permits in the permitting procedure, cannot be obtained unless generation or transmission facilities are included in the existing spatial planning documents. The absence of the FBiH Spatial Plan creates not only an obstacle for the construction of power facilities located on the territories of two or more Cantons, but also those that are located on the territory of both BiH entities.

At present, only certain power facilities are included in the existing spatial planning documents in FBiH (such as the hydropower plants in the upper-Neretva River – Bjelimici, Glavaticevo and Konjic). Also, the construction of (hydro) energy facilities is possible in some areas in accordance with the current spatial plans, because the land use is broadly defined; however, the size and type of such facilities is often not defined by this plan, which prevents their construction.

**Step 3 - Permitting Procedure:** The permitting procedure is the core part of the authorization framework in FBiH. The permitting procedure for the construction of energy infrastructure facilities in FBiH is conducted at the FBiH and/or cantonal level, depending on the type and size of a facility as well as the competences. This applies for all processes and steps within one permitting procedure. In practice, this means that the investor might obtain some permits at the level of the Federation and other(s) at the cantonal level. The lack of legislative clarity that pertains to the issue of jurisdiction for the issuance of certain permits is often stressed by investors as the major cause of delays in the permitting procedure.
There are a number of documents (e.g., permits, approvals, consents, certificates) that the investor (developer) must acquire through different processes and process steps in order to begin the construction and complete an energy infrastructure project. Those processes and steps are governed by laws and regulations from the different sectors/areas (e.g., concessions, spatial planning, construction, water management), which are usually adopted on both the Federation and cantonal levels. Typically, the laws regulating the subject areas at the Federation level and those adopted at the cantonal level are not harmonized. The most illustrative example is the area of concessions. Thus, Article 3 of the FBiH Law on Concessions defines the “energy facilities that can be subject to concessions,” among other public goods, in the following way:

“... 2. Use of river flows and other water in the areas or the interest of two or more Cantons;
3. The construction of hydro power facilities of installed capacities over 5 MW;
4. The construction and use of hydro accumulations in the areas or interest of two or more Cantons;
5. Research or use of energy and other mineral resources...”

Interestingly, the above cited Article 3 of the FBiH Law on Concessions does not envision granting concessions for the construction of plants using renewable energy sources (RES), such as a solar, biogas, wind, and biomass or cogeneration plants.

On the other hand, cantonal laws on concessions define the list of public goods and/or types of energy facilities that can be subject to concessions in a non-uniform manner, different from the FBiH Law on Concessions. As an example, Article 7 the Law on Concessions of Herzegovina-Neretva Canton prescribes the list of public goods/generation facilities, among others, for which a concession can be granted, including those using renewable energy sources (RES), in the following way:

“b) use of water and water goods for:
....
5) Production of electricity of installed capacities up to 5 MW,
....
c) Exploration of energy and other mineral resources, including salt and salt water as defined by other law,
....
h) Exploitation of non-metal mineral sources, including all secondary mineral resources defined by other law,
....
n) [L]and for the construction of the energy facilities:

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42 FBiH Law on Concessions (“Official Gazette of the FBiH,” Nos. 40/02 and 61/06).
1) Wind power up to 5MW of installed capacities per production unit and wind parks,
2) Cogeneration facilities of up to 5 MW of installed capacities,
3) Solar power plants between 20 kW and 5 MW of installed capacities.”

In addition, the laws governing various sectors pertaining to a permitting procedure across the Federation are not harmonized between themselves. For example, there is no generic or standard term used as a single reference for an “energy infrastructure facility/project” or “generation facility.” Moreover, no precise definition of the term is provided in any law, so it is often unclear what types of generation facilities are subject to regulation. In fact, each sectoral law defines energy infrastructure facilities differently. Thus, in the legislation governing spatial planning and construction, reference is made to “construction buildings and works” and “building complex,” without defining what kind of buildings are encompassed by those terms. Further, the terms “hydro power facilities” and “hydro accumulations” are used in the sector of concession at the Federation level, without clear reference to other types of generation facilities. Finally, other sectoral laws refer to a “generation facility” as an “electro-energy object,” again without defining this term.

Typical processes and steps of a generic permitting procedure for the construction of a generation facility in the FBiH are illustrated by Figure 4 and explained in this chapter. Although all described processes and steps are required by laws and regulations, the two most important permits are: 1) the Urban Permit, and 2) the Construction Permit. The majority of other permits/approvals and consents are obtained as a precondition for the issuance of these two permits.

Further, the issuance of some permits consists of multiple steps and/or the issuance of progressive administrative decisions/acts as the permitting procedure progresses, which lead to the issuance of a final permit from that category. For example, a Water Permit is acquired at the end of the process (before the issuance of the Use Permit), but only after the Preliminary Water Consent and the Water Consent for that facility had been issued earlier in the procedure. All those water acts are issued by the same authority – the Water Management Agency – in the same permitting procedure and following the collection of required information. The Preliminary Water Permit contains the conditions and methods of use of water, and the documentation requirements; the Water Consent confirms the submission of the required documentation; and the Water Permit defines the operational conditions and disposal of waste.

In order to clearly illustrate this process in this Report, when necessary for clarity and coherence, the respective permits are grouped and presented on the basis of category and/or the institution competent for their issuance (e.g., water, connection to distribution network, RES production).

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44 The FBiH permitting scheme in Figure 4 includes steps for acquiring the incentives for the producers of electricity using renewable energy sources.
Energy Investment Activity - EIA Project

rather than in the exact order of their collection as illustrated by Figure 4. In addition, each category of permit is identified by the same pattern and color in the diagram; for example, all water acts are colored in blue and illustrated by a diagonal pattern. Where a category of permits is described, for context and clarity at the beginning of that section, a process diagram containing the permitting process in such category in relation to the two main permits – the Urban Permit and Construction Permit – has been extracted from the overall diagram in Figure 4.

Since some procedural steps are optional and depend on the legal requirements for the type and size of generation facility and/or whether the competent authority deems the procedure necessary (e.g., concession, EIA), such procedure is presented in Figure 4 by dotted lines. A solid line is used to identify the required procedural steps that an investor must take.
Figure 4: FBiH – Permits and Competent Institutions
**Concessions:** In order to construct a certain type of energy infrastructure facility in the FBiH, such as a power plant in the FBiH, it might be necessary for an investor to acquire a Concession. A Concession can be granted at the level of FBiH, or, as stated in the 2002 FBiH Law on Concessions, at the cantonal level pursuant to the respective Cantonal Laws. The legislative framework governing Concessions in FBiH, which includes the FBiH Concessions Law and 10 cantonal laws on concessions is not harmonized, particularly concerning the requirements for construction of RES generation. Thus, whether a Concession is required for the construction of a wind power plant, a solar power plant, a biomass or a biogas power plant varies from one Canton to another. The FBiH Office for Audit conducted a performance audit on concessions, and developed a Report entitled “Performance Appraisal – Management of Concessions in the Federation of Bosnia and Herzegovina” (the Performance Report), dated February 2011. The Performance Report highlighted the need for the harmonization of cantonal laws on concessions (and other laws governing the areas that can be subject to concessions) with the FBiH Law on Concessions, as well as EU Directives pertaining to Concessions. No harmonization has been conducted thus far.

**FBiH level:** The FBiH Law on Concessions does not specify at which stage of the permitting procedure a Concession must be acquired, if mandatory. Most investors, however, request a Concession at an early stage of the process, immediately after the development of a Feasibility Study and prior to an application for the Urban Permit. Thus, in the flow chart, illustrated by Figure 4, a step for acquiring a Concession is included at the beginning of the permitting procedure.

The term “Concession” is defined by the FBiH Law on Concessions somewhat differently than by the state law: “The right to perform an economic activity through the use of natural resources, the resources in public use, and the performance of an activity in the public interest pursuant to this Law.”

Article 3 of the FBiH Law on Concessions stipulates the list of objects or areas that may be subject to Concessions, including the energy resources. Further, Article 6 of the FBiH Law on Concessions prescribes the projects for which the FBiH Government has the authority to grant Concessions, including energy infrastructure facilities. Article 6, in pertinent part, reads as follows:

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45 For example, an investor must acquire a concession for the construction of a solar power plant in the Herzegovina-Neretva Canton, but not in Sarajevo Canton. Also, Tuzla Canton initially required concessions for both wind and solar power plants, but it then changed the law and abandoned those requirements.


48 Article 3, FBiH Law on Concessions: “2. Use of river flows and other water in the areas or in the interest of two or more Cantons; 3. The construction of hydro power facilities of installed capacities over 5 MW; 4. The construction and use of hydro accumulations in the areas of interest for two or more Cantons; 5. Research or use of energy and other mineral resources.”
“2. use of river flows and other water in the areas or in the interest of two or more Cantons;
3. the construction of hydro power facilities of installed capacities over 5 MW;
4. the construction and use of hydro accumulations in the areas of interest for two or more Cantons;”

The Amendments to the FBiH Law on Concessions, passed in 2006, added a new requirement for the FBiH Government when deciding on Concessions under Article 6 of the FBiH Law on Concessions: namely, if a Concession has an impact predominantly on one municipality, a prior approval from the Municipal Council of the local community is also required.

The FBiH ministries, or other bodies designated by the FBiH Government to grant Concessions, play the role of Conceding Parties in the Concession Process. Competent ministries and bodies have the prime responsibility for the determination of a potential Concession, preparation of responses to unsolicited proposals, and for implementing procedures for approving Concessions, including negotiations with potential Concessionaires. In order to initiate the procedure for Concessions, listed under Article 6 of the FBiH Law on Concessions, FBiH Government prior approval is required. The entire procedure is subject to control by the FBiH Government and the FBiH Commission for Concessions, which is established as a professional and permanent body, similar to the BiH Commission for Concessions.

A Concession Contract can be concluded for a period of up to 30 years. Exceptionally, the period can be extended to a maximum of 50 years.

According to the 2014 Annual Report of the FBiH Commission for Concessions (the Annual Report), a total of two (2) Concessions have been granted at the FBiH level thus far: 1) hydro power plant (HPP) Vranduk – EP BiH (2012); and 2) HPP Janjici – EP BiH (2014). The Annual Report noted that HPP Mostarsko Blato – that was already constructed by EP HZHB - requested a Concession in 2013 retroactively because it could not get an operational license from the Federation Energy Regulatory Commission (FERC), but the procedure has not been completed yet.

Cantonal level: Apart from the laws, many cantons have adopted their own cantonal regulation defining the Concession Procedure, authorities, and other Concession matters. Consequently, each Canton has its own structure and procedure governing the area of Concessions, different from other Cantons. In addition, a lower level of authority in each canton is each individual municipality, which also has its own local government and regulations affecting certain aspects of Concessions.

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Energy Investment Activity - EIA Project

The Performance Report pointed out to the issue of transparency by stating that, “Although explicitly favored by the laws on concessions, there is a little evidence of the transparency of the process. The laws on concessions allow granting Concessions on the basis of unsolicited proposals, without public tender, which is not in line with best EU practise and Directives.”

Also, there is no public Registry of Concessions granted in FBiH nor a system for monitoring their realization (execution) and payment of fees. Further, there is no mechanism for recording the number of submitted applications for Concessions or information on granted Concessions that have not been realized. Very little information is available on the internet.

The laws on concessions in FBiH do not prescribe the deadlines for the implementation of the procedure pertaining to granting a Concession. The majority of Concessions have been granted through the procedure based on an unsolicited proposal. According to the Performance Report, the main factors influencing the length of the procedure are pending approvals from the Municipal Council and late approvals of a Concession by the competent bodies. Furthermore, the OECD/SIGMA/EU Review pointed out that: “The most worrying fact is that laws enable a bidder to prepare a Feasibility Study for the Concession, instead of requiring its development from a Conceding Party. This applies to both procedures: public announcement (tender) and unsolicited proposals. Through transfer of this task from the Conceding Party to the bidder, the definition of requirements of the Conceding Party is done by its future partner, who is by default extremely interested to be selected to be the private partner on the specific project, and, therefore, has a vital interest in presenting the needs and benefits of the Conceding Party in very positive sense. The preparation of the Feasibility Study, including environmental impact assessment (EIA), is usually the key task of the competent authority. The Feasibility Study contains specificities, which enables the authority to compare and evaluate the received bids.”

Since there is no public registry of concessions issued in FBiH, it cannot be established how many Concessions in the energy sector have been granted at the cantonal level to date. The OECD/SIGMA/EU Review noted that at the time their expert team was assessing the area of Concessions in BiH (2008 – 2009), approximately 300 Concessions had been granted at the cantonal level, mainly to local enterprises. There were a few exceptions including concessions for mini HPPs to Dutch and German companies.

Concession Fees comprise two types of payments. The first type of payment is a lump sum, which needs to be paid immediately after the Concession Contract is concluded, and cannot be less than

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50 FBiH Office for Audit, op. cit., p.18.
51 Ibid, p.17.
52 OECD/SIGMA, op. cit., p.21.
53 Ibid., p.46.
1.5% of the total planned investment. The second type of payment is paid as an annual fee, calculated on the basis of generated revenue.

**Water Acts**: In order to acquire the right to use water by the new generation facility, an investor must go through different steps to acquire administrative documents, which will gradually lead to the final stage of obtaining a Water Permit. As the permitting procedure progresses, the competent authorities require more detailed information. The authorities make and issue administrative decisions – water acts along with this process. Figure 5 below identify the stages and the order of the issuance of water acts in relation to the Urban Permit and the Construction Permit.

Water acts are administrative documents through which water use and water waste are defined. The issuance of these water acts is regulated by the FBiH Law on Water\(^{54}\) and the FBiH Regulation on Content, Form, Terms and Method of Issuance and Maintenance of Water Acts (the FBiH Regulation on Water Acts)\(^{55}\). There are three types of water acts that are required to be obtained for any use of water or disposal of water waste by certain commercial activities, including energy facilities\(^{56}\), which extends the volume of a general (ordinary) use of water, regardless of its impact. Thus, along with the permitting procedure for the construction of a new generation facility, the investor needs to obtain the following three water acts:

- **a. Preliminary Water Consent**
- **b. Water Consent**

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\(^{54}\) FBiH Law on Water ("Official Gazette of the FBiH," No. 70/06).

\(^{55}\) FBiH Regulation on Content, Form, Terms and Method of Issuance and Maintenance of Water Acts ("Official Gazette of the FBiH," No. 31/15).

