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WWRO Code of Practice

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1 INTRODUCTION

WWRO is the economic regulator for the water and solid waste sector in Kosovo. As an independent economic regulator WWRO ensures non-discrimination and the provision of qualitative, reliable, safe and efficient water and solid waste services with respect for the environment and public health¹

This WWRO Code of Practice sets out the main principles governing the discharging of WWRO's statutory duties as the economic regulator of the water and (solid) waste sector in Kosovo. It is based on good Kosovar and International Practice.

It sets out the overall approach to be followed by WWRO and provides a framework of general principles which WWRO will follow in the discharge of its functions. This is important not only to WWRO but also to a) Water and Waste Service Providers in terms of *regulatory certainty*, b) to customers who rely on WWRO to protect their interests c) to other water sector stakeholders to avoid misunderstandings and to promote harmony in the sector and d) to wider stakeholders including Kosovo Government and International donors.

Whilst the development of a Code of Practice is not a specific requirement of the UNMIK Regulation 2004/49 primary legislation², or the Law No 03/L-086 which replaced this UNMIK Regulation as of June 13th 2008, it is nevertheless considered to be a relevant and useful document not only to ensure that WWRO staff are aware of the underlying Principles which govern their activities but to also provide a reference document for other water sector stakeholders in Kosovo on the Principles which underpin WWRO's key statutory activities.

This Code of Practice deliberately does not set out in prescriptive form a detailed set of procedures to be followed. In several areas (e.g. the development of Policy Documents on Tariff Setting) WWRO has already produced dedicated documents which are available on the WWRO website and in other areas e.g. development of a Strategy on Communications work is still ongoing³.

¹ See the UNMIK brochure on Kosovo's regulators: *"Promoting transparency and efficiency across key sectors"* January 2007

² UNMIK Regulation 2004/49, recently amended by equivalent Kosovo Law NO 03/L-086 as passed by the Assembly of Kosova on 13th June 2008.

³ See draft Communications Strategy developed by UNDP/CBEI Consultant in April 2008 included as Annex B

2 SUMMARY OF WWRO'S FUNCTIONS

2.1 Introduction

The first WWRO Annual Performance Report on the Water and Waste Service providers produced in July 2007 explained the functions of WWRO in some detail. Most of the following section is based on this earlier document with some updated sections as appropriate.

A list of WWRO's main functions is set out below:

- Setting tariffs which balance the needs of customers for affordable prices whilst protecting the financial integrity of the service providers
- Issuing licenses to the water and waste service providers
- Stimulating competition in the water and waste sectors through benchmarking
- Safeguarding customers' interests by ensuring that the regulated service providers do not abuse their monopolistic positions and ensuring that services are provided in accordance with established and appropriate standards of service
- Monitoring and reporting service provider performance
- Establishing and supporting customers' consultative committees
- Approving the terms and conditions for forgiveness and settlement of past debts

2.2 What WWRO Does Not Do

Since Economic Regulation is relatively new to Kosovo, this section of the Code of Practice sets out below what WWRO does **not do**:

Regulation – not management

In accordance with good regulation practice WWRO's regulatory approach is *output driven*. WWRO is primarily concerned with the levels of service and overall costs. WWRO does not, therefore, directly interfere with the day-to-day management of the regulated service providers, leaving this responsibility to their management teams and supervisory institutions.

Non-POE water services.

WWRO does not have any jurisdiction over private water supplies, bottled water providers or non-POE operators providing water supply services outside the POEs' defined areas of supply, e.g. rural water supply.

Private waste collection services

Currently, WWRO has no regulatory jurisdiction over the many informal private waste collection operators. WWRO is, however, taking an interest in this phenomenon with a view to regularising such bodies within a future wider framework that enjoys the

benefits of commercial competition yet still ensuring compliance with environmental standards and good practice.

Drinking water quality

WWRO is not responsible for setting drinking water quality standards or for monitoring drinking water quality. This is the responsibility of the NIPHK. However WWRO works closely with the NIPHK and they have recently signed a Memorandum of Agreement setting out each party's responsibilities with regard to maintaining drinking water quality supplied by the POEs.

Environmental regulation

WWRO is not responsible for the protection of the environment. This is the responsibility of the MESP and the KEPA. However WWRO approach is to ensure that its policies and procedures do not harm the environment or public health.

Target setting

Annual targets are currently established by the POEs' supervisory/management boards. In the near future WWRO will work closely with service providers and their supervisory/ management boards to set achievable but nonetheless challenging targets for the water and waste sector.

