



WATER AND WASTE REGULATORY OFFICE  
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## **Draft WWRO Policy Proposals to facilitate PSP Activities in the Waste Sector in Kosovo**

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### **1. SUMMARY OF WWRO POLICY PROPOSALS**

This draft policy document describes the background to economic regulation of the waste sector in Kosovo and the background for the increasing pressure from the private sector and other key stakeholders including UNMIK<sup>1</sup> for private operators to be allowed to participate fully in the delivery of waste collection services in the near future.

UNMIK and other stakeholders recent requested WWRO to develop changes in the legislation concerning economic regulation in order to facilitate private sector participation in the Municipal waste collection sector in Kosovo. A sustainable long term policy for the management of the waste collection services in line with good practice in other European countries is set out for the sector<sup>2</sup> in this proposal as a pre requisite for developing suitable legislative changes.

**Following stakeholder consultation<sup>3</sup> on this draft WWRO policy position on PSP in the waste collection sector, the policy should be finalised and agreed and thereafter serve to inform and underpin the necessary changes to the revised legislation affecting the waste sector currently being drafted by a working group reporting to the Kosovo Assembly Committee for Trade and Industry.**

This document considers four policy options:

1. “Do nothing” option-Option A
2. Sub-contract agreements between POEs and private waste collection operators-Option B
2. Short-term transitional option-Option C
3. Long-term sustainable option-Option D

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<sup>1</sup> Acronyms including UNMIK are explained at the end of this proposal.

<sup>2</sup> Changes to the economic regulation of water and wastewater services and Municipal waste disposal services are not considered appropriate at the present time and are not covered in this paper.

<sup>3</sup> Stakeholders comprise: MESP, MoT&I, Assembly working group, EAR, KTA, PAMKOS, EPTISA, private sector representatives including Chambers of Commerce.

**The recommended policy option (long-term sustainable policy-option D) comprises the full economic de-regulation of the Municipal waste collection activities in Kosovo as soon as possible to allow private operators to compete openly with existing POEs for the provision of Municipal waste collection services throughout Kosovo. At the same time Municipalities would need to take on the overall responsibility for managing the waste management sector through managing procurement of waste collection services through competitive bidding for services by both the private sector and POEs.**

**This proposed option is considered to be the only option which is:**

- **Sustainable ie represents a long term solution**
- **In accordance with good waste management practice in other European countries;**
- **In line with Kosovo Ministry of Trade and Industry objectives to remove market distortions and reduce regulation**
- **Would have no significant adverse impact on waste collection in the short or long term if managed properly**
- **In line with the draft Ahtisaari proposals<sup>4</sup> for Comprehensive Proposals for the Kosovo Settlement which give Municipalities full and exclusive powers in areas including “Provision and maintenance of public services and utilities including....waste management”**

These proposed amendments to the legislation will remove the artificial monopoly currently enjoyed by POEs for providing waste collection services and oblige Municipalities to procure these services through transparent and open competition between the private sector operators and the POEs. Municipalities would also be fully responsible<sup>5</sup> for collecting revenues from customers including domestic customers and for paying waste disposal charges to KLMC.

This recommended policy option could be successfully achieved in the next few months by undertaking the following coordinated measures:

- Agreeing a timetable for the proposed legislative changes and Institutional strengthening measures to be implemented.
- Identifying donor funding and Consultants for undertaking Institutional strengthening of Municipalities including drafting the model contracts for competitive bidding for waste collection services<sup>6</sup> and procurement training, and support in developing the Waste Law “Subsidiary Acts”

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<sup>4</sup> Article 3 of Annex III, section 3.1 dated February 2007

<sup>5</sup> This is the main recommendation of EPTISA’s draft Cost Recovery strategy dated 31<sup>st</sup> August 2006 for achieving full cost recovery.

<sup>6</sup> The model documents should be relatively simple 3-5 year lump sum contracts between the service provider and the Municipality (or groups of Municipalities) based on an assumed monthly volume of Municipal waste and certain minimum service standards eg frequency of collection, daily operating times etc.