\(^{56}\) Article 109 of the FBiH Law on Water defines the activities for which water acts must be always obtained.
c. Water Permit

a) **Preliminary Water Consent**: The Preliminary Water Consent is an administrative act, which defines the conditions for the right to use water and the allowed methods of such consumption, as well as the terms that need to be fulfilled by the investor’s documentation for the construction of new or the reconstruction or removal of existing facilities that can permanently, temporarily or occasionally have an impact on the water regime. The issuance of a Preliminary Water Consent is mandatory for all energy facilities and is sought in the process of acquiring an Environmental Permit or an Urban Permit. Also, if a Concession is required for the construction of the specific generation facility, the Preliminary Water Consent needs to be obtained prior to the Concession.

If a Preliminary Water Consent is requested in the Concession Process or in the process of acquiring the Environmental Permit, then such request needs to be submitted by the institution/body competent for granting a Concession or for the issuance of the Environmental Permit. However, in case those two processes are not required for that type of a generation facility by the law, then an investor is obligated to request an issuance of the Preliminary Water Permit.

The new FBiH Regulation on Water Acts, adopted recently in 2015, requires a Water Study for the Issuance of the Preliminary Water Consent, which is a new requirement. The Water Study needs to be prepared by the authorized legal entity that is included in the official list of authorized entities.

The issued Preliminary Water Consent is valid up to three years, during which period the request for Water Consent must be submitted.

b) **Water Consent**: The Water Consent is the second step in acquiring a final water permit. The Water Consent verifies that the documentation submitted by the investor with the request for the issuance of Water Consent meets the terms and conditions defined by the Preliminary Water Consent and water regulations.

A Water Consent needs to be obtained in the permitting process for the construction or reconstruction of all facilities for which the Preliminary Water Consent is required and issued in the previous stage. A Water Consent needs to be acquired before the issuance of a Construction Permit.

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57 The construction of a wind farm also needs a Preliminary Water Consent.
58 Article 3, FBiH Regulation on Water Acts.
c) **Water Permit**: The Water Permit defines the purpose, the method and conditions for the use of water, the terms and condition for disposal of water waste and solid and liquid waste, and other terms and conditions as necessary.

A Water Permit certifies that the terms defined by a Water Consent are met. A Water Permit is issued on a temporary basis, up to a maximum of 15 years. The acquired rights to use water or the release of water waste by one investor cannot be transferred to another.

Institutions/bodies that are competent to issue Water Acts are defined by Article 139 of the FBiH Law on Water. Competences are divided between the FBiH and cantonal authorities, or more specifically, between the two FBiH Agencies for Water Management: the Agency for Sava Basin and the Agency for the Adriatic Sea Basin on the one hand (Water Management Agencies), and the Cantonal Ministries competent for the issuance of Water Acts on the other. Competencies for the issuance of water acts between Water Management Agencies and competent Cantonal Ministries are divided on the basis of the rivers’ categories, among other criteria. Thus, Water Management Agencies are, for example, in charge of the issuance of water acts related to the construction of HPPs on bigger rivers falling under Category 1 (for example, the Bosna, Neretva, Drina and Una Rivers), while Cantonal Ministries are authorized to decide a water request for the construction of HPPs on the rivers under Category 2 (smaller rivers), and up to 5 MW of installed capacity.

**Consent of Other Users of the Location**: In order to apply for an Urban Permit, the investor must also obtain written approvals (consents) from all users operating at the location (users operating on the soil and space above the location site) where a generation facility will be constructed (Users). In accordance with the Law on Spatial Planning and Land Utilization of the FBiH (Law on Spatial Planning), an Urban Permit specifies urban and technical conditions for a specific location. These conditions are determined and evaluated on a case-by-case basis, depending on the number of Users at the location.

Consents of Users usually include consents issued by Telecom Companies, Gas Companies, Public Road Management Companies, Water, Sewerage and other Utility Companies. Each User must issue a written consent separately and define the conditions, if necessary, that must be met if a generation facility is to be constructed at the site.

**Connection to the Distribution Grid (Network)**: Before a Construction Permit is issued for a generation facility of low and medium voltage, the investor must have two permits for connection

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59 Competences between the two Water Management Agencies are divided on the basis of the river basins.
60 Article 139 (1), FBiH Law on Water.
61 Article 139 (2), FBiH Law on Water.
62 FBiH Law on Spatial Planning and Land Utilization (“Official Gazette of the FBiH,” Nos. 02/06, 72/07, 32/08, 4/10, 13/10 and 45/10).
to the distribution grid: an Initial Power Permit and an Electric Power Permit. The Initial Power Permit must be requested and issued at the beginning of the permitting procedure and prior to the request for the Urban Permit, while the Electric Power Permit must be issued prior to the start of construction, or, more specifically, before the Construction Permit is obtained. Both permits are issued by the Distribution System Operator (DSO) at the request of an investor as illustrated by Figure 6 below. The DSO is a legal entity licensed for power distribution activity.\textsuperscript{63} At present, there are two public utility companies licensed for power distribution in the FBiH – EP BiH and EP HZHB. Based on the issued Electric Power Permit, a Connection Contract is signed between the investor and DSO.

![Figure 6: FBiH – Stages of Connection and Permits Issued by DSO](image_url)

**Initial Electric Power Permit:** As defined by the General Conditions for Electricity Supply (General Conditions),\textsuperscript{64} the Initial Power Permit is issued as a confirmation that the planned facility can be connected to the power distribution grid in accordance with the power conditions and planned development for that specific area. In this permit, the DSO will also evaluate the effects of the planned generation facility on the distribution network.

The investor must submit an application for the issuance of this document, which contains all the necessary data that the DSO requires in order to determine all aspects of the connection to the distribution network, such as the data on the investor and the facility, purpose, capacity and annual consumption of electricity, list of appliances, and the like. Within 30 days following the date of the receipt of the “completed application,”\textsuperscript{65} the DSO will issue the Initial Power Permit (if the decision

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\textsuperscript{63} Article 45, FBiH Electricity Law ("Official Gazette of the FBiH," No. 66/13).

\textsuperscript{64} FBiH General Conditions for Electricity Supply ("Official Gazette of the FBiH," No. 89/14).

\textsuperscript{65} Article 23, General Conditions, “Response to an Application.”
is positive), which contains the information on installed power, and technical and other general conditions for the connections.

The period of validity of the Initial Electric Power Permit is one year; however, it can be extended for one additional year.

**Electric Power Permit:** Documents submitted with the application for the Electric Power Permit enables the DSO to estimate the economic and technical aspects of the connection. At this stage, the DSO also requires the relevant part of the Main Project Design or Detailed Design in addition to other documents.

The DSO is obliged to decide upon the request for the Electric Power Permit within 30 days following the day of the receipt of a completed application. Typically, the Electric Power Permit contains the following: data on the applicant, installed capacity, the type of primary energy, voltage levels, the technical data, such as data on billing and the metering point, data on the connection point. This permit is not issued for a specific period of time, but it provides a mandatory time-frame in which the investor will have to sign the Connection Contract with the DSO.

The Connection Contract is based on the data specified by the Electric Power Permit, which contains the following basic information: data on both contracting parties, the subject, technical aspects of the connection point, ownership status, deadline for the construction of connection point, and the deadline for connection to the distribution network. The investor also has to pay connection fees,\(^{66}\) while the DSO is obliged to construct the connection point within 30 days from the date of signing the Connection Contract. According to the General Conditions, connection points are constructed and owned by the DSO.

The actual connection to the distribution network is performed after the works inside the facility have been completed and the construction of the connection point has been finalized.

**Environmental Permit:** An Environmental Permit is required as a precondition for the issuance of an urban permit for all generation facilities for which an Environmental Impact Assessment (EIA) is compulsory.\(^{67}\) Figure 7 illustrates at what stage the Environmental Permit is issued in the FBiH permitting procedure:

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\(^{66}\) The Connection Fees are determined by the methodology provided in The Rulebook on Methodology for Calculating Connection Fees and Definition of Deadlines and Requirements for Connection to Distribution Network (“Official Gazette of the FBiH,” No. 89/14), adopted by the FBiH Regulatory Commission for Energy (FERC).

\(^{67}\) Article 54, FBiH Law on Environmental Protection (“Official Gazette of the FBiH,” Nos. 33/03 and 38/09).
The FBiH Regulation on Plants and Facilities that regulates the requirement for an EIA defines the types of generation and other energy infrastructure facilities that require an EIA. In addition to determining the types of plants and facilities for which an EIA is compulsory and thus cannot be constructed without an Environmental Permit, the FBiH Regulation on Plants and Facilities also determines the jurisdiction of FBiH in issuing an Environmental Permit for a certain category of projects, including those from the energy sector. Thus, according to Article 4(a) of the FBiH Regulation on Plants and Facilities, an EIA is mandatory for the following:

“3. Thermal plants and other facilities of 50 MW of installed capacity and over,
4. Facilities for production of hydro-power energy over 5 MW of installed capacity for the individual facility, or 2 MW for several facilities located within distance less than 2 km from each other,
5. Construction of power lines:
   -110 kV, if they are a part of the transmission network,
   -220 kV and more.”

For the generation facilities and other energy objects listed under Article 4(a), an Environmental Permit is issued by the FBiH Ministry for Environment and Tourism (the FBiH Ministry for Environment) after the EIA is conducted.

Further, the BiH Regulation on Plants and Facilities also defines a second group of plants and facilities from the energy sector, for which the FBiH Ministry for Environment is authorized to issue an Environmental Permit after the FBiH Ministry for Environment has assessed in each individual

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68 FBiH Regulation on Plants and Facilities for Which the Environmental Impact (EIA) Assessment must be Carried Out, and Plants and Facilities That Can Be Constructed Only with the Environmental Permits (“Official Gazette of the FBiH,” No. 19/04).
case whether an EIA is necessary. Article 6 prescribes generation facilities that fall into this category, as follows:

“4. Facilities for the use of wind power for the production of electricity (wind miles) of 2 MW of installed power or 4 converters,
5. Hydro-power facilities up to 1 MW of installed capacity.”

The procedure for obtaining an environmental permit in case of construction of a hydro-power plant up to 1 MW of installed capacity on the territory of FBiH includes the following two steps: i) the FBiH Ministry for Environment makes a preliminary assessment on whether an EIA is required; and ii) if the FBiH Ministry for Environment decides that the EIA is required, then the investor (developer) is obliged to complete an EIA Study within six months from the date of the issuance of the Ministry’s opinion.

Articles 12-19 of the FBiH Regulation on Plants and Facilities define the content of the EIA Study. The list of legal entities authorized for the development of EIA Studies is available on the Ministry’s web site. The FBiH Ministry for Environment manages a public consultation process pertaining to the EIA Study, which is conducted at locations closest to the proposed construction site.

The investor who seeks an Environmental Permit must have previously obtained a Preliminary Water Permit. The FBiH Ministry for Environment’s decision on an Environmental Permit is a final administrative act, meaning that an appeal is not allowed to the second instance administrative body. However, a dissatisfied party can initiate an administrative dispute before a competent court in FBiH. An Environmental Permit is valid for five (5) years. Environmental court cases are still rare, although there have been several “heated public debates.”

Some cantons in FBiH have cantonal laws on environmental protection. Article 2 of the FBiH Regulation on Plants and Facilities prescribes that Cantonal Ministries competent in the environmental area will issue Environmental Permits for plants and facilities for which an EIA is not required, as well as for those that are beyond installed capacities and parameters prescribed by the FBiH Regulations on Plants and Facilities, or those that are not listed by it.

**Urban Permit:** The Urban Permit is one of the main (key) permits in the permitting procedure for the construction of a generation facility. Through issuance of an Urban Permit, a competent body at the respective government level (FBiH, Canton, or municipality), certifies that the construction of a specific plant or a facility is in line with spatial planning documents and other terms and condition envisioned for that area (location), as well as other pertinent laws and regulations.

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69 Chapter IV, Article 20 of the FBiH Regulation on Plants and Facilities determines criteria for the EIA.
70 FBiH Law on Spatial Planning and Land Utilization.
When requesting an Urban Permit, the investor is obliged to submit a Preliminary Design, together with other previously obtained permits.

Article 40 of the FBiH Law on Spatial Planning and Land Utilization (the FBiH Law on Spatial Planning) prescribes the competences for the FBiH Ministry for Spatial Planning in issuing Urban Permits. Thus, the FBiH Ministry for Spatial Planning is authorized to issue Urban Permits in the following cases:

“1.) Facilities and works covering the territories of two or more Cantons
2.) Facilities and works in the interest of FBiH in the areas and locations that are important for FBiH
3.) On inter-state borders
4.) Free zones
5.) Facilities and activities that can have an impact on the environment, life and health of FBiH Citizens
6.) Facilities and works in the interest of and importance for FBiH
7.) Facilities and works in the areas of national monuments.”

Article 40 also stipulates that the FBiH Ministry for Spatial Planning is obliged to obtain an opinion from the cantonal authorities prior to the issuance of an Urban Permit.

The issuance of an Urban Permit for generation facilities other than those listed in Article 40 of the FBiH Law on Spatial Planning and Land Utilization is within the competence of Cantons (cantonal and/or municipal authorities), and therefore such procedure is defined by cantonal laws on spatial planning and construction.

An Urban Permit determines the urban and technical requirements for a specific generation facility, which the investor must meet, including the terms and conditions specified under previously-obtained permits, such as the Preliminary Water Permit, the Environmental Permit, the Initial Electric Power Permit, Consent of Other User of the Location, and Pre-approval of Connection. The FBiH Law on Spatial Planning and cantonal laws on spatial planning and construction allow the competent authorities to request other documents, if necessary. Thus, the FBiH Law for Spatial Planning prescribes that the Ministry may request submission of “other documents depending on the complexity of construction.”

The Urban Permit is valid for one year, during which period the Construction Permit must be requested.

Approval of Project Documentation – Compliance with the Electricity Law: A new process step in the permitting procedure for the construction of generation facilities, was introduced by the FBiH Law on Electricity, adopted in 2013. Specifically, Article 101, paragraph 1, of the FBiH Law on...
Electricity provider investors are required to acquire an Approval of the Project Documentation Regarding Compliance with the Electricity Law and other Regulations from the FBiH Ministry for Energy, Mining and Industry (FMERI). The investor modifies and develops Project Documentation throughout the permitting procedure. In this stage, the Project Documentation is developed as the Main Project Design. The Approval of the Project Documentation, or the Main Project Design, by FMERI must be obtained before the application for a Construction Permit is submitted to the authorities that are competent to decide on a request for a Construction Permit.