2.3 WWRO's Overall Approach to Economic Regulation

WWRO's overall approach to the discharge of its functions is set out below based on WWRO's first Annual Performance Report on the Water and Waste Service Providers, produced in July 2007:

WWRO's Vision

"Water and solid waste service providers delivering a consistent, good quality and efficient service to all customers throughout Kosovo."

WWRO's Mission⁴

Implement economic regulation of water and solid waste services in a transparent and equitable manner in accordance with good European practices in order to ensure that service providers deliver qualitative and affordable services for all customer groups in Kosovo with respect for the environment and public health.

How does WWRO achieve its Aims?

WWRO seeks to achieve its aims by:

- Setting price limits which:

⁴ Revision to the WWRO Mission as incorporated in the WWRO 2007 Report on the Performance of Water and Waste Companies dated July 2008 is reproduced above.

- Enable well managed Water and Solid Waste Service Providers to finance the delivery of services in line with relevant standards and requirements
- Recognise the current affordability constraints especially amongst the poorer communities in Kosovo
- Ensuring WWRO is aware of stakeholders' views and priorities by consulting with stakeholders through exchange of information, Memoranda of Understanding, organising open consultative workshops, publishing relevant information on its website and through the seven regional consultative committees.
- Working with the Quality Regulators (ie Ministry of Environment and Spatial Planning and Ministry of Health, Institute of Public Health to ensure responsibilities are clearly defined
- Ensuring customers' tariffs are fair and do not unduly discriminate or show preference to any class of customers
- Ensuring that minority and gender issues are addressed in full compliance with Kosovar legislation
- Handling disputes and complaints involving the Service Providers economically, effectively and fairly
- Publishing information openly and transparently thereby allowing all stakeholders to understand and participate in regulatory decisions taken by WWRO
- Assessing Service Providers by making appropriate annual comparisons between regulated companies.
- Helping develop revisions to policy (e.g. regarding possible de-regulation of the waste collection sector in line with European good practice)

2.4 Policy Development by WWRO

External policy issues

A fundamental principle of good regulation is that it is the role of Regulators to implement external policies and legal instruments as set by Government, and not to develop policy or regulations (except where specifically set out in law). WWRO adheres to this principle although recognises that it may be consulted from time to time in the development of policies and legal instruments.

WWRO internal policies

WWRO is in the process of developing internal policies on a number of issues including: tariffs, enforcement of compliance with regulations (and penalties for non-compliance), metering and Communications Strategy

3 FRAMEWORK OF PRINCIPLES

3.1 Statutory Duties

In accordance with Section 1 of the Law 03/L-086 “Amending UNMIK Regulation 2004/49 On the Activities of Water, Wastewater, And Waste Services providers”, the Scope and Application of the (Economic) Regulator applies to “all Publicly owned and Socially-Owned Service providers and Bulk Water Suppliers in Kosovo and governs service standards, the setting of tariffs, the Customer Charter, the issuance, amendment and revocation of Service licences, disconnections as well as settlement of past debts”.

WWRO is required to “exercise its independent judgement in carrying out its responsibilities under the present Regulation”. In accordance with Law No 03/L-086 as promulgated on 13th June 2008, “Law” shall replace “Regulation” and the Director of WWRO is now accountable to the Assembly of the Republic of Kosovo having been accountable under the previous UNMIK Regulation 2004/49 to the SRSG.

It should be noted that the UNMIK Regulation 2004/49 and replacement Law 03/L-086 omit any reference to consideration of environmental quality issues by WWRO this responsibility being the remit of the Environmental Regulator (MESP).

3.2 Regulatory Independence/ Accountability

Law No 03/L-086 clearly requires WWRO to exercise its independent judgement (see section 1). Following the promulgation of this Law WWRO is now directly accountable to the Kosovo Assembly. WWRO plans in the near future to publish an Annual Business Plan setting out its objectives with clear targets.

Decisions by WWRO can be referred by Service Providers to a Review Committee comprising a Chairman appointed by the Kosovo Assembly⁵, one member appointed by WWRO and one member appointed by the Service provider who has filed the request for the review.