- Replacing the current UNMIK Regulation 2004/49 on economic regulation (*On the Activities Water, Wastewater and Waste Service Providers*) with a revision of the draft (2004) WWRO Law<sup>7</sup> (*Draft Law on the Economic regulation of Water and Waste Industries*) including making some important amendments to some sections concerning de-regulation of waste collection services to facilitate PSP. This activity is already in progress by a small working group (including the WWRO Director). The working group reports to the Kosovo Assembly Committee for Trade and Industry.
- Revising current Waste Law (UNMIK Regulation 2006/31) by removing the current contradictions in the Regulation concerning the roles and responsibilities of WWRO, the economic regulator. (It is not clear if a separate working group will be responsible for this revision to UNMIK regulation 2006/31). Also introducing a new section to the revised waste Law (in harmony with the changes proposed in this document), which obliges Municipalities (or groups of Municipalities) to tender the provision of Municipal waste collection through open, transparent tendering procedures by say mid 2008 which would be subject to Government Local Government auditing
- Ensuring Municipalities are in a position shortly to take on full responsibility for managing waste collection services in their service areas including procurement of these services through an open competitive bidding process. (Institutional support from donors will be necessary to enable Municipalities to have the capacity to carry out these additional responsibilities properly in line with the original Waste Law).
- WWRO would determine the tariffs for 2008 (due to be finalised by 1<sup>st</sup> October 2007) and thereafter have a limited role monitoring performance of the waster collection sector over a fixed period (say until April 2008) to enable the Municipalities to progressively took overall control of the sector.

## **2. BACKGROUND**

### *Legislative framework*

The current UNMIK Regulation 2004/49 (*On the Activities of Water, Wastewater and Waste Service Providers*) sets out the responsibilities of the economic regulator for water and solid waste services in Kosovo (WWRO). The scope of this Regulation (including the issuing of [operating] licences by WWRO for provision of waste collection services) in its present form only applies to Publicly Owned Enterprises (POEs) [and Socially owned Enterprises (SOEs)]. Thus it is not possible for WWRO to simply issue licences to private waste collection operators (or private disposal operators) under the current legislation.

A draft Law on the Economic Regulation of Water, Wastewater, Solid Waste Collection and Solid Waste Disposal Industries in Kosovo (hereafter termed the draft

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<sup>7</sup> The draft Law (Article 2 (a)) already recognised the benefits of involving the private sector in water and waste service provision in relation to introducing investment and management expertise.

WWRO Law) was developed in 2004 but not passed by the Assembly since regulation was a reserved power under the responsibility of UNMIK. This draft WWRO Law already recognised the role of the private sector in Article 2-Clause (a).

#### *Private operator activities in Kosovo*

Private operators have recently become increasingly active in large scale, profitable commercial and industrial waste collection sectors (eg providing collection services to UNMIK and large supermarkets) and have been active in lobbying UNMIK, MESP, Pristina Chamber of Commerce and WWRO to be licensed<sup>8</sup> in order to undertake these collection services legally and possibly to expand the scope of the services into other areas eg Municipal domestic collection.

As a short term measure, model sub-contract agreements has been developed by WWRO recently in cooperation with the POEs and other stakeholders in order to facilitate private sector involvement as sub-contractors to the POEs until a longer term policy is developed on PSP.

#### *Domestic Municipal waste collection activities*

There is little evidence currently that the private sector is interested in participating in the routine (and currently unprofitable) Municipal *domestic* waste collection activities. These activities are characterised by low collection efficiencies and low tariffs, and are limited by affordability<sup>9</sup> issues. POEs are currently not covering their operating and maintenance costs and depend on donors for provision of major equipment and on subsidies from the Kosovo Consolidated Budget to make up the significant shortfall<sup>10</sup> in annual revenue.

Unlike most other European countries the waste collection POEs are directly responsible for collecting the revenues from customers including domestic waste customers and have a collection efficiency of only about 50% or worse despite spending approximately 10% of their overall operating costs on this activity. In most other European countries this activity is the responsibility of the Municipality which normally has legal powers to enforce revenue collection from customers and therefore can achieve much higher collection rates.

#### *Stakeholder views on PSP*

UNMIK have recently asked WWRO to formulate amendments to the current legislation concerning economic regulation (ie UNMIK Regulation 2004/49) in order to allow the private sector to participate legally in waste collection service provision. UNMIK have proposed a speedily implemented transitional measure which would

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<sup>8</sup> In some recent cases it has been reported that permits have been issued by MESP to these private operators.