As an example, the Review of the Project Documentation (the Main Project Design) for the construction of the generation facilities for which FBiH has competence includes the following:

“a) Level of harmonization of the Project Documentation with regulatory, technical and other regulations, standards, technical norms and recommendations governing the area of construction of generation facilities that are of importance for FBiH;
b) Complexity of the Project Documentation;
c) Technical Revision;
d) Procedures of the development of Project Documentation.”

In addition, the Review of Project Documentation for the generation facilities that use renewable energy resource as their primary source of energy, is checking the documentation’s harmonization with the Action Plan for the Use of Renewable Energy Resources in FBiH (the Action Plan for RES), issued by FMERI in May 2014.

**Energy Permit:** The Energy Permit is defined by the FBiH Law on Electricity as an administrative act issued by FMERI in the permitting procedure that precedes the construction and/or reconstruction of a generation facility. The FBiH Law on Electricity prescribes the competences of FMERI in issuing energy permits for all generation facilities, including those that are within Cantonal competences. Article 78(3) of the FBiH Law on Electricity, prescribes that FBiH is authorized for the construction of the following generation facilities:

1) Hydro-energy objects above 5 MW of installed capacity and a few subsequent hydro-energy objects, each above 2 MW of installed capacity, and 2 km distance from each other;
2) Thermal-plants and other combustion facilities with heat output of 50 MWt and over;
3) Generation using wind power over 2 MW of installed capacity;
4) Generation using solar power of 1 MW of installed capacity and over;
5) Other generation of 5 MW or over.”

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73 There are a few stages of the development of Project Documentation, including: 1) The Preliminary Design, which is required for the application of Urban Permit; 2) The Main Project Design, which is required for the application of Construction Permit; 3) As-Built Design, which is required for the application of Use Permit.


Further, Article 78 prescribes that Energy Permits for the construction of generation facilities, listed under the above-cited paragraph (3), of installed capacities of 30 MW or over, are issued by FMERI, following the approval by the FBiH Government and the FBiH Parliament. However, for the construction of generation facilities of less than 30 MW of installed power, FMERI needs only FBiH Government approval.

The FBiH Regulation on Procedure, Criteria, Form, and Content of the Request for the Issuance of Energy Permit for Construction of New and/or Reconstruction of Existing Generation Capacities (the FBiH Regulation on Energy Permit)\textsuperscript{76} regulates all details required for the issuance of an Energy Permit, including the deadlines for the issuance and public consultation process. Hence, Article 22(1) of the FBiH Regulation on Energy Permit prescribes that FMERI is required to finalize the Energy Permit request within three (3) months from the date of its notification that the request has been completed, unless FMERI decides that two (2) additional months are needed to complete the procedure. Also, Article 23 of the FBiH Regulation on Energy Permit defines issues such as drafting the Energy Permit, informing the public, and gathering comments.

FMERI issues a permit in the form of a certificate consisting of the Energy Permit and the terms and conditions for its issuance. The Energy Permit can be issued for a maximum of a five (5) year period.

**Construction Permit:** After the investor has acquired an Urban Permit, Water Consent, Energy Permit, Electric Power Permit and developed the Main Project Design for the construction of the generation facility, then it can request a Construction Permit. The Construction Permit is one of the main permits in the permitting procedure in addition to the Urban Permit. In addition to the above-listed documentation, one of the preconditions for obtaining a Construction Permit is that property and legal issues at the construction site have been resolved.

As a rule, the authorities that have issued an Urban Permit in an earlier phase of the permitting procedure are authorized for the issuance of the Construction Permit for that generation facility, as well as for the Use Permit at the later stage. Thus, the FBiH Ministry for Spatial Planning is competent to decide on a request for Construction Permit of the generation facilities listed in Article 40(1) of the FBiH Law on Spatial Planning,\textsuperscript{77} while competent Cantonal Ministries are competent to decide on the request for a Construction Permit for the facilities defined by the Cantonal Laws.

\textsuperscript{76} Regulation on Procedure, Criteria, Form, and Content of the Request for the Issuance of Energy Permit for Construction of New and/or Reconstruction of Existing Generation Capacities ("Official Gazette of the FBiH," No. 27/14).

\textsuperscript{77} Article 40(2), FBiH Law on Spatial Planning, states: "1.) Facilities and works covering territories of two or more Cantons; 2.) Facilities and works in the interest of the Federation in the area and location that are important for FBiH; 3.) On inter-state borders; 4.) Free zones; 5.) Facilities and activities that can have an impact to the environment, life and health of FBiH Citizens; 6.) Facilities and works of interest and importance to FBiH; 7.) Facilities and works in the areas of national monuments."
Energy Investment Activity - EIA Project

The competent authority for the issuance of a Construction Permit (FBiH/Canton) is obliged to determine whether the Main Project Design is developed in accordance with the terms and conditions defined by the previously-issued Urban Permit for that facility. A Construction Permit will expire if construction works do not commence within one year following the final date of the issuance. However, the Construction Permit can be extended for an additional year, if the delays can be justified.

With regard to the construction of energy generation projects, especially bigger HPPs and thermal plants, investors usually approach the construction of those facilities sequentially, building one part of the facility first, and then the other parts at later stages. In such case, the investor must request a Preliminary Consent for the Construction of a Part of the Facility Complex. Such approval is prescribed by Article 61 of the FBiH Law on Spatial Planning and can be issued for one or more facilities that are part of the planned facility complex. The Preliminary Consent for Construction of a Part of a Facility Complex determines the parts of a “facility complex,” their functional or/technological connections, and the order of issuance of an individual approval for construction of them. The Urban Permit for the entire facility complex must be obtained before the Preliminary Consent for Construction of the Part of the Facility Complex is requested.

Use Permit: After the generation facility has been constructed, or a part of such facility, which is a separate economic or technological unit that can be utilized, it can become operational, provided the investor has obtained a Use Permit. The request for the issuance of a Use Permit must be accompanied with the previously obtained Construction Permit. A Use Permit is issued after a technical inspection of the facility is performed. Competent authorities are required to perform a technical inspection within 30 days following the date of the submission of a request.78

A facility for which a Construction Permit is not issued or which has no Use Permit cannot be registered in the land registry.

License for Electricity Generation: In order to perform activities in the electricity market after the construction of a generation facility has been completed, the investor must first obtain a License from the FBiH Regulatory Commission for Energy (FERC). The proceedings related to the license application, criteria, conditions and license contents are defined by the Licensing Rules issued by FERC.79

An investor that intends to perform the activity of electricity generation has an obligation to file an application for a license from the Federation Energy Regulatory Commission. FERC is authorized to issue a License for Electricity Generation. An application is required to be submitted in the

78 Article 68, FBiH Law on Spatial Planning.
prescribed form, along with a number of documents, approvals and permits listed under Articles 22 and 23 of the Licensing Rules. Some of the documents required are as follows: Water Permit, Environmental Permit, Concession Contract (if required), Electric Power Permit and Use Permit.

A decision on the issuance of License is made within 60 days from the day of submission of the completed application, and the validity period of the license is 30 years. The License contains, among other things, the identification of the license holder, registration number, a code that is the licensee’s identification in the electricity market and the validity period.

System of Incentives for Production and Purchase of Electricity from Renewable Generation and Efficient Cogeneration: In order to stimulate the production of electricity from RES and efficient cogeneration, a system of incentives for production and purchase of electricity from renewable generation has been established by the FBiH Law on the Use of Renewable Energy Sources (RES) and Efficient Cogeneration80 (the Law on RES), and supporting regulations.

In essence, all electricity end users (consumers) in FBiH are obligated to pay a surcharge for the production of electricity from RES as an incentive for RES generation, while eligible producers of electricity from RES are entitled to receive the currently valid feed-in-tariffs81 for the period of time specified under a contract signed with the Operator for Renewable Energy Sources and Efficient Cogeneration (the Operator).82

The Regulation on Incentive of Electricity Production from Renewable Energy Resources and Cogeneration, Determination and Collection of Fees as Incentives (the Regulation on Incentives)83 passed by the FBiH Government, defines the methodology for determining incentive fees and the eligibility criteria for the status of privileged producer. The eligibility criteria are based on the installed generation capacities, as well as the type and/or technology used for the generation (e.g., solar, wind, biogas).

The Operator: The Operator acts as a non-profit entity in order to create an institutional structure for the operationalization of the system of incentives for production and purchase of electricity from renewable generation and efficient cogeneration.

Article 10 of the Law on RES defines the competences of the Operator. Some of the competences include: keeping records of the total electricity production from RES, signing preliminary contracts

80 FBiH Law on the Use of Renewable Energy Sources and Efficient Cogeneration (“Official Gazette of the FBiH,” Nos. 70/13 and 05/14).
81 Feed-in tariffs provide a higher (incentivized) price to eligible RES producers for the electricity they supply to the grid.
82 The Operator is established under Article 9 of the FBiH Law on RES and the Decision on the Establishment of the Operator of Renewable Energy Sources and Efficient Cogeneration (“Official Gazette of the FBiH,” Nos. 90/13 and 96/14).
83 Regulation on Incentive of Electricity Production from Renewable Energy Resources and Cogeneration, Determination and Collection of Fees as Incentives (“Official Gazette of the FBiH,” No. 48/14).
and final contracts with different categories of RES generation, preparing analysis and planning of RES production, maintaining a Register of Projects, proposing rules on a balancing system in cooperation with the Independent System Operator BiH, and the like.

The Operator’s headquarters are in Mostar, and its activities and operations are regulated and supervised by FMERI and FERC.

**Incentivized production from Renewable Generations and Efficient Cogeneration:** The investor who is constructing a renewable generation plant or an efficient cogeneration facility and aims to obtain an incentive for this kind of electricity production in FBiH, needs to take a few additional steps in the permitting procedure to acquire the Status of Privileged Producer. Such status is the final document (certificate) issued by the Operator that ensures the right to incentivized production to be exercised by the investor, or more specifically the investor’s right to sell the total amount of produced electricity at the guaranteed price (currently valid feed-in tariff) in the defined period of time. However, before the investor reaches this final stage, it needs to acquire different statuses during the preceding process steps. Parallel to acquiring the Status of Privileged Producer, the investor also needs to register the project in the Register of Projects.

The Steps for acquiring incentives for renewable generation and efficient cogeneration as well as the sequences (stages) of the project registration in relation to the issuance of the key permits in the permitting procedure in FBiH are illustrated by Figure 8. Each process step is further explained in the text below:
Steps for Acquiring Incentives:

- **Acquiring Potential Privileged Producer Status**

After the issuance of an Energy Permit, the investor can apply for Potential Privileged Producer Status,\(^\text{84}\), which is issued by the Operator. The Status of Potential Privileged Producer and/or a Privileged Producer can be acquired only if the requested installed capacity of renewable generation falls within the allocated (prescribed) quota available for that specific type of power plant. The prescribed quota is the maximum level of installed capacity (power) of privileged renewable producers whose production is incentivized and is determined for each primary source of energy by the Action Plan for Renewable Energy Sources of the Federation BiH (the Action Plan).\(^\text{85}\) The Law on RES requires that prescribed quotas be assigned in the order of the project’s entry into the Registry of Projects. Acquiring the Status of Potential Privileged Producer is a precondition for a Pre-contract on the Obligatory Purchase of Electricity. The Potential Privileged Producer, as defined by the Law

\(^{84}\) Article 23, FBiH Law on RES.
on RES, means an investor who acquired that status based on the decision of the Operator and has the right to conclude a Pre-contract on Obligated Purchase of Electricity.

In its application, the investor will provide data on location of the facility, installed power, technical characteristics, source of primary energy for the production of electricity and the time-frame for the construction of the facility and connection to the grid. The Operator is obliged to decide on the application within 30 days from the date of its submission.

➤ **Pre-Contract on Obligatory Purchase of Electricity**

If the Operator approves the status of potential privileged producer for the investor, it signs a Pre-contract on the Obligatory Purchase of Electricity with the investor for purchasing produced electricity at the currently valid feed-in-tariffs. The Pre-contract is a guarantee that the investor has the right to acquire the status of privileged producer, if a generation plant is built on time and in accordance with the relevant regulations. It contains information on the guaranteed price (feed-in-tariffs), duration of the pre-contract, maximum allowed time for the construction of the facility, technical data on the connection to the grid, and planned production of electricity. If the investor doesn’t finish the construction of the facility and connection to the grid within the time specified in the Pre-contract, the potential privileged status is revoked and the Pre-Contract is terminated.

The Pre-contract is the key document that banks require to issue a loan for power plant construction and therefore highly important step for the investors.

➤ **Qualified Producer Status**

“Qualified Producer” is the status that must be obtained prior to the submission of the request for acquiring a Status of Privileged Producer. Namely, the Action Plan comprises two tables - Table 10. a, and Table 10. b. Table 10.b prescribes quotas for the total RES production envisioned for FBiH by 2020 (44% of total electricity production), which guarantees the obligatory purchase at currently valid Feed-in tariffs. However, Table 10.a prescribes quotas of RES production from all renewable sources. Those quotas also provide an incentive for RES generation, apart from large hydro power plant production exceeding 10 MW of installed capacity, but at a lower price than the currently valid Feed-in tariffs.

The Qualified Producer Status verifies that the producer generates electricity using waste materials or RES in an economically adequate manner, including an environmentally safe combined cycle of generation of thermal and electric power. This status is granted by Decision of FERC.

86 Article 26, FBiH Law on RES.
87 Procedure regulated by the Rulebook on Acquiring the Status of the Qualified Producer of Electricity (“Official Gazette of the FBiH,” No. 53/14).
obtain qualified producer status, an investor must first acquire a license for generation, which is also issued by FERC. Qualified Producer Status expires together with the license for generation. An investor has to enclose the Water Permit, the Environmental Permit and the Use Permit with its Qualified Producer Status application.