3.3 The Need for Good Regulatory Practice in Kosovo

Several recent authoritative publications in Kosovo and elsewhere have emphasised the importance of ensuring an effective and financially Independent regulatory framework for overseeing state-owned companies (POEs) in Kosovo. These publications include:

- *Principles of Corporate Governance*, published by OECD in 2005;
- *Independent Agencies and Institutions in Kosovo Democracy*, OECD, November 2005

⁵ See Law No 03/L-086, Article 8

- *Corporate Governance in Kosovo* by RIINVEST, Printed in Pristina in 2006.
- *Promoting transparency and efficiency across key sector*: UNMIK brochure on Kosovo's Regulators: January 2007

Furthermore the European Partnership Priority Action Plan, (Priority No 46-Short term) includes as one of the priorities:

"Further strengthen the operational and financial independence of regulatory authorities with a view to enhancing transparency and competition in the respective sectors"

In essence all these documents confirm the importance of maintaining and funding Independent Institutions in Kosovo in order to maintain oversight and regulation which in turn strengthens the separation of powers underpinning the democratic system in Kosovo. At present all regulatory and oversight institutions face significant difficulties in their relations with the Kosovo Government and the Assembly which in many cases threaten the survival of the Institutions. Unless these issues are resolved satisfactorily and the Independent Institutions are allowed financial freedom within an acceptable accountability mechanism, the sustainability of these Independent Institutions will be compromised thereby weakening Kosovo's young democracy.

3.4 WWRO Approach to Regulatory Good practice

In accordance with good practice utility economic regulation is based on the following five principles: transparency, accountability, consistency, proportionality and targeting. These principles are considered below in relation to WWRO's functions:

3.4.1 Transparency

Consultation

All important decisions taken by WWRO are subject to a formal consultation exercise where all stakeholders are invited to contribute formally in writing and/or informally during workshops to the draft proposals/ determinations before a final decision is made.

Information

WWRO seek to ensure that all stakeholders have ready access to the information available to WWRO, in the language preferred by them and in accordance with the Law on Use of Languages, to help them in presenting their views to WWRO.

Information includes: Annual Reports on the performance of the service providers, summary of tariff determinations, audit reports and shortly, annual WWRO Business Plans.

Reasoned Decisions

WWRO provide reasoned explanations for all decisions including decisions affecting individual or groups of service providers and customers.

3.4.2 Accountability

In accordance with Article 2 of the Law No 03/L-086, WWRO is accountable to the Kosovo Assembly.

3.4.3 Consistency

The approach adopted by WWRO in accordance with good regulatory practice is to make decisions on a “no surprises” basis.

WWRO strives to ensure that responses to Service Providers are timely, consistent and not retrospective.

3.4.4 Proportionality

WWRO is proportionate in discharging its functions and will devote an appropriate level of effort to its functions and to any penalties imposed on Service Providers for breaching the Regulations.

3.4.5 Targeting

WWRO targets its activities in accordance with the priorities to be established in Annual Business Plans. It will target its activities where the biggest benefits will result taking account of WWRO staffing constraints and other relevant factors.

3.5 Cooperation with other Economic Regulators

WWRO is committed to sharing experience and learning from other Water and Waste Economic regulators. WWRO has developed good relationships with other regional water regulators in Albania, Macedonia and Montenegro as well as undertaking study tours to:

- The water and waste regulator in Portugal (IRAR- Instituto Regulador da Água e dos Resíduos) IRAR in Portugal in November 2007 and;
- The Water Industry Commission in Scotland (WICS) and Waterwatch Scotland in May 2008.

Both these study tours were funded through the EAR Institutional Support Project to WWRO.

Representatives from the newly established Albanian Water Regulatory Entity also visited WWRO in June 2008 re share experience.

3.6 Applying Good Governance to Decision Making

WWRO intends to establish in due course a Management Board/ Commission in line with other Public Utility Regulators in Kosovo and in line with good International practice. However the proposed revised draft WWRO Law which has recently been prepared by WWRO and which includes the establishment of a Board (as well as de-regulation of the Municipal waste collection sector) has regrettably recently been

postponed for expediency. The amendment of the UNMIK Regulation as a new Law by the Assembly on June 13th 2008 mainly covered changes related to the transfer of accountability and responsibilities for the appointment of the WWRO Director and Deputy Director from the SRSG to the Kosovo Assembly.

WWRO intend to publish a forward Annual Business Plan setting out its planned future work priorities shortly.

3.7 Basing Decisions on a Factual Basis

WWRO bases its decisions on the quality of information provided by the Service providers and others. In the past the accuracy (as well as the timing) of the data has been imperfect. WWRO has from April 2008 begun conducting annual audits of the information provided by the Service Providers. This exercise has identified several areas of weakness which Service Providers will need address in order to improve the accuracy and delivery of regulatory information.