<sup>9</sup> See IPA report on Affordability and willingness to pay-desk study dated March 2007 produced as a deliverable under the EAR funded WWRO Institutional Support Project.

<sup>10</sup> EPTISA believe that if tariffs could be raised and collection efficiencies improved (i.e. by involving Municipalities in collecting charges for collection and disposal) the POEs could manage to cover their operating and maintenance costs. Whether this could be a profitable business for the private sector is less certain.

amend the current waste legislation in order to address the current urgent problems regarding lack of access by the private sector to the provision of waste collection services, but without introducing any longer term i.e. sustainable measures.

KTA are understood to be opposed to introducing PSP in the waste sector until the POEs are incorporated and robust enough to be able to compete for provision of waste collection services with the private sector. Currently the POEs are consolidated<sup>11</sup> into regional utilities (in theory if not in practice) but are not yet incorporated<sup>12</sup>.

There are important unresolved issues concerning the ownership of the POE incorporated companies.

#### *Working Group*

Currently a working group including representatives from the Kosovo Assembly, UNMIK lawyers and WWRO are working on an amendment to the WWRO draft Law<sup>13</sup> to include amendments allowing PSP activities in the waste sector, as well as a collegial Board and other necessary amendments. This working group reports to the Kosovo Assembly Committee for Trade and Industry.

#### *Waste disposal*

The private sector are currently involved in the waste disposal sector to limited extent as sub-contractors who operate the four EAR funded landfill sites in Kosovo. These sub-contractors are managed by the Kosovo Landfill Management Company (KLMC). KLMC is a recently incorporated POE, regulated by WWRO in relation to setting tariffs and issuing the operating licence and by MESP in relation to various environmental regulatory aspects. KLMC is a monopoly service provider. There is scope in the future for this activity to be privatised or for another form of PSP to be introduced but this is not considered appropriate for the present.

Currently waste collection utilities (ie POEs) are expected to pay for the cost of Municipal waste disposal at the licensed landfill sites managed by KLMC and recover the disposal charges levied by KLMC through charges to customers. In practice as a result of the low collection efficiencies particularly in the domestic waste collection sector, the POEs do not normally pay KLMC the full cost for disposal<sup>14</sup> and KLMC receive an annual subsidy via KTA from the Kosovo Consolidated Budget. This is not in accordance with good practice elsewhere and an alternative arrangement is considered necessary.

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<sup>11</sup> If a free market in provision of services was introduced by changes in the current legislation in the near future it is possible that the POEs would collapse and the skilled resources would then migrate where possible to the private sector.

<sup>12</sup> Consultants have recently begun work (in March 2007) on consolidating the waste collection companies.

<sup>13</sup> The draft WWRO law already contains most of the provisions of the Regulation 2004/49 plus some provision for private sector involvement and a Board

<sup>14</sup> Private waste collection companies normally can afford to pay the disposal charges to KLMC and do so although some are understood to use unlicensed dumps where the costs are much lower or free.

### 3. Draft WWRO POLICY ON WASTE MANAGEMENT INCLUDING PSP

#### *Current policy deficit*

**There is currently no formal Government policy on “waste management” in Kosovo.** Some policy issues can be inferred from UNMIK Regulation 2004/49 and the original Waste Law, as promulgated as UNMIK Regulation 2006/31 (e.g. a central role for Municipalities in developing waste management plans). However, the additional text associated with the promulgation of the Waste Law<sup>15</sup> by UNMIK contradicts some of the key principles as set out in the original Waste Law as drafted and re-affirms the role of the WWRO as the economic regulator.

The view of UNMIK’s lawyers and the Kosovo Government on PSP activities in the waste collection sector are understood to be generally supportive. However, there are currently no specific policies published by the Kosovo Government or UNMIK on which the primary legislation concerning the waste sector (ie UNMIK Regulation 2006/31 and the UNMIK Regulation 2004/49) is based.

Note: It is generally recognised that the main role of utility regulators to *implement policy (not to develop it)* although it is appropriate for regulators to recommend policy changes where these are considered necessary.