The benefits of the acquired Status of Qualified Producer are as follows:

1) Supply advantages – preference of dispatching electricity to the grid and advantage for the facilities of installed capacities less than 150 kW that can dispatch electricity without reporting their daily schedule to the Operator;

2) Right to guarantee of origin of electricity – an administrative act issued by the Operator, which proves that quantities specified in the act are produced in facilities that use RES and Cogeneration;

3) Obligatory Purchase of electricity at the reference price – a qualified producer that has not obtained the status of privileged producer or whose the status of privileged producer has expired is entitled to the obligatory purchase of electricity at the reference price, provided that its production is within the quotas assigned by the Table 10.a of the Action Plan. The reference price is determined by the methodology defined by the Regulation on Methodology for Determination of the Reference Price of Electricity (the Regulation on Reference Price), and adopted by FERC.

➢ **Privileged Producer Status**

After the status of Qualified Producer has been granted by FERC, an investor can submit an application for Privileged Producer Status to the Operator. No producer can get the Status of the Privileged Producer unless the status of the Qualified Producer is previously obtained from FERC. The Status of Privileged Electricity Producer can be granted by the Operator to the investor that produces energy from the following types of generation plants:

   a) Hydro power plants with installed capacity up to 10MW  
   b) Wind power plants  
   c) Solar power plants with installed capacity up to and including 1MW  
   d) Geothermal power plants with installed capacity up to and including 10MW

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88 The reference price is a price of electricity lower than the guaranteed price (feed-in-tariffs), but higher than the price of electricity generated outside the RES production.
89 A qualified producer will not acquire the Status of Privileged Producer if quotas for that specific type and size of facility are not available, or if the Status of Privileged Producer has expired, or if that type of generation production is not incentivized through Feed-in tariffs, such as production in large hydro power plants exceeding 10 MW.
e) Biomass power plants with installed capacity up to and including 10MW
f) Biogas power plants with installed capacity up to and including 1MW
g) Waste power plants with installed capacity up to and including 5MW
h) Cogeneration power plants with installed capacity up to and including 5MWe\(^{91}\)

After the approval of the Status of Privileged Producer, the Operator signs a Contract on the Obligatory Purchase of Electricity with the investor at the currently valid feed-in-tariff (guaranteed purchase price).

In addition to the same supply advantages as provided to the Qualified Producer Status, the Privileged Producer Status grants an investor the right to sell the total amount of produced electricity at the guaranteed price (currently valid feed-in-tariff) in the specified period of time.

**The Guaranteed Obligatory Purchase Price** (Feed-in-tariff) is the price paid to the Privileged Producer of electricity from RES during the contracted period. This price is determined by the methodology defined by the FERC's Regulation on Methodology for Determination of Guaranteed Obligatory Purchase Price of Electricity from Plants Using Renewable Energy Sources and Efficient Cogeneration.\(^{92}\) The Guaranteed Obligatory Purchase Price or Feed-in-tariff equals the reference price multiplied by a tariff coefficient. A tariff coefficient is assigned to each type of RES plant and adjusted once every 18 months.

➤ **Obligatory Purchase Contract**

Based on the Obligatory Purchase Contract, a privileged producer acquires the right to sell electricity at guaranteed prices (currently valid Feed-in-tariff) during a period of 12 years. This Contract specifies a Guaranteed Obligatory Purchase Price, the duration of contract, technical aspects of the facility and data on the planned generation of electricity.

**The Register of Projects:** The FBiH Law on RES stipulates that all projects using energy from RES and Efficient Cogeneration must be registered in the Register of Projects (Register). The procedure of maintaining and updating the Register is defined by the Instructions on Managing and Updating the Register of RES Projects (the Instructions).\(^{93}\)

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91 Regulation on Methodology for Determination of Guaranteed Obligatory Purchase Prices of Electricity from Plants Using Renewable Energy Sources and Efficient Cogeneration (“Official Gazette of the FBiH,” No. 50/14).

92 Ibid.

93 Instruction on Managing and Updating the Register of RES Projects (“Official Gazette of the FBiH,” No. 80/14).
The Register is maintained by the Operator for the following project phases:

1. **Projects in the testing phase**
   
   Registration for the projects in the testing phase is mandatory when an investor is testing renewable energy potential at a specific location.\(^94\) If the testing of potential is not conducted, this registration is not required.

2. **Projects under construction**
   
   With the application for registration of projects in the construction stage, the investor must submit a valid Urban permit, Energy Permit and Construction Permit.

3. **Built projects**
   
   With the application for registration of built projects, the investor must submit the Use permit.

4. **Abandoned projects**
   
   Abandoned projects must also be recorded in the Register; and with the application, the investor must submit a written decision on abandonment of the project.

For each registration phase, the Operator issues a Decision on Entry in the Register, which contains the duration of the registration. After the project enters the next phase in the Register, the previous entry is deleted, so the project can only be registered in one phase at the time. Registration of Projects, at all stages, is a legal obligation for RES projects, including hydro, wind, biomass, solar and other power plants projects. The Register is a public document, available on the Operators website.\(^95\)

### Step 4 - Securing Land, or the Right to Use Land:

Before the construction of a generation facility begins, the investor must resolve all legal and property issues at the construction site. This means that the investor must either obtain the ownership of the land or acquire the right to use the land to construct on it.\(^96\) If the investor cannot reach an agreement with owners, the property can still be acquired through the process of expropriation.

According to the FBiH Law on Expropriation,\(^97\) property can be taken without the consent of the owner by competent authorities and designated to the public use.\(^98\) The property (real estate) can

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\(^{94}\) Article 7, the Instructions.

\(^{95}\) [operatorioieek.ba/bs/registar-projekata/](http://operatorioieek.ba/bs/registar-projekata/).

\(^{96}\) According to the Law on Proprietary Rights ("Official Gazette of the FBiH," Nos. 66/13 and 100/13), “[T]he Right to Construct” enables its beneficiary to construct a building on someone else’s land and still be the owner of the constructed object. In return, a compensation fee is paid to the owner of the land. The Right to construct as a legal institution is relatively new in the FBiH legal system.

\(^{97}\) FBiH Law on Expropriation ("Official Gazette of the FBiH," Nos. 70/07, 36/10, 25/12).

\(^{98}\) Article 6 of the FBiH Expropriation Law provides that expropriation can be pursued for the needs of FBiH, the Cantons, Cities, Municipalities, Public Enterprises and Public Institutions.
be expropriated completely or partially for the purposes defined by the Law on Expropriation and “... when it is determined that the use of the property for which the expropriation will be proposed will bring bigger benefits than was the case with the earlier use of the property.”99 Property is expropriated either for government use or assigned to the third parties who have the obligation to dedicate it to the public use.

Property can only be expropriated after the public interest for the construction has been declared by the competent authority.100 The procedure for the declaration of public interest can be initiated by expropriation beneficiaries, and the Proposal for Expropriation must contain an expropriation analysis (geodetic and cadastral plan of the area of expropriation, information on real estate, the assessment of property value, the aim and purpose of expropriation and other data for determining the public interest).

A decision as to the public interest can be declared by the Government of FBiH, Cantonal Government or Municipal Government, depending on the location of the generation facility. According to the FBiH Law on Expropriation, if the generation facility is located (or construction is performed) across the areas of two or more cantons, the public interest for construction will be declared by the FBiH Government. If the generation facility is located across the areas of two or more municipalities, the public interest will be declared by the Cantonal Government; and where the facility is only located in the area of one municipality, the public interest will be declared by the Municipal Government. However, in practice, the public interest for the construction of generation facilities are often designated at the FBiH level.

In addition to the FBiH Law on Expropriation, a legal basis for the determination of public interest can be found in the FBiH Law on Concessions. Namely, the procedure for granting concessions can also include the designation of public interest. However, no law on concession (at all government levels) is clear as to whether the procedure for granting a concession includes the transfer of the “ownership right” or the “right to use the concession property” by the Concessionaire.

In February 2010, the Federation Government adopted a Decision on Determination of the Public Interest and Preparation for the Construction of Priority Electro-Energy Objects in FBiH,101 and declared the public interest for the construction of 6 thermal power plants, 17 hydro power plants and 6 wind power plants. It is notable that besides the FBiH Law on Expropriation, this Decision was based on the Law on the Government of the Federation BiH102 and the FBiH Law on Electricity.

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99 Article 3, FBiH Law on Expropriation.
100 Article 5, FBiH Law on Expropriation.
102 Law on FBiH Government (“Official Gazette of the FBiH,” Nos. 1/94, 8/95, 58/02, 19/03, 2/06 and 8/06).
Following the determination of public interest, an investor first attempts to reach an agreement with owners through negotiation. If not successful, then the investor is obliged to submit its Proposal for Expropriation to the respective municipal authorities, which are tasked with the implementation of expropriation. A Decision on Expropriation is then made by the municipal authority and implemented through the payment of compensation fees to owners. If a land owner is not satisfied with the proposed compensation fees, then the owner has the right to initiate an administrative dispute before the competent court in FBiH (Cantonal Courts). Owners can only appeal the amount of fees before the court. The initiated administrative dispute postpones the enforcement of the Decision until such time the FBiH Supreme Court decision becomes final and binding. Article 31, paragraph 2 of the FBiH Law on Expropriation provides an exception to this rule as follows: “Exceptionally, following the proposal made by the expropriation beneficiary justifying the urgent acquisition of the possession of the property, the Government can decide to allow acquisition of the possession of the property to the beneficiary before the decision on expropriation becomes final and binding (enforceable).” Article 31, paragraph 5, further prescribes that “an administrative dispute cannot be initiated against the decision of the government made under paragraph 2 of this Article.”

Following the government decision under the above-cited exceptional rule, the investor can actually enter into the possession of the expropriated property before the FBiH Supreme Court decides on the final and binding amount of compensation fees. However, the FBiH Constitutional Court declared Paragraphs 2, 3 and 5 of Article 31 of the FBiH Law on Expropriation unconstitutional,103 or more specifically, contrary to Article 1 of the Protocol 1 to the European Convention for Human Rights (ECHR).104 At the time of the writing of this report, Amendments to the FBiH Law on Expropriation were being discussed by the FBiH Parliament, including new text for Article 31.

2.2.4 Entity Level Authorization Framework: The Republika Srpska (RS)

Step 1 - Designation of the Status of “Public (General) Interest”: In formal legal terms, energy infrastructure projects in the RS can be granted the status of project of “public (general) interest,” which is determined by the RS Government.

The public interest can be determined in the process of granting Concessions, if the procedure is initiated by an interested party. This procedure is prescribed by the RS Regulation on the Evaluation of the Public Interest when the procedure is initiated by an interested party (the Regulation on

103 FBiH Constitutional Court (CC) Decision No. U-64/1.
Evaluation of the Public Interest).\textsuperscript{105} The competent RS Ministry must assess whether a public interest exists on the basis of a Feasibility Study developed for the project and a document on the Policy for Granting Concessions (the Policy Document on Concessions).\textsuperscript{106} Then, the RS Commission for Concessions must approve the Ministry’s assessment on the public interest and allow negotiation with the bidder. The final step includes the verification of the status of the “public interest” by the RS Government. If, however, the Concession procedure is initiated by the RS competent institution/body, then the public interest is “assumed.”

The public interest can also be determined in the process of expropriation. This procedure is prescribed by the RS Law on Expropriation,\textsuperscript{107} which can be implemented, among other things, for the purpose of the construction or works related to energy infrastructure projects.\textsuperscript{108} It is assumed that the public interest is already determined, if a separate law prescribes that the construction of specific facilities or construction works is in the public interest. The expropriation beneficiary\textsuperscript{109} is required to submit a Proposal for Expropriation to the RS Government, after obtaining the opinion from the Municipal Council, on whose territory the construction is planned.

**Step 2 – Spatial Planning:** The RS adopted the RS Spatial Plan. The RS Spatial Plan 2025 contains a map of strategic priorities, including energy infrastructure facilities.\textsuperscript{110} The generation facilities from the PECI list are also included in the RS Spatial Plan: HPP Dabar, HPP Buk Bijela, HPP Foča, HPP Paunci, HPP Sutjeska, HPP Tegare, HPP Rogačica and HPP Dubravica. HPP Dubrovnik is not in the plan.

**Step 3 – Permitting Procedure:** The permitting procedure in the RS is more streamlined than the permitting procedure in FBiH, because of the RS centralized organizational structure, consisting only of the entity and municipal levels (without Cantons) and concentration of the competences for the issuance of required permits lies within only a few entity level ministries/institutions. In addition, the strategic framework for the implementation of energy infrastructure projects such as the RS Energy Sector Development Strategy 2030 and the RS Spatial Plan 2025 have been adopted and are in place. However, as to the types and number of permits and consents, processes and number of process steps, the RS permitting regime is very similar to the one in FBiH, with a few distinct features.

\textsuperscript{105} http://koncesije-rs.org/dokumenti/zakoni/UPzaProcjenuPSamoln%20Lat.pdf
\textsuperscript{106} http://koncesije-rs.org/dokumenti/zakoni/Politika_dodjela%20Lat.pdf
\textsuperscript{107} RS Law on Expropriation (“Official Gazette of the RS,” Nos. 112/06, 37/07, 66/08, 110/08 and 121/10).
\textsuperscript{108} Article 3, RS Law on Expropriation.
\textsuperscript{109} Article 6, RS Law on Expropriation: “The expropriation beneficiaries are the Republika Srpska and local communities unless another law prescribes otherwise.”
\textsuperscript{110} Planned Energy Infrastructure in the RS: The RS Spatial Plan - https://drive.google.com/file/d/0B6zeHu2sHD5OV3lXT3NPa2xiMU0/edit
In short, given that the spatial planning documents are rather developed in the RS, including detailed spatial planning documents, such as the zoning plan, urban plan, regulation plan, and plan of parcelization, an Urban Permit is not issued in the RS; instead, Location Conditions are issued. Further, the issuance of an Environmental Permit (if required) includes the development of a Preliminary Environment Impact Assessment (EIA) study prior to the issuance of Locations Conditions. After the Location Conditions are issued, the EIA Study is updated, provided the Preliminary EIA had determined that an EIA Study needed to be conducted. The Environmental Permit is issued in the preparatory stage for the Construction Permit. In addition, the RS Energy Regulatory Commission (RSERC) has a comprehensive mandate and plays a prominent role in the RS permitting procedure for the construction of generation facilities and other energy infrastructure projects. Its mandate includes the issuance of an Energy Permit. Finally, the procedure for acquiring incentives for RES generation is slightly different.