3.8 Safeguarding Customer Interests

WWRO is committed to safeguarding water and waste customers' interests throughout Kosovo and ensuring that all customers, regardless of their ethnic origin, gender, political affiliation, disability, etc., receive equal access to services, in line with the Kosovo Anti-Discrimination Law⁶. The WWRO Rule for the Customer Charter outlines the rights of the customer, obligations of water and waste service providers, and also includes details regarding the minimum content of customer invoices. In addition, WWRO is developing a draft Communications Strategy which includes details of a proposed procedure for handling customer complaints.

WWRO believes in the importance of good customer relations and is committed to supporting and strengthening the role of Customer Consultative Committees. In order to be most effective, WWRO recognises that Customer Consultative Committees should be independent, reflective of the communities they represent, and accessible to all customers.

WWRO seeks to achieve these aims by:

- Raising the awareness of the role of Customer Consultative Committees to customers independently of water and waste POEs through:
 - the distribution of publicity material; and
 - advertising the date and location of Committee meetings to the public with adverts in the local media;
- Increasing the capacity and profile of Customer Consultative Committees through the provision of secretariat support and offering training for members;

⁶ The Anti-Discrimination Law (2004/03), Article 2(a): The principle of equal treatment shall mean that there shall be no direct or indirect discrimination against any person or persons, based on sex, gender, age, marital status, language, mental or physical disability, sexual orientation, political affiliation or conviction, ethnic origin, nationality, religion or belief, race, social origin, property, birth or any other status.

- Encouraging membership of Customer Consultative Committees that is in accordance with the Kosovo Law on Gender Equality and Law on Communities, and is representative of the different communities resident in that locality⁷; and
- Encouraging Committees to operate in the language preferred by the customer, in accordance with the Law on Use of Languages⁸.

WWRO aims to ensure that service standards are maintained at an acceptable level for all customers; including the important requirement that water is distributed on an equitable and non-discriminatory basis where there is a resource constraint.

3.9 WWRO Approach to Minority and Gender Issues

WWRO believes that the most appropriate way to address minority and gender issues effectively is not to dislocate them from general policies and practice, but to ensure that specific solutions pertinent to women (or men) and non-majority communities are integrated within an appropriate wider policy or context. WWRO deliberately does not have a separate policy on minority or gender issues, but seeks to ensure that these underlying issues are properly integrated within all key documents and are implemented within the wider remit of WWRO's responsibilities. WWRO proposes in due course to amend the Law on the Activities of Water, Wastewater and Waste Services Providers (No. 03/L-086) and Rules on the Customer Charter and Customer Consultative Committees in line with the Anti-Discrimination Law and the Law on Gender Equality.

WWRO recognises that ensuring all customers enjoy equal access to services *does not* mean treating all customers in exactly the same way. Specific needs, such as language requirements, should be recognised and accommodated. In practice this may mean offering additional support to certain customers that will enable them to access services equally.

WWRO is implementing the Law on Use of Languages in the following ways:

- Communicating in the two official languages of Kosovo (Albanian and Serbian) and recognise the equality status of other community languages, such as Turkish, in certain municipalities;
- Ensuring that all documents issued by WWRO, e.g. government legislation, policy documents and general brochures and content of the WWRO website are published and regularly updated in both official languages;
- Encouraging the use of all official languages by water and waste POEs⁹;

⁷ The Law on Gender Equality (2004/02) states that: "*Unequal representation*. ...exists when the participation of a certain gender in a particular social field or in a segment of such field is lower than 40%" (Article 2.12).

⁸ Law on Use of Languages (2004/02-L37)

⁹ For further details please refer to the WWRO Rule on the Customer Charter, which outlines the rights of the customer, obligations of water and waste service providers, and minimum content of customer invoice.

- Monitor the way water and waste POEs communicate with their customers, including those whose language is not Albanian, by expanding current Key Performance Indicators on customer relations; and
- Supporting Customer Consultative Committees to conduct their business in the language(s) preferred by the customer.

WWRO recognise that many Serbs and other communities, such as Roma, Egyptians and Ashkalia, live in rural villages that are not connected to the water system or networks. In order to better service these areas and communities, WWRO encourages POEs to expand service provision to rural regions, when possible.