It is also generally recognised that legislation should be based on an agreed sector policy as developed by Government.

In order to facilitate changes to the legislation to allow the private sector to participate in relevant aspects of waste collection in Kosovo, it is necessary in this document to present a draft policy covering the role of the private sector in waste management in Kosovo.

#### *Draft WWRO policy*

A draft WWRO policy on PSP is proposed below and should be discussed shortly with other stakeholders including the Kosovo Government and representatives private operators. Once the policy is finalised it should then serve to inform and underpin the development of the revised legislation (based on the current draft WWRO Law) covering the role of the private sector in waste management as well as other necessary changes (including the introduction of a collegial Board etc).

The main policy principles proposed by WWRO regarding the future role of PSP in the waste sector (comprising both waste collection and waste disposal activities) are set out below. It is recognised that the private sector are only interested currently in providing waste management services where they are commercially profitable (ie collection from Industrial, Commercial and Institutional customers producing medium/large scale quantities of Municipal solid waste). The private sector is understood to be less interested in competing for the less profitable components of Municipal waste collection (eg domestic waste) especially in the short term. However it is considered inappropriate and short-sighted to limit the scope for PSP to the more profitable components of waste collection (ie collection from Industrial, Commercial and Institutional customers producing medium/large scale quantities of Municipal

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<sup>15</sup> The original Waste Law does not mention the economic regulator, WWRO at all.

solid waste) whilst leaving the POEs to undertake the less profitable domestic Municipal waste collection activities and to continue to be heavily subsidised from the Kosovo Consolidated Budget. **Indeed the removal of the more profitable components from the POE's current service provision obligations arising from Option C would result in an even larger public subsidy being required as a result of the loss of the cross subsidy from these more profitable activities.**

#### 4. SUMMARY OF POLICY OPTIONS

##### *Introduction*

There are four main policy options for the management of the waste sector in Kosovo:

1. "Do nothing" option-Option A
2. Sub-contract agreements between POEs and private operators-Option B
3. Short-term transitional option-Option C
4. Long-term sustainable option-Option D

These options are considered below:

##### *Option A-Do nothing*

The do nothing option (Option A) is not considered appropriate in view of the need to respond to the concerns of the major stakeholders in connection with PSP as described above.

##### *Option B-Sub-contract agreements between POEs and private operators*

The current WWRO initiative to develop model sub-contract agreements to allow the private sector to undertake work as sub-contractors to the POEs has been a reasonable interim solution but is not considered to be a sustainable longer term solution and is therefore not considered further. Neither the POEs nor the private sector see this Option as attractive.

##### *Option C- Short-term transitional option*

The short-term transitional option (Option C) is favoured by some stakeholders including UNMIK as a "quick-fix" to address the immediate need of facilitating some kind of limited PSP role in the more profitable areas of waste collection. This is not recommended but is considered below:

##### Advantages of option C

- this option would legitimise the current limited PSP activities ie it would allow the WWRO to license private operators to compete with POEs for certain appropriate waste collection streams ie "medium-large scale" Industrial, commercial and Institutional waste collection services, in a de-regulated environment whilst continuing to protect POEs under a regulated but artificial monopoly regime for provision of domestic Municipal waste collection services.

##### Disadvantages of option C

- Short-term transitional measures often turn into long-term inappropriate permanent measures. If this is the case, the opportunity to revise the legislation to provide a long-term sustainable solution would be lost for several years.
- The POEs who would continue to undertake the collection of domestic Municipal waste and would require **larger subsidies** from the Kosovo Consolidated Budget to offset the loss of the more profitable medium-large scale Industrial, Commercial and Institutional waste collection services to the private sector.
- There would little incentive for the POEs to become commercially focussed and they would still require economic regulation (eg setting of tariffs and monitoring of service standards by WWRO)
- A partially de-regulated waste collection sector could present major problems for consistent regulation by WWRO, the economic regulator
- Municipalities would be denied the responsibility for overall management of waste collection service provision as envisaged in the original Waste Law
- This option would sustain an artificial monopoly on domestic waste collection service provision. **This is not in accordance with normal good practice in most other European countries or in line with Kosovo Government policy on eliminating distortion of the market and minimising unnecessary regulations.**