The scheme (mapping) of the RS permitting procedure and individual permits is illustrated by Figure 9 and explained in the text below, including steps for acquiring incentives for RES. The two most important permits in RS are: 1) the Location Conditions, and 2) the Construction Permit.

The issuance of some permits consists of multiple steps and/or the issuance of progressive administrative decisions/acts as the permitting procedure progresses, which lead to the issuance of a final permit from that category. Hence, in the case of a Water Permit, two administrative decisions/acts – the Water Guidelines and the Water Consent – are required before the Water Permit is issued at the end of the process (before the issuance of the Use Permit). All those water acts are issued by the same authority – the RS Water Management Agency/local authority – in the same permitting procedure after the collection of required information. The Water Guidelines contain the conditions and methods of use of water, and the documentation requirements; the Water Consent confirms the submission of the required documentation; and the Water Permit defines the operational conditions and disposal of waste.

In order to illustrate this process clearly, the respective permits are grouped and presented on the basis of category and/or the institution competent for their issuance (e.g., water, connection to distribution network, RES production), rather than in the exact order of their collection as illustrated by Figure 9. Each category of permit is identified by the same pattern and color in the diagram; for example, all water acts are colored in blue and illustrated by a diagonal pattern. Where a category of permits is described, for context and clarity at the beginning of that section, a process diagram containing the permitting process in such category in relation to the two main permits – the Location Conditions and Construction Permit – has been extracted from the overall diagram in Figure 9.

111 “Energy Permit” is the colloquial term used for the Permit for Construction of Power Facility issued by the RS Regulatory Commission (RSERC) prior to the Construction Permit, and not the legally prescribed term.
Some procedural steps in the RS permitting procedure are optional and depend on the legal requirements for the type and size of generation facility and/or whether the competent authority deems the procedure necessary (e.g., concession, EIA). This type of procedure is presented in Figure 9 by dotted lines. A solid line is used to identify the required procedural steps that an investor must take.
Figure 9: RS Permits and Competent Institutions
Concessions: The area of concessions in the RS is governed by the RS Law on Concessions (the RS Law). This RS Law was adopted in 2013, and replaced the previous 2002 RS Law on Concessions. Adoption of new regulations followed the adoption of the RS Law, such as the Regulation on the Procedure for Transfer of Concession Contract and Change of Ownership Structure of the Concessionaires (the Regulation on Transfer of Concession Contract), and the Regulation on Content and Maintenance of the Registry of Concession Contracts (the Concession Registry), both adopted in 2014. However, to date the Policy Document on Concessions, which was adopted in 2005, has not been updated.

The term “concession” is defined by the RS Law as “the right to perform economic activities through the use of public goods, natural resources and other goods of general interest, as well as the right to perform activities of general interest.” The RS or a local community or, more specifically, the RS Government on behalf of the RS and the Municipal Assembly on behalf of the local community, perform the role of Conceding Party. In fact, the RS Government is authorized to grant concessions for all subjects prescribed by Article 6 of the RS Law other than for communal activities, which is the only exclusive competence of a local community. A Concessionaire can be a legal entity, which needs to be registered in accordance with the RS laws and regulations. Article 6, paragraph (1), item v) of the RS Law on Concessions defines the energy facilities that are “subject to concessions” as follows: “The construction and use of energy facilities of over 250 kW of installed capacity, apart from energy facilities using biomass, biogas and solar facilities with photo-voltaic panels on facilities, irrespective of the facility’s installed capacity.” However, whether a concession is required for generation using biomass, biogas or solar facilities with photo-voltaic panels up to 250 kW of installed capacities (smaller generation), is not defined by the RS Law.

The RS Law differs from the previous RS Law on Concessions and the current laws on concessions on the state and FBiH level in terms of the prescribed methods for granting concessions. As explained earlier in this report, the BiH Law on Concessions and the FBiH Law on Concessions envision two methods for granting concessions: a) public tender, and b) unsolicited proposal. The RS Law, however, prescribes three separate procedures for granting concessions, each of them comprising elements of both methods - public tender and unsolicited proposal. The three different

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114 http://koncesije-rs.org/dokumenti/zakoni/Pravilnik%20o%20sadr.%20nac.%20vodj%20ug%20Lat.pdf.
115 The Municipal Assembly grants concessions for communal activities apart from water supply, which is also a competence of the RS Government.
procedures are entitled as the procedure initiated by “i) a competent body/institution, ii) an interested party, or a procedure conducted through iii) a direct agreement.”

Under the first type of procedure involving the initiative of a competent RS body/institution for granting a Concession, the envisioned method is a public tender. Prior to the tendering procedure, a competent body must develop a Feasibility Study or request the development of a Feasibility Study from the potential bidders through a public tender. The second type of procedure refers to a situation when an interested party has initiated a procedure for granting a concession. An interested party cannot initiate a procedure for a concession for which a procedure has already been initiated by a competent RS body/institution. Under this second procedure, the public interest for the proposed concession must be evaluated first; and, if the public interest is determined, then the competent body is obliged to launch a public tender and invite the party that initiated the procedure to apply along with other bidders. When the bids are evaluated, the offer of the party that initiated the procedure gets a bonus of up to 10% points maximum. This second procedure has departed from the exclusivity given to the proposal of the interested party prescribed under the previous RS Law on Concessions, when the tendering procedure was not obligatory.

Finally, Article 26 of the RS Law prescribes the third type of procedure for granting concession through direct agreement in the following cases:

“a) Bids of the public companies which perform activities of public interest, when such an activity is subject to concession;
b) Implementation of the existing agreements, signed by the Government or public companies, pertaining to the implementation of concessions;
c) Extension of the concession period for granted concessions.”

An important role in the concession process in the RS has been given to the RS Commission for Concessions, which is a permanent and regulatory body, tasked to perform various activities pertaining to concessions under the RS Law. The RS Commission maintains a Concession Registry, which is available on its web site. The Concession Registry contains data of a total of 276 concessions granted in the different sectors in the RS thus far, including generation facilities. The RS

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116 Article 11, RS Law on Concessions.
117 A Feasibility Study is a document containing technical, financial, economic, environmental, and legal analyses, which justifies granting of the Concession.
118 Launching a public tender for granting a concession without a previously developed Feasibility Study by the competent authority was a heavily criticized element of both the public tender procedure, as well as the unsolicited proposal procedure by the OSCE/SIGMA/EU Review, op cit., pp. 21, 41.
Commission for Concessions reports annually to the RS National Assembly, and its annual reports are public and include a list of all concessions granted for the reporting year.

Article 40 of the RS Law on Concessions prescribes a new security instrument for creditors, which is the possibility of transferring a concession to a third party or a financial institution (e.g., a bank), which provided financing for the Concessionaire. This mechanism can be used if the Concessionaire has not been able to meet its obligation contained in the Contract with the financial institution. The possibility for transferring a concession to a financial institution is something new prescribed by the RS Law. The procedure for the transfer of the concession to a third party or a creditor is prescribed by the Regulation on Transfer of Concession Contract, which was passed by the RS Commission on Concessions.

A Concession Contract can be concluded for a maximum of 50 years. Concession fees are determined separately for each concession by the Concession Contract, taking into account the following parameters, among others: the type, category, quantity, and purpose of a concession, the market price of the natural resource, length of the concession contract, and risk and anticipated profit. The RS Law prescribes that concession fees comprise two types of payments: i) a lump sum paid after the Concession Contract is concluded, and ii) fees for the use of public goods expressed in a percentage (%) of the generated annual revenue.

**Water Acts:** The RS Law on Water\(^{120}\) defines Water acts as acts that determine the right, obligation, or legal interest for a third party (i.e., a natural person or legal entity, the state/RS body, or a local community). Water acts are issued in accordance with a separate procedure prescribed by the RS Law on Water and the general provisions of the RS Law on Administrative Procedure. There are three types of Water acts that must be obtained by an energy facility for any use of water exceeding the ordinary use of water or disposal of waste water, regardless of the facility’s impact on the water regime. Specifically, in the permitting procedure for the construction of an energy facility, the investor needs to acquire the following Water acts: i) Water Guidelines; ii) Water Consent; and iii) Water Permit. The stages at which these Water acts are issued in relation to the Location Conditions and the Construction Permit in the RS permitting procedures are illustrated by Figure 10.

\(^{120}\) RS Law on Water ("Official Gazette of the RS," Nos. 50/06, 92/09 and 121/12).
According to Article 127 (1) of the RS Law on Water, the RS Water Agency has the authority to issue Water acts, among others, for the construction of the following facilities/activities: “hydro power plants (HPPs); all accumulations on the RS territory; disposal of technological waste water; and facilities that use five (5) liters of water or more in one second.” The authorized body of a local community is competent for the issuance of Water acts that are not defined by Article 127 (1) of the RS Law on Water.

**Water Guidelines**: Water Guidelines determine mandatory terms and conditions to be included in the Project Documentation for the construction of new or reconstruction of an existing generation facility and for other non-construction activities, which can have an impact on the water regime on a permanent or temporary basis. Issued Water Guidelines are valid for the period of one year.

The RS administrative bodies/institutions that are authorized to grant concessions are required to obtain Water Guidelines before a Concession procedure is initiated.

**Water Consent**: According to Article 139 of the RS Law on Water, a Water Consent is required for the construction, reconstruction or removal of an existing energy facility, if such facility can have an impact on the quality and quantity of water, or more specifically, if water regimes can be impacted on a permanent or temporary basis.

A Water Consent determines that the Project Documentation attached to the request for Water Consent is in line with the Water Guidelines, water regulation and planning documents. The issued Water Consent is a precondition for the issuance of the Construction Permit. A Water Consent is issued in the form of a document and is valid for the period of one year, unless the works on construction have commenced within this period.
For objects and facilities that dispose of waste water or other dangerous materials, a Water Consent and Construction Permit cannot be issued unless the Project Documentation has planned the simultaneous construction of the facilities for the treatment of water waste and/or a reduction of the concentration of dangerous substances.

**Water Permit:** A Water Permit must be obtained for all facilities for which a Water Consent is required, including generation facilities. It verifies that all terms and conditions specified under the Water Consent are met. Further, a Water Permit determines the purpose, ways and terms for the use of water, the water regime for the disposal of waste water, and other conditions. A Water Permit is the final Water act and is a precondition for the issuance of the Use Permit for any generation facility. A Water Permit is issued for a limited period of time, a maximum of fifteen years.

Water acts are issued upon written request of investors or a competent authority, or upon the request of the administrative body competent for the issuance of the Urban Permit.

**Consent of the Other Users of the Location (Public and Utility Companies):** In order to apply for Location Conditions in the RS, an investor must obtain written approvals (consents) from all users operating at the specific location. According to the RS Law on Spatial Planning and Construction, with an application for Location Conditions, the investor must submit approvals of the location for the future facility from the public utility companies, and the public companies for managing public infrastructure. However, if the area of construction is already included in the existing spatial planning documentation (such as zoning plan or a regulation plan), these approvals on location are not needed, since all aspects of the construction on the specific location are already evaluated and included in the spatial planning documents.

If required, consents and approvals need to be obtained from telecom/phone companies, gas companies, road management companies, water, sewage and other RS utility companies.

**Location Conditions:** The Location Conditions have the same meaning and purpose as the Urban Permit in FBiH; but since RS has developed spatial planning documents, then Location Conditions, which encompass comprehensive and detailed information on the terms and conditions for the construction at the specific location, are issued instead of Urban Permit. In essence, the Location Conditions is a technical document, which defines the terms and conditions for the planning and construction of a generation facility (or reconstruction), and is issued on the basis of the RS Law on Spatial Planning and Construction, other pertinent RS laws and regulations, and detailed spatial planning documents. The detailed (implementing) spatial planning documents, which are the basis

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122 RS Law on Spatial Planning and Construction.
for the issuance of the Location Conditions are as follows: zoning plan, zoning plan for the areas designated for special purpose, regulation plan, urban plan, and plan for parcelization.¹²³

If detailed spatial planning documents are not adopted for the specific area where the project is to be located, then the Location Conditions are issued on the basis of the spatial planning documents available for that location. Additionally, an expert opinion must be sought from a legal entity that is licensed for the development of spatial planning documents. Regardless of the status of the development of spatial planning documents, the Location Conditions include two compulsory documents: i) a verified excerpt from the spatial planning documents; and ii) a document specifying urban-technical conditions.

The document defining urban-technical conditions for the construction of a generation facility and the use of land includes the following information: a) the purpose of the facility; b) the size, shape and photographs of the land parcel; c) the terms for constructing the facility; d) the need for the development of a Preliminary Design; e) the terms and conditions related to the construction vis-à-vis neighboring objects; f) the terms for the protection of the environment in accordance with the regulations governing the area of environment (i.e., whether the EIA is mandatory for the project and the scope of the EIA); g) the need and methods for the geo-mechanical examination of the soil; and h) other terms and conditions relevant for the facility.

The municipal administrative body competent for spatial planning is defined as the authorized body for the issuance of Location Conditions by Article 60(1) of the RS Law on Spatial Planning and Construction. Article 60(2) of the RS Law on Spatial Planning and Construction defines the exceptions to this rule. Thus, according to Article 60(2), the RS Ministry for Spatial Planning is competent for the issuance of Location Conditions for the construction of the facilities located on the territory of two or more municipalities. Furthermore, Article 60(2), items d) and e) prescribe additional competences for the RS Ministry for Spatial Planning for the issuance of Location Conditions for the following energy infrastructure facilities: “d) energy and other objects and facilities for generation, apart from solar photovoltaic generation and facilities that use all other types of RES up to 250 kW of installed capacity; and e) power lines of 110 kV of installed capacity and over, and power stations of 110 kV of installed capacity and over.”

The competent body is required to issue Location Conditions within 15 days from the date of the submission of the completed request. It should be noted that the Location Conditions for the projects that can have significant impact on the environment can be issued by the competent

¹²³ Article 59 (2), RS Law on Spatial Planning and Construction.
authorities, provided the final document (certificate) on the EIA implementation and its scope is previously obtained.\textsuperscript{124}

**Connection to the Distribution Grid (Network):** In order to connect a generation facility to the distribution grid at low and medium voltage level in the RS, the investor must obtain a number of permits and contracts from Distribution System Operator (DSO), each at a specific stage of the construction process. In accordance to the RS Electricity Law,\textsuperscript{125} the DSO is in charge of the operation, control, maintenance and development of the distribution system. Currently, there are five companies licensed for the distribution of electricity in the RS, each operating in its distribution area: 1) MH "ERS" ZP "Elektro Doboj" a.d. Doboj; 2) MH ERS ZEDP "Elektro-Bijeljina" a.d. Bijeljina; 3) MH ERS ZP "Elektrokrajina" a.d. Banjaluka; 4) MH ERS ZP "Elektrodistribucija" a.d. Pale; 5) MH ERS Trebinje ZP "Elektro-Hercegovina" a.d. Trebinje. The role and stages in connection of a generation facility to the distribution grid in relation to the Location Conditions and the Construction Permit are illustrated by the Figure 11.