WWRO is committed to the regulation of all water and waste POEs situated throughout Kosovo and will continue to promote better co-operation and understanding with those Service Providers not currently included in the regulatory framework including the Municipalities in North Mitrovica.

WWRO recognise that all customers are entitled to equal access to services. In order to ensure that the needs of all customers, regardless of their gender, are recognised and safeguarded, WWRO will ensure that membership of Customer Consultative Committees is in accordance with the Kosovo Law on Gender Equality¹⁰. In due course WWRO intends to establish a Commission/Board fully in line with regulatory good practice. Membership of this Board will also be in line with the Law on Gender Equality.

3.10 Coordination with other Regulatory Institutions in Kosovo/ Internationally

WWRO is one of a number of bodies with regulatory responsibilities in the water and waste sectors.

WWRO have made considerable efforts to cooperate productively with all stakeholders in a spirit of regulatory independence-especially with Kosovo Trust Agency (KTA¹¹) Water and Waste Department, the Ministry of Environment and Spatial planning (MESP¹²) and the National Institute of Public Health (NIPH¹³). To date only the NIPH have fully cooperated with WWRO.

3.11 Achieving Value for Money

In accordance with Section 8 of Law No 03/L-086, WWRO shall be funded through an annual license fee not exceeding 1.5% of the reported gross turnover in each Service providers' profit and loss account. The WWRO is required to issue Administrative

¹⁰ WWRO Rule for Customer Consultative Committee, Section 8.2 (Appointment of Customer Consultative Committee): "The Regulator shall select members to assure each Customer Category is represented and membership reflects the local population, in accordance with the Law on Gender Equality and Law on Communities."

¹¹ To be terminated on 30th June 2008.

¹² The head of the MESP water department accompanied WWRO staff on the recent study tour to Scotland in May 2008.

¹³ WWRO established a formal Memorandum of Understanding with NIPH in March 2007 setting out areas of responsibility and cooperation.

Instructions in consultation with MFE specifying the amount of fees payable by each Service provider.

WWRO strives to manage its resources prudently working hard to improve the level of service and efficiency of the Service providers.

The information collected from Service providers is considered by WWRO to be the minimum level of information necessary to enable WWRO to discharge its functions. Most of the data requested should be of benefit to the Service Providers

The RIINVEST publication *Corporate Governance in Kosovo* (2006) showed the following levels of satisfaction of customers with a range of public services including water and sanitation, power supply and post/ telecommunications.

Level of satisfaction	RTK	PTK	KEK	Water Supply	sanitation	Local roads infrastructure
Very dissatisfied	19.8	13.9	44.5	11.8	20.2	26.4
Dissatisfied	21.6	30.8	32.7	20.4	37.0	40.6
Satisfied	49.3	50.1	19.4	55.1	47.3	29.6
Very satisfied	9.3	5.2	3.4	12.7	3.7	2.4

3.12 WWRO Policy on Penalties

WWRO have statutory powers in accordance with Section 32 of UNMIK Regulation 2004/49 to fine Service Providers guilty of a specified violation with penalties ranging from up to 50,000 euros for serious offences (e.g. supplying false information to WWRO or breaching service License conditions) to 5,000 euros (e.g. for charging tariffs which have not been set or approved by WWRO).

However WWRO have sought to influence Service Providers who breach the requirements set out in the Regulations by persuasion and public disclosure (e.g. through the publication of poor performance in the Annual Performance Reports on Service providers). WWRO will only use financial penalties as a last resort. Penalties on Publicly Owned Companies (unlike privatised companies) have little direct impact and only increase the level of financial underperformance.

To date no penalties have been imposed on Service Providers for breaches of the Regulations.

3.13 WWRO Policy on Regulation of the Waste Collection Sector

WWRO considers the long term economic regulation of the waste collection sector in Kosovo by an independent national regulator hard to justify in terms of economic efficiency, or in terms of good International/ European practice. Technically the sector is less sophisticated as compared with the water sector, it is not a natural monopoly, and is more suited to local municipality management. Consequently, efficient prices for waste services can be better delivered through market competition rather than

through regulation. WWRO has therefore proposed deregulation of this sector in the near future in a recent Private Sector participation (PSP) policy document¹⁴.

Until a policy for the waste collection sector has been agreed and any changes have been implemented WWRO will continue to fulfil its remit for economic regulation fully in accordance with the relevant legislation.

¹⁴ Draft policy document on PSP in the waste collection sector, March 2007