#### *Option D-long term sustainable option*

The long term sustainable option-Option D is favoured by WWRO. This is considered below:

##### Advantages of option D

- It would provide a long term sustainable solution in line with good practice in other European countries and removes the obligation from WWRO to regulate an artificial monopoly ie waste collection service provision.
- It would facilitate genuine unfettered private sector participation in the whole waste collection sector, bringing economies of scale, which should attract significant investment and management expertise to the waste collection sector.
- It would enable Municipalities to take full responsibility for managing the waste collection sector in their service areas including procurement of the services.
- The proposed long term solution is not expected to cause any significant short term disruption to waste collection service provision provided the transition was managed properly and WWRO were responsible in the revised legislation for setting tariffs for 2008 (due to be finalised by 1<sup>st</sup> October 2007) and thereafter for routine monitoring waste collection services over a limited period (say max 12 months) ie until April 2008 until the Municipalities were ready to take overall control of the sector.

##### Disadvantages of option D

- Additional effort would be required in the short term to effect the necessary legislative changes.
- Institutional support would be required to assist Municipalities in taking on the additional responsibilities of managing the waste collection sector including procurement of these services through open tendering.
- The POEs may not be able to compete with the private sector and may disappear (although the skilled resources would migrate to the private sector operators and provide necessary management and operational skills)

## **5. DETAILS OF OPTIONS**

### **5.1 Option C. Short term policy Option<sup>16</sup>**

The short term policy option for management of the waste management sector (ie collection and disposal services) **is not the recommended option by WWRO and is not considered further:**

### **5.2 Option D. Long Term Sustainable Policy Option**

The long-term policy option for management of the waste management sector (ie collection and disposal services) are set out below **This is the recommended option by WWRO:**

#### *Waste collection activities in Kosovo*

##### Introduction

The key aspects of this long term sustainable policy option are:

- Incorporation of the POEs over the next few months (with the anticipated benefits in improved financial performance to enable the POEs to compete on equal terms with the private sector in service provision for the full range of Municipal solid waste collection activities<sup>17</sup>).
- De-regulation of the entire Municipal waste collection sector through the introduction of an amended WWRO Law as part of the current legislative review in which the remit of WWRO is limited to the economic regulation of water and wastewater services, bulk water services, and Municipal waste disposal services only.

Once Municipalities are responsible for waste management as set out in the original Waste law they would be fully responsible for the procurement of waste collection services through open tendering for period of say 3-5 years and responsible for developing local waste management plans, and setting and monitor performance

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<sup>16</sup> i.e. for the period 2007-2009 to allow POEs to be fully consolidated and incorporated and to allow for the current Waste Law, promulgated by UNMIK as 2006/02 to be fully implemented (including development of subsidiary acts as envisaged in the waste Law) and all regulatory duties for waste management to be by the responsibility of Municipalities (or groups of Municipalities) or MESP as appropriate and WWRO no longer having a role in economic regulation of the waste collection sector.

<sup>17</sup> Assumed in EPTISA's draft cost recovery strategy to be by 2010

standards in line with good European practice elsewhere. POEs should be able to compete<sup>18</sup> on equal terms shortly with the private sector for providing these services.

#### Waste disposal activities

There is scope in the longer term for each landfill to be privatised with common standards set by a central environmental regulator ie MESP, and with each site competing for waste disposal services in Kosovo. In practice the fixed costs will be similar for all landfill sites and haulage distances will determine which landfill sites are used by the collection companies. For the next few years the current arrangements whereby KLMC manage the operation of the four landfill sites through competitively bid three year contracts with private sub-contractors should continue.

## **6. ACRONYNS**

KTA	Kosovo Trust Agency
MESP	Ministry of Environment and Spatial Planning
TOR	Terms of Reference
WWRO	Water and Waste Regulatory Office
PSP	Private Sector Participation
KLMC	Kosovo Landfill Management Company
POE	Publicly Owned Enterprise
SOE	Socially Owned Enterprise
UNMIK	United Nations Mission in Kosovo

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<sup>18</sup> The issue of any usable equipment previously provided by donors will need to be addressed in order that POEs do not enjoy an unfair advantage in bidding for work against the private sector.