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{figure11.png}
\caption{RS - Steps for Connection and DSO documents}
\end{figure}

**Location Approval:** The Location Approval is an initial confirmation that the generation facility can be connected to the distribution grid at the planned location. According to the General Conditions for Delivery and Supply of Electricity (General Conditions),\textsuperscript{126} on the basis of the request of the authority competent for the issuance of Location Conditions for spatial planning, the DSO is required to approve the location for the future construction of the energy facility.

\textsuperscript{125} RS Law on Electricity (“Official Gazette of the RS,” Nos. 8/08, 34/09, 92/09 and 01/11).
\textsuperscript{126} General Conditions for Delivery and Supply of Electricity - consolidated text (“Official Gazette of the RS,” No. 90/12).
Although this approval is acquired *ex-officio* at the request of the competent authority in charge for spatial planning and doesn’t require any action by the investor, it should be noted that this is an important step, given that the Location Conditions cannot be issued without it.

**Electric Power Permit:** The Electric Power Permit is issued at the request of the investor, for each individual connection of the generation facility to the distribution network, prior to the issuance of the Construction Permit. The Electric Power Permit is a mandatory attachment to the request for the issuance of Construction Permit, if the energy facility is to be connected to the distribution network.

Along with the request, the investor must provide data on the owner of the facility, the type of primary source of energy, voltage levels, nominal capacity and number of generators, annual generation per month, estimated time of connection and other technical data. The DSO will make a decision on the issuance of the permit within 30 days from the date of submission of the application.

The Electric Power Permit contains the following data: details on the applicant, general data about the constructed facility, electric power and technical requirements (such as the voltage levels, installed capacity, consumption and generation data, peak capacity), conditions of facility usage, information on the obligation of contract conclusion, validity period and other conditions as defined by the DSO.

The conditions set in the Electric Power Permit are binding on the network user (investor) and cannot be modified during construction without approval of the DSO. In general, the validity of the Electric Power Permit is not limited, but the investor has the obligation to conclude a Connection Contract with the DSO within two (2) years from the date of the issuance of this permit.

**Connection Contract:** Based on the Electric Power Permit and at the request of the investor, the DSO prepares a Connection Contract. This contract must be concluded before construction of a connection point to the distribution grid; it regulates the procedures and terms of connection, method of payment and other necessary aspects of a specific connection point. Also, it includes data on the following: contracting parties, power facility, and technical elements of the connection, payment of fee for the connection, maintenance and ownership of the connection point, and deadline for the construction.

The construction of a connection point starts after the conditions specified by the Connection Contract have been fulfilled.

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127 Articles 14 and 15, General Conditions.
128 According to Article 23 of the General Conditions, this period can be extended up to an additional two years.
**Contract on Access to the Network:** In order to use the distribution network, after the construction of the connection point has been completed, an investor must submit a request for connection to the distribution network. Based on this request, the DSO prepares a Contract on Access to the Network, to define and regulate network usage conditions. The contract is signed between the investor and DSO, and it includes basic data on the contracting parties, the capacity approved by the Electric Power Permit, data on the measuring point, quantity and quality of electricity, and liability for the damages.

The validity of the Contract on Access to the Network is not limited.

**Declaration on Connection:** Having connected a power facility to the distribution network, the DSO prepares a Declaration on Connection for each metering point, which contains the final data on connection capacity, type of the connection, connection point, supply point, ID of metering point, main fuses, category of consumption, modifications made during construction and other important data. The Declaration on Connection contains “as-built” data on the connection.

**Environmental Permit:** An Environmental Permit defines the measures and activities for preventing or reducing emissions in the air, area, water and land, as well as prevents the accumulation of waste materials in order to protect the environment to the highest extent possible. The issuance of the environmental permit in the RS encompasses a few steps that are illustrated in Figure 12.

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**Figure 12: RS – Environmental Permit – Steps**

For any project that can have a significant impact on the environment because of its nature, size, or location, an Environmental Impact Assessment (EIA) must be developed. Energy infrastructure

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129 RS Law on Protection of Environment refers to the Environmental Permit as an “Ecological Permit,” which has different meanings in the local languages, including the environment. To that end, the term “Environmental Permit” is used in this report for the sake of clarity.
projects for which an EIA is mandatory are as follows: “energy industry: . . . i) thermal power plants and other combustion facilities of 50 MW and over; ii) hydro power facilities with the output of 5 MW and over for each individual facility; iv) construction of power lines of 220 kV and over, and a length of 15 km and more.” As to RES generation facilities, it is within the authority of the RS Ministry for Spatial Planning, Civil Engineering, and Environment (MSPCEE) to decide whether a specific RES project needs an EIA.

The core steps for an EIA include identification, determination, analysis, and an assessment of a direct or indirect impact of the project on the environment. Pursuant to Article 61(2) of the RS Law on Protection of Environment, the EIA is implemented through two phases: “a) the preliminary EIA procedure, and b) the EIA procedure.”

A decision on whether an EIA is mandatory for the project and what the scope of the EIA should be, is determined during the preliminary EIA phase. The final decision on the preliminary EIA phase is published on the web site of the competent ministry. The investor is then obliged to submit a request for the development of the EIA Study to a licensed legal entity that is authorized for the development of EIA Study by MSPCEE within six months from the final preliminary EIA decision. Following the development of the EIA Study, the investor is required to inform the general public and interested parties on the developed EIA Study through an announcement in one daily newspaper that is available in the local community where the construction is planned. Additionally, the investor is obliged to allow access to the EIA Study by all interested parties free of charge, and to arrange one public consultation on the EIA Study to get feedback. The next step encompasses a Review of the EIA Study by the licensed legal entity authorized by MSPCEE for conducting review of EIA Studies. The objective of this Review by the licensed legal entity is to assess the quality of the EIA from an expert point of view. The investor is required to update the EIA Study in accordance with the comments made under the Review procedure and then re-submit the updated version to the competent authority. If approved, the EIA Study is valid for two years. Within a two-year period from the date of the EIA approval, the project promoter must obtain the Construction and Environmental Permits.

According to the RS Regulation on Facilities That Can Be Constructed and Become Operational Only if an Environmental Permit Is Issued (the RS Regulation on Environmental Permit), the MSPCEE is authorized for the issuance of the Environmental Permits for all projects for which the EIA is mandatory.

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130 Article 2 (1) a), RS Regulation on Projects for which EIA is Conducted and Criteria for Decision-Making on Mandatory Implementation of EIA and the EIA Scope (“Official Gazette of the RS,” No. 124/12).

131 Article 2 (1) b), c), RS Regulation on Projects for Which EIA is Conducted and Criteria for Decision-Making on Mandatory Implementation of EIA and the EIA Scope.

132 RS Regulation on Facilities That Can Be Constructed and Become Operational Only if Environmental Permit Is Issued (“Official Gazette of the RS,” No. 124/12).
mandatory. In addition, the RS Regulation on Environmental Permit prescribes discretionary authority to the MSPCEE to evaluate whether a certain project requires an EIA or not. Thus, in accordance with the RS Regulation on Environmental Permit, the MSPCEE is authorized to decide whether the EIA is required on a case-by-case basis as well as in cases of smaller projects, which are beyond the legally prescribed thresholds.\footnote{Article 2 (1), items b) and v), RS Regulation on Environmental Permit.} Furthermore, the RS Regulation on Environmental Permit specifically prescribes the authority for MSPCEE to issue the Environmental Permit for energy infrastructure projects, among others, falling under the category of the “energy industry,” such as: thermal energy facilities of 10 MW of installed capacities and over; facilities for energy transmission via power lines of 220 kV and 110 kV and less than 15 meters length.\footnote{Article 2 (2), RS Regulation on Environmental Permit.} For energy infrastructure projects beyond the above-prescribed thresholds (smaller facilities), the environmental permit is issued by the local administrative body competent for the environment protection.

**Permit for Construction of Power Facilities with Installed Capacity Exceeding 1MW (Energy Permit):** According to the RS Law on Electricity, one of the permits required in the RS electric energy sector is the Permit for Construction of Power Facilities with Installed Capacity Exceeding 1MW, issued by RSERC. The criteria, contents and proceedings for the issuance of this permit are given in the RS Rulebook on Licenses.\footnote{RS Rulebook on Licenses ("Official Gazette of the RS," Nos. 39/10 and 65/13).}

Before the construction or major reconstruction of an existing facility begins, the investor must obtain a Permit for Construction of Power Facilities with Installed Capacity Exceeding 1MW from RSERC. This permit is issued prior to the Construction Permit, although this order is not explicitly defined by the RS Law on Electricity. However, the RS Rulebook on Licenses clearly states that neither construction nor reconstruction of a generation facility can begin before a Permit for Construction of Power Facilities with Installed Capacity Exceeding 1MW is issued.\footnote{Article 4, RS Rulebook on Licenses.} Thus, to get a Construction Permit from the competent authority, the investor first must obtain a Permit for Construction of Power Facilities with Installed Capacity Exceeding 1MW.

With the request for the issuance of a Permit for Construction of Power Facilities with Installed Capacity Exceeding 1MW, the investor must enclose a significant number of other documents and major permits, including a: Feasibility Study, Environmental Impact Assessment Study, Environmental Permit, Water Permit, Electric Power Permit (Transco BiH) and/or Connection Conditions (DSO), Location Conditions and Concession Contract (if required).\footnote{Article 37, RS Rulebook on Licenses.} After a detailed review by RSERC of the documents,\footnote{Article 16 of the RS Rulebook on Licenses prescribes authority for RSERC to review all submitted data and, if necessary, conduct an on-site inspection of the generation facility and its equipment.} the Permit for Construction of Power Facilities with Installed Capacity Exceeding 1MW is issued.

\begin{itemize}
\item [133] Article 2 (1), items b) and v), RS Regulation on Environmental Permit.
\item [134] Article 2 (2), RS Regulation on Environmental Permit.
\item [135] RS Rulebook on Licenses ("Official Gazette of the RS," Nos. 39/10 and 65/13).
\item [136] Article 4, RS Rulebook on Licenses.
\item [137] Article 37, RS Rulebook on Licenses.
\end{itemize}
Capacity Exceeding 1MW is issued as a Decision, which confirms that the facility was planned and designed adequately regarding its impact on the power system, design of the installations, energy efficiency and the environment. The Decision is issued within 60 days following the date of submission of the completed application to RSERC, and the Permit for Construction of Power Facilities with Installed Capacity Exceeding 1MW is valid to a maximum of six years.

According to the Law on Electricity, RSERC is authorized to issue a Permit for Construction of Power Facilities with Installed Capacity Exceeding 1MW only for the generation facilities that exceed the installed capacity of 1MW. The issue of competence for the issuance of a permit for construction of power facilities with installed capacity of less than 1MW in the RS is not legally defined.

**Construction Permit:** The Construction Permit allows the construction of generation facilities at a planned location. The investor is required to develop a Main Project Design before the submission of its request for the Construction Permit. The Main Project Design needs to ensure harmonization of the construction with all spatial planning documents through meeting required terms and conditions defined by previously issued Location Conditions.

Along with the request for the issuance of the Construction Permit, the documents that the investor must enclose include: the Location Conditions; proof that property issues have been resolved; the Concession Contract (if required); three copies of the Main Project Design; the Report on the Review of the Technical Documentation (Project Documentation); and the Environmental Permit (if required).

A Construction Permit is issued by MSPCEE in accordance with Article 60(2) of the RS Law on Spatial Planning and Construction or a municipal authority competent for spatial planning, on whose territory the construction is planned.

The Construction Permit may be issued for the entire facility or a part of a facility which comprises a technical, technological, and/or a functional unit. The construction must begin within a period of three years following the final date of the issuance of a Construction Permit.

**Use Permit:** A newly constructed energy facility cannot become operational before a Use Permit is acquired from the competent authority. Prior to the issuance of a Use Permit, a Technical Inspection of a generation facility must be performed. The Technical Inspection encompasses inspection of the completed works and their compliance with the Construction Permit and technical documentation that were the basis for the construction. The Technical Inspection ensures compliance of the works with the technical regulations and standards pertaining to the specific types of works, including materials, installations and equipment. A Technical Inspection must be performed within 15 days following the date of the submission of the request.
Based on the opinion of the Committee that performs the Technical Review, the competent authority can issue a permit for a testing period, allowing the temporary use of the facility during the testing period for the energy facilities. The permit for a testing period can be issued only if the Technical Review has confirmed that the facility has been constructed in accordance with the Construction Permit, and that the operation of the facility will not endanger the life, health, environment and the neighboring buildings. The testing phase can last up to a maximum of one year; and in the case of particularly complex technological process, the testing phase can be extended for one additional year.

The investor must submit its request for an Use Permit to the competent authority that has issued the Construction Permit, once the works on the facility have been completed.

**License for Generation for Facilities with Installed Capacity Exceeding 1MW:** After construction is completed and the Use Permit for the facility is issued, the investor must obtain a License from RSERC in order to perform activities on electricity market. The procedure for the issuance of a License and its conditions and content are defined by the RS Rulebook on Licenses.

The investor that plans to perform an activity in electricity market has the obligation to submit an application for a License for that specific activity (generation, distribution, supply or trade). Accordingly, RSERC is authorized for the issuance of the following licenses in the electricity sector:

- a) License for Generation of Electricity for Hydro Power Plants, Thermal Power Plants, Thermal Power Plants with Integrated Mines and Other Power Plants with Capacity Exceeding 1MW (License for Generation)
- b) License for Distribution of Electricity, for the Purposes of Delivery of Electricity at Middle-Voltage and Low-Voltage Network to the Customers
- c) License for Supply of the Tariff Customers
- d) License for Electricity Trade and Supply on the Territory of BiH

In order to produce electricity in the power plant, the investor must obtain a License for Generation. With the application, the investor must enclose the following: information on the power facility and technical parameters, proof of meeting the requirements regarding the establishment of the system of quality control and the system of environmental protection control in the power facility, proof of the nature of the primary source of energy, Water Permit, Environmental Permit, Concession Contract, Connection Contract (DSO or Transco BiH) and Use Permit.¹³⁹

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¹³⁹ Articles 23-24, RS Rulebook on Licenses.
The decision on the issuance of the License is made within 60 days following the date of the submission of the completed application to RSERC. The License is valid for a period of 30 years maximum.

System of Incentives for Production and Purchase of Electricity from RES and Efficient Cogeneration: The system of incentives for the production of electricity from RES and efficient cogeneration in the RS was established by the RS Law on Renewable Energy Sources and Efficient Co-generation (RS Law on RES).\textsuperscript{140}

According to the RS Law on RES, in addition to the price of electricity, all end users are obliged to pay a surcharge for electricity production from RES and efficient cogeneration.\textsuperscript{141} The terms, conditions, and procedure for exercising the right to incentives are defined by the Rulebook on Incentives for Generation of Electricity from Renewable Sources and in Efficient Co-Generation (Rulebook on Incentives).\textsuperscript{142}

In the RS, eligible RES producers are entitled to different benefits. For example, the DSO is required to inform the RES producer of whether it is feasible to connect to the system and the possibilities of connection, and the precise timeframe for the connection at the DSO’s expense. The RES producer is also entitled to priority dispatching of electricity according to the daily schedule. Finally, the RES producer is entitled to obligatory purchase of electricity at currently valid Feed-in tariffs, and the Right to a Premium\textsuperscript{143} in the case of self-consumption or the sale of electricity in the RS market.

The RS Action Plan for Renewable Energy Sources (the RS Action Plan)\textsuperscript{144} defines the total quotas for incentives as well as the quantities of incentives for each specific technology. The amounts of the Feed-in tariff and the Premium Price that is paid to the producers are determined by an RSERC decision, which must be approved by the RS Government. The prices are evaluated at least once a year.

Incentives are given to the producers for the following types of facilities, provided that they do not exceed the total quantities of incentives determined by the RS Action Plan:

a) Hydro power plants with installed capacity up to 10MW
b) Wind power plants with installed capacity up to 10MW
c) Solar photovoltaic power plant with installed capacity up to 1MW

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\textsuperscript{141} Article 30, RS Law on RES.

\textsuperscript{142} RSERC Rulebook on Incentives for Generation of Electricity from Renewable Sources and in Efficient Co-Generation (“Official Gazette of the RS,” Nos. 114/13 and 88/14).

\textsuperscript{143} The premium is added to the wholesale price.

d) Geothermal power plants with installed capacity up to 10MW
e) Biomass power plant with installed capacity up to 10MW
f) Biogas power plant with installed capacity up to 1MW
g) Cogeneration power plants with installed capacity up to 30MWe.

The incentives are allocated following the order of submission of the applications to RSERC, until the total quotas set by the Action Plan are filled.

It should be noted that the incentives cannot be given to the producers that installed used equipment during the construction of the facility. Basic components for the production of electricity, such as generators, photovoltaic panels, boilers, or turbines have to be new for the producer to be eligible for incentives.\(^\text{145}\)

**The Operator:** The RS Law on RES prescribes the role of the Operator of the Incentive System (Operator) as a non-profit organization (legal person) with public authorities. However, the Operator has never been established, and the activities of the Operator are currently performed by the RS power utility company (EPRS). The tasks of the Operator under the RS Law on RES include the administrative, financial and other operational activities for the system of incentives for the production from RES and efficient cogeneration. The work of the Operator is supervised by the RS Ministry of Industry, Energy and Mining (MIER) and RSERC.

The competences of the Operator\(^\text{146}\) include keeping records of the total amount of electricity produced from RES and efficient cogeneration, signing Contracts on the RES Incentives, and balancing responsibility.

**Exercising the Right to Incentive:** The Steps for acquiring incentives for renewable generation and efficient cogeneration as well as the sequences (stages) of the project registration in relation to the issuance of the key permits in the permitting procedure in the RS are illustrated by Figure 11. Each process step is further explained in the text below.

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\(^\text{145}\) Article 6, Rulebook on Incentives.  
\(^\text{146}\) Article 14, RS Law on RES.
Steps for Acquiring Incentives:

The investor that plans construction of an RES and/or efficient cogeneration facility, needs to take the following steps in order to become eligible to the incentivized electricity production:

- **Preliminary Right to Incentive**

  The Preliminary Right to Incentive enables the investor to sign a Pre-contract on Obligatory Purchase of Electricity with the Operator. It is acquired through an RSERC Decision for the following types of the incentives:

  a) right to obligatory purchase of electricity at currently valid feed-in tariffs (guaranteed price), or
  b) right to premium (for self-consumption or sale in the electricity market).

  The following documents need to be enclosed with the request: a Feasibility Study, document certifying entry into the Register of Projects, Construction Permit and evidence that the construction of the facility has begun.

  The Decision on the Preliminary Right to Incentive includes data on the generation facility, the type of incentive, planned production of electricity and amount of incentives, and the validity period. The Decision, however, does not contain the price at which the electricity will be purchased (feed-in tariff or premium), since the price is determined by the Contract on Obligatory Purchase of Electricity at a later stage, and after the construction has been completed.
Energy Investment Activity - EIA Project

- **Pre-Contract on Incentive**

The Pre-Contract is signed between the investor and the Operator, based on a Decision on Preliminary Right to Incentive in order for the investor to reserve the available amounts of incentives in the system. The investor has the obligation to submit a request for signing the Pre-Contract within 15 days, following the date of issuance of the Decision on Preliminary Right to Incentive.

- **Certificate for the Generation Facility**

To acquire the Right to Mandatory Purchase of Electricity at currently valid feed-in tariffs (the guaranteed prices) or the Right to Premium, the investor must first acquire a Certificate for the Generation Facility (the Certificate). The Certificate is a document issued by RSERC that proves that the generation facility produces electricity using waste material or RES, economically and in an environmentally friendly manner. The criteria and the procedure for the issuance of the Certificate are defined by the RS Regulation on the Issuance of Certificates for the Generation Facility which Generates Electricity Using RES or in Efficient Cogeneration.

- **The Right to Incentive**

After the issuance of the Certificate, the investor can apply for the following incentives: the Obligatory Purchase of Electricity at currently valid Feed-in tariffs or Premium, and Obligatory Purchase of Electricity based on the Net-metering Principle. The application is submitted to RSERC together with the Document on Entry into the Register of Projects, Certificate, Use Permit, Connection Contract (DSO) or Approval of Connection (Transco BiH), and other evidence as prescribed by Article 21 of the Regulation on Incentives. RSERC decides on the application within 30 days, following the date of submission of the completed application. The Decision contains data on the producer, the approved type of incentives, the planned production of electricity, the incentivized amounts, and the validity period.

The Right to Obligatory Purchase of Electricity at currently valid Feed-in Tariffs and the Right to a Premium are granted for a period of 15 years.

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147 According to Article 30 of the Rules on Incentives the reservation period is specified in the Decision on Preliminary Right to Incentive and cannot exceed a period of 3 years. Exceptionally, this period can be extended for another six (6) months.

**Obligatory Purchase Contract**

Finally, a Contract on Obligatory Purchase of Electricity is entered into by the investor and Operator. The type of the Contract depends on the approved type of the incentive:

a) Contract on Obligatory Purchase of Electricity at currently valid Feed-in Tariffs for RES facilities;  
b) Contract on Obligatory Purchase of Electricity at currently valid Feed-in Tariff for the Efficient Cogeneration Facilities; or  
c) Premium Contract.

The Contract includes data on the contracting parties, the planned electricity generation and possible deviations, the Feed-in Tariff or Premium Amount, data on metering point, and balancing responsibility like.

The Register of Projects: According to Article 39 of the RS Law on RES, a natural or legal person (investor) that constructs a generation plant has the obligation to register the project in the Register of Projects, maintained by MIER, within 30 days from the issuance of Construction Permit or conclusion of the Contract on Concession. The Register of Projects contains all RES and efficient cogeneration projects in the RS, which is used to monitor the goals set by the RS Action Plan regarding the participation of RES in the final (gross) consumption of electricity.

The form, contents and procedure of keeping the Register of Projects are defined by the RS Instructions on Managing and Updating the Register of RES and Efficient Cogeneration Projects (Instructions). The Register of Projects is divided into the following sections: 1. Projects under construction; 2. Built projects; and 3. Abandoned projects.

The project can only be registered in one section of the Registry of Projects at a time; and for each registration, MIEM issues a written confirmation. Although the registration is mandatory for all RES projects, it does not provide the priority in allocation of incentives, since incentives are granted on the basis of submission of the completed application to RSERC.

**Step 4 - Securing Land, or the Right to Use Land:** If the investor cannot obtain the ownership of the land through negotiation with owners or acquire the right to use the land or construct on it, then the property can be expropriated for the purpose of the construction of the facilities that are of a “general interest,” including energy facilities.

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149 RS Instructions on Managing and Updating the Register of RES and Efficient Cogeneration Projects (“Official Gazette of the RS,” No. 76/13).  
150 Article 3 (1), RS Law on Expropriation (“Official Gazzette of RS,” Nos. 112/06, 37/07, 66/08, 110/08, 121/10 and 79/15).
According to the RS Law on Expropriation, the expropriation beneficiaries are the RS and local self-government units (municipalities), “if not otherwise prescribed by the Law.”\(^\text{151}\) The expropriated property is transferred to the investor for the purpose of construction of the facility in accordance with the terms and conditions defined by the Contract.

In order for the expropriation to begin, the public interest for the construction has to be declared by the RS Government. A proposal for the declaration of the public interest is submitted by the expropriation beneficiaries to the RS Government, together with an Elaboration on Expropriation, which contains data on the area of expropriation (geodetic and cadastral plan), data on the property and its owners, purpose of the expropriation and the estimated value of the property. After obtaining an opinion on expropriation from the municipality, the RS Government adopts a decision on expropriation.

Articles 18(5), 33(1) and 48 of the RS Law on Expropriation were rendered unconstitutional by the Decisions of the RS Constitutional Court.\(^\text{152}\) They contained the following provisions: (i) Article 18(5) prevented the owners to appeal the Decision on Expropriation in an administrative dispute; (ii) Article 33(1) enabled the entry into the possession of the expropriated property before the payment of the expropriation fees; and (iii) Article 48 prescribed that the public interest was already established in the case the expropriation property was included in the existing regulation plans. The RS Constitutional Court found that these provisions violated property rights and were contrary to the RS Constitution and the European Convention for Human Rights (ECHR). Consequently, the RS Law on Expropriation was amended to repeal those Articles in 2015.

### 2.2.5 The Brcko District (BD) Authorization Framework

The Brcko District of Bosnia and Herzegovina (BD), is a self-governing administrative unit in BiH, with specific status under the sovereignty of BiH and its own institutions, laws and regulations.

**Step 1 - Designation of the Status of Public (General) Interest:** Energy infrastructure projects can get the “public (general) interest” status in the BD, like all other capital investment projects, initiated by the BD Government. The status of a public interest in the BD is determined in the Concession-granting procedure and the process of expropriation. The BD has adopted the Law on Concessions\(^\text{153}\)

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\(^{151}\) Article 6, RS Law on Expropriation.

\(^{152}\) The RS Constitutional Court: Decision No. U-46/08, November 10, 2010 (regarding Article 18 (5) and Article 48); and Decision No. U-46/13, December 22, 2014 (regarding Article 33 (1)).

\(^{153}\) BD Law on Concessions (“Official Gazette of the Brcko District of BiH,” Nos. 41/06, 19/07 and 02/08).
and the Law on Expropriation;\textsuperscript{154} and according to these laws, the public interest needs to be determined by the BD Assembly, based on a BD Government proposal.

**Step 2 - Spatial Planning:** BD has adopted the Law on Spatial Planning and Construction\textsuperscript{155} and the Spatial Plan of BD 2007-2017.\textsuperscript{156} The BD spatial plan corresponds to the administrative borders of the BD, and serves as a basis for the issuance of an Urban Permit and all other construction works in BD. The construction of some energy infrastructure projects is included in the physical planning documentation.

**Step 3 – Permitting Procedure:** Different institutions are responsible for granting the necessary permits/approvals for different types of energy infrastructure projects. There is no exact procedure established, and it is not the same for all projects.

Similar to the FBiH and RS permitting procedures, in order to construct and use a generation facility in the BD, the investor has to obtain the same permits and approvals from the competent authorities in the areas of spatial planning, construction and environment (Location Conditions, Construction Permit, Urban Permit, Environmental and Water Permits), and grid connection (DSO and/or Transco BiH). In addition, the investor needs to acquire an Energy Permit and a License from the State Electricity Regulatory Commission (SERC) for activity performed in the electricity market.

Therefore, the BD has its specific legislation that, among others, governs concessions, spatial planning and construction, environment protection\textsuperscript{157} and electrical energy.\textsuperscript{158} However, according to the BiH Law on Transmission of Electric Power, Regulator and System Operator,\textsuperscript{159} the State Electricity Regulatory Commission (SERC) has the regulatory responsibility over the matter of electricity generation, distribution and supply of customers in BD. Since there is no electricity generation in BD and “no economic justification for the establishment of a separate regulator for the Brčko District of Bosnia and Herzegovina,”\textsuperscript{160} the jurisdiction of SERC was extended to the BD in 2009,\textsuperscript{161} to create the missing legal framework in the electricity market of the BD. The activities of

\textsuperscript{154} BD Law on Expropriation (“Official Gazette of the Brcko District of BiH,” Nos. 26/04, 19/07, 2/08, 19/10 and 15/11).
\textsuperscript{155} BD Law on Spatial Planning and Construction (“Official Gazette of the Brcko District of BiH,” No. 29/08).
\textsuperscript{156} BD Decision on Spatial Plan 2007-2017 (“Official Gazette of the Brcko District of BiH,” No. 64/07).
\textsuperscript{157} BD Law on Environmental Protection (“Official Gazette of the Brcko District of BiH,” Nos. 24/04, 01/05, 19/07 and 09/09).
\textsuperscript{158} BD Law on Electricity (“Official Gazette of the Brcko District of BiH,” Nos. 36/04, 28/07, 61/10 and 4/13).
\textsuperscript{159} BiH Law on Transmission of Electric Power, Regulator and System Operator (“Official Gazette BiH,” Nos. 7/02, 13/03, 76/09 and 1/11).
\textsuperscript{160} Paragraph 9 of the Recital of the Amendments to the BiH Law on Transmission, Regulator and Electricity System Operator in BiH.
\textsuperscript{161} Decision Enacting the Law on Amendments to the Law on Transmission of Electric Power, Regulator and System Operator of Bosnia and Herzegovina (“Official Gazette of BiH,” No.76/09).
distribution and supply of electricity are carried out by the public company “Komunalno Brcko” under the licenses issued by SERC. Currently, all electricity in BD is provided by EPRS.162

Unlike the entities FBiH and RS that have adopted legislation on RES, the BD has neither a Law on Renewable Energy Sources and Efficient Cogeneration nor an Action Plan on RES. Thus, the BD has not established a system of incentives for the production of electricity from RES.

**Step 4 – Securing Land, or the Right to Use Land:** If the investor cannot obtain ownership of the land or acquire the right to use the land or construct on it, the property in the BD can still be acquired through a process of expropriation after the status of public interest has been declared by the BD Assembly. The process of expropriation and designation of public interest status is defined by the BD Law on Expropriation.

### 3. Key Permitting Challenges

#### 3.1. Strategy, Planning and Determination of Priority Status

An Energy Sector Development Strategy has been adopted only at the RS level, which envisions the construction of energy infrastructure projects, including PECI/PCI projects on the RS territory. To date, none of the State level, FBIH level or BD level have adopted an Energy Sector Development Strategy.

Adoption of a Spatial Plan at the State level is not prescribed by the existing legislative framework, since adoption of Spatial Plans is in the competence of entities. A Spatial Plan has been adopted for the RS, and it includes energy infrastructure projects. The proposed FBIH Spatial Plan has not yet been adopted by both Houses of the FBIH Parliament. Until the adoption of the FBIH Spatial Plan, the Spatial Plan of the Socialist Republic (SR) of BiH for the period from 1981 to 2000 has been applied in the FBIH, where it is not contrary to the FBIH Constitution. The SR BiH Spatial Plan does not include RES generation or PECI/PCI projects; and it is unclear to what extent it is implemented in practice, given that it was designed for the territory of BiH without entities and Cantons. Large energy infrastructure projects are not planned to be constructed on the territory of the BD; however, the Spatial Plan for the BD includes some other energy infrastructure projects.

In formal legal terms, energy infrastructure projects may obtain the status of a public (common) interest at all government levels in BiH. The process of awarding public (common) interest status to a certain project is regulated by entity and BD laws. However, the process of determining priority

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162 Under the BiH Law on Transmission of Electric Power, Regulator and System Operator, EP BiH and EPRS are obliged to supply the BD with electricity at the rate of 50 percent (%) each, unless they reach a different agreement.
status or awarding the status of a public (common) interest and harmonization of the award of this status at the State and lower levels of government is not regulated at the State level.

### 3.2 Organization of Permitting Procedure (Overall Responsibility and Supervision of the Procedure)

Providing overall information on the permitting procedure for the construction of energy infrastructure projects is not done institutionally. Potential investors are unable to obtain information in one place or in one institution at any government level in BiH regarding investment opportunities, the permitting procedure, competent institutions/bodies and deadlines.

There are no written instructions at any government level for investors in local language or foreign languages, which would in a brief and simple manner incorporate the key information on the entire permitting procedure (e.g., all required permits and approvals, steps in the permitting process, competent institutions, and deadlines).

Cooperation between the competent institutions within the same government levels responsible for the permitting procedure for construction of energy infrastructure projects is considered insufficient (State and FBiH level); and for some levels, such cooperation is satisfactory but could be improved (RS and BD). The lack of cooperation is especially noticeable when it comes to institutions at different levels of government (e.g., State—Entities; FBiH—Cantons). Cooperation and regular exchange of information between institutions responsible for granting permits and approvals in the permitting process from several levels of government in BiH is not legally regulated. Institutions mostly communicate when the law stipulates the issuance of one permit requiring an institution to obtain the views/consent/approval from other institutions, so the communication occurs on an ad hoc basis.

There is no single body or institution at any level of government in BiH that has the jurisdiction or mechanism to manage an entire permitting procedure for the construction of energy infrastructure projects, or to supervise compliance with deadlines prescribed by the law (other than the competent inspection and second instance administrative bodies who carry out supervision within general supervision over administrative proceedings in the entities and BD).

### 3.3 Permitting Procedure and Steps

For the construction of one power plant in BiH, it is necessary to obtain a vast number of permits, consents, approvals and other administrative acts. According to the EPs and some authorities in FBiH, it is necessary to obtain more than 50 permits and other administrative acts in FBiH, while the construction of power lines requires 5 key permits. Some of the key permits include a Concession,
Environmental Permit, Urban Permit, Construction Permit, Energy Permit, Use Permit, and License for Generation, and Connection to the Grid.

Most procedures for obtaining the main permits cannot be conducted in parallel because they are mutually conditioned and connected, meaning the issuance of one permit or other administrative act is conditioned on obtaining another. There are a few procedures that can be conducted in parallel where they are not mutually conditioned.

The procedures for obtaining any one of the main permits comprise multiple steps. So, for example, in one permitting procedure (e.g., construction) it is necessary to obtain opinions, approvals and permits from other administrative bodies and institutions from the same or different government level. Such steps within one main permitting procedure can be conducted in parallel.

There are many competent institutions and bodies from different government levels involved in the permitting procedure for construction of energy infrastructure facilities in both entities.

3.4 Transparency and Public Participation

The permitting procedure at all government levels in BiH lacks transparency. Information and/or guidelines for investors explaining the steps for acquiring permits is not available on the authorities' web sites. In addition, official gazettes of some FBiH Cantons are not available in electronic form, making it difficult to obtain information on specific regional requirements. Also, no information is available in foreign languages.

The authorities in BiH argue that the public is involved in an early stage of the procedure for construction of energy infrastructure projects and such an obligation is set forth by the entity environmental protection laws and the BD Environmental Protection Law. However, some representatives of the authorities in FBiH believe that the public is actually involved in a “later stage,” since a “strategic EIA” has never been carried out in FBiH. Pursuant to Article 51 of the FBiH Law on Environmental Protection, a “strategic EIA” needs to be conducted during the procedure of development of spatial planning documents. Currently, the public is consulted during the EIA procedural step, which is conducted during the procedures for the Construction Permit. This procedural step comes later in the permitting process.

The obligation to give the general public notice of an ongoing permitting procedure is defined by the entity environmental laws and the BD Environmental Protection Law. Also, BiH is a signatory of the Aarhus Convention, which ensures public involvement in every procedure that prescribes measures, conditions and monitoring related to the environment.

During the permitting procedure, all interested parties, including NGOs, local residents, agencies, individuals, and associations, are notified of public consultations through letter notifications,
advertising, the relevant ministry’s website announcements, and calls for public hearings in the media. Public consultations are sometimes conducted separately and sometimes with all interested parties in official meetings and public hearings, with the possibility of the submission of written comments.

There is public opposition to the implementation of energy infrastructure projects, mainly from NGOs and certain local communities and citizens, in particular concerning the construction of large hydroelectric plants. However, there have been only a few court cases. Investors are not obliged by law to conduct educational programs for the local community/public awareness. The main reasons for the public’s opposing the implementation of energy infrastructure projects are: i) lack of information; ii) lack of trust in institutions; iii) lack of understanding of energy infrastructure needs; iv) expropriation proceedings; v) lack of public participation in the spatial planning procedure; and vi) failure to implement the required strategic EIA.

Public consultations in the permitting procedure for construction of energy infrastructure projects are organized and conducted by the authorities responsible for issuing individual permits and other administrative acts, such as, for example, a Construction Permit, Energy Permit or Environmental Permit. All competent authorities for issuing individual permits in the procedure (such as the entity and cantonal environmental ministries and entity regulatory commissions for energy) conduct a consultation and public hearing procedure independently, which means that public hearing procedures for the same project are conducted several times at different stages of the procedure.

3.5 Length of the Permitting Procedure

All permits and other administrative documents in the permitting procedure for the construction of energy infrastructure projects are issued in an administrative procedure and are subject to the deadlines defined by the relevant law on administrative procedure at the respective government level (the state, FBiH, and RS), if not determined by other special laws. All administrative procedure laws in BiH prescribe a general deadline for issuing permits of 30 or exceptionally 60 days. However, an administrative body can, within that deadline, request additional documentation to be submitted. Although an administrative body is obliged by law to decide on a request for permit or other administrative acts within the prescribed deadlines, in cases when it requests additional documents, in practice the deadlines are not met. The extension of the length of permitting proceedings resulting from additional requests made by administrative bodies is a common practice in all proceedings at all government levels.

The quality of submitted documentation significantly affects the length of the procedure at all government levels. There are a number of examples where the deadline was extended due to inadequate documentation, resulting in the need for additional amendments. The main reason is
considered to be the lack of investors’ knowledge of the required standards for the documentation and lack of technical expertise in the country for its preparation.

Inadequate capacity and lack of resources in relevant institutions involved in the permitting procedure significantly affects the length of the procedure. While the institutions have the possibility to outsource experts (assuming such experts can be found in the country), this possibility is not used often due to the lack of financial resources.

3.6 Legal Framework

The legal framework for implementation of energy infrastructure projects consists of many laws and regulations governing the same subject area at the state, entity and cantonal levels. In addition to being fragmented, the laws and regulations are not harmonized and are often conflicting. Non-harmonization applies to the legislation from the same subject area (e.g., concessions, spatial planning, and construction) adopted by different levels of government, such as the state versus entity legislation, as well as the entity versus lower levels of government legislation, in particular the FBiH versus Cantons. Moreover, the legislation from the different but inter-related and relevant areas for permitting, such as concessions, environmental protection, spatial planning, construction, and energy, is also not harmonized and often conflicting. Conflicting provisions governing different, but related permitting areas can be found not only in the legislation adopted by the different government levels, but also at the same level of government. Hence, in order to facilitate the construction of energy infrastructure facility projects in BiH, the key priority should be the elimination of gaps and overlaps between the various government levels and harmonization of legislation between all areas relevant for permitting.

Furthermore, the existing legislative framework at all government level does not ensure clear and transparent procedures. Many investors point out that laws and regulations are often applied in an unequal manner in practice. Further, authorities have great discretionary powers, especially in the matter of the application contents and required documentation that must be submitted with the application for permit, including a request for submission of other documents as deemed necessary.

The area that represents significant obstacles to the effective implementation of energy infrastructure projects, in particular at BiH and the FBiH, is the area of concessions. In addition, the procedure for the issuance of the Construction Permit has been identified as slow and bureaucratic by both entities. Besides non-harmonized spatial plans between municipalities, cantons and the FBiH, a big problem in the FBiH is the lack of an FBiH Spatial Plan, which would include renewable energy generation, since the currently applied and outdated SRBiH Spatial Plan envisages construction of conventional facilities only.
3.7 Financial and Administrative Costs

There is no data on the identification of possible sources of funding for energy infrastructure projects at any government level in BiH, except for the part of infrastructure projects mentioned in the Long Term Transmission Network Development Plan by the ISO. This document also includes the construction of power lines on the territory of BiH from the PECI/PCI list – Banja Luka-Lika and Visegrad-Vardiste (Bajina Basta-Pljevlja) and project funding therefor by the Transco BiH.

The overall percentage of administrative costs (fees and charges) in the FBiH that an investor pays in comparison to the total value of the project is said to be less than 1%. Also, concession fees are paid in the amount of no less than 1.5% of the total investment value.

4. Recommendation for Next Steps

One of the main objectives of USAID’s Energy Investment Activity (EIA) Project is to assist the country to attract investment and create jobs in the energy sector. Through this activity, EIA will work to revise and align the permitting procedures for construction of electricity generation facilities, so they are consistent, transparent and investor friendly throughout the country. The project will develop and recommend legislative measures, at all levels of government, that will stimulate investment in new power plants—especially renewable energy power plants and biomass co-generation—in select regions of the country. This activity is planned to last through August 2019.

The process of identifying obstacles, and legislative gaps and overlaps will be done on a step by step basis; as a result, this paper is a living document that will be updated as information is developed. EIA plans to dig deeper for permitting practices in certain regions that will be chosen as described below. Therefore, the following areas of activity are envisioned at this time, but will develop further as the activities progress:

- This Draft Report will be presented and discussed with stakeholders at the respective government levels in BiH to get their feedback. The Draft Report will be revised accordingly.

- Each area that is relevant for permitting will be subject to further and more detailed analysis.

- Several regions in both entities will be selected for in-depth study of the legislation and its practical application. Regions will be selected on the basis of their potential for the construction of different types and sizes of generation, which include: i) conventional plant – TPP; ii) biomass plant; iii) biogas plant; iv) small HPP; v) wind; and vi) solar plant. The availability of potential investors in a certain region will be an important factor for the selection. Regional in-depth legal study, coupled with case analyses (where appropriate), will be conducted in partnership with stakeholders from all government levels, relevant for the
construction of the selected type and size of the facility in the selected region, including local-municipal administration.

- The entire exercise described above is planned to be completed by mid-2017. The findings will be incorporated into a Final Report. The Final Report will also include recommendations for streamlining and speeding up the permitting procedure as well as making it more transparent and non-discriminatory. The recommendations will take into consideration the objectives defined by the Action Plans, adopted by both entities for the purpose of the implementation of the Reform Agenda for BiH. The improvement of the procedure to obtain a construction permit has been identified as one of the critical objectives by the Action Plans, among others. In addition, recommendations will be guided by the BiH responsibility to transpose and harmonize its legislative framework and implementing infrastructure with EU Regulation 347, adopted by the EC in October 2015. Finally, special consideration will be given to the recommendations streamlining the procedure governing the construction of new RES generation plants so that BiH can meet its RES quotas by 2020.

- Afterwards, the Final Report policy recommendations will be discussed and agreed with relevant stakeholders and presented to decision-makers at the respective government levels.

- The agreed policy recommendations will then be translated into new legislation and/or legislative amendments in the regions willing to implement them.