
LEGAL OPINION ON ISSUES RELATED TO THE FINANCING OF SEETO

Legal background

The legal basis for the operation of SEETO, including the financing of the SEETO Permanent Secretariat is the Article 10 of the Memorandum of Understanding for development of the Core Regional Transport Network (hereinafter MoU), as well as the Agreement on the Establishment and Operation of SEETO (hereinafter SEETO Agreement) , signed in Skopje on 10th November 2005, by the Republic of Albania, Bosnia and Herzegovina, the Republic of Croatia, Serbia, Montenegro, the former Yugoslav Republic of Macedonia and the United Nations Interim Administration Mission in Kosovo acting for the Provisional Institutions of Self Government, together with the European Commission, whereas in Chapter XII- Financing of SEETO, Article 16, it is stated:

“The contribution of each partner to the SEETO operational budget will be provided by each participant from the government treasuries.

The amount of the contribution of each participant will be in proportion to the percentage of the financial amount for all projects of the participant to all of the projects of all of the participants that are included in the annual action plan. Contributions to SEETO in kind shall not be considered as being a part of the mandated budget contribution of the participants.”

The operational budget of the SEETO has been calculated according to the aforementioned Article in the past 5 budget years from 2006-2010, since the start of operation of the SEETO Permanent Secretariat.

However, on the 25th meeting held in Vlore on 8.07.2010, the Steering Committee has brought a Decision to initiate a change of the provision in order the national contributions of one of the Regional Participants to the SEETO budget to be decoupled from the total value of the projects on the MAP Priority project list submitted by the same Participant, and that the contribution should reflect the real and accurate Core Network priorities of the Participants, as well as to reflect more properly the economic development of each Participant.

The modality of such change is brought into question with relation to the existent provision in the Article 26 of the SEETO Agreement, Chapter XII Financing of SEETO, which stipulates:

“The Participants accept that changes to the SEETO Agreement or its various components or termination may be made by consensus of the Steering Committee (except Chapter XII Financing of SEETO).

Changes to Chapter XII Financing of SEETO, must pass the same procedure of this Agreement.”

In this view, the Steering Committee has asked the SEETO Secretariat to prepare a legal opinion on the issues related to the SEETO financing. Upon the analysis, the SEETO Secretariat issues the following

OPINION:

- 1.1 Having regard to the principal aim of the SEETO Agreement which is to create a regional entity to act as a Permanent Secretariat, which overall objective is to facilitate jointly or severally the Participants in the implementation of the Memorandum of Understanding on the Development of the South East Europe Core Regional Transport Network (hereinafter MoU), as stipulated in the Article 3, paragraph 1 of the SEETO Agreement, by using the method of legal interpretation of the provisions put into the chronological and political context, the spirit of the provision of the Article 26 is to be understood as an intention of the Signatories to enable sustainability of SEETO by securing finances for functional operations of SEETO, thereby prescribing more rigid provision for amending, that is no longer attainable, given the historical facts for financial continuation of SEETO without any abruption since the beginning of its operation in 2005
- 1.2 SEETO Secretariat deems justified the undoubted determination of the Steering Committee to modify the calculation method of the Participants contribution to the SEETO budget in order to achieve greater transparency in the creation of the Priority project list in the Multi-Annual plans as one of the principal and prevailing aims of the MoU, and acknowledges the fact that over time span of implementation of the MoU, possible alterations, amendments and modifications which shall be done in undisputed agreement among the Participants and in accordance with the spirit of the MoU and the general and specific aims of the aforesaid Memorandum stipulated in the Article 1 and 10 as well as with the SEETO's mission and objectives prescribed in Article 1 of the SEETO Agreement, are duly reasonable, and therefore they can not be impeded, obstructed or undermined by any formal requirement or procedure prescribed by the aforesaid Agreement
- 1.3 In *stricto sensu*, the provision described in Article 26, paragraph 2, reads that the changes of the Article 16 should undergo a procedure of signing by the respective Ministers of the originating Signatory parties; nevertheless, prudent and logical interpretation off the same provision reads that the change of method of calculation is without any prejudice to the actual obligation for the Participants to contribute to the SEETO budget, provided that it is acquired by consensus within the Steering Committee, requested for any other component of the Agreement, thereby excluding the requirement for formal approval by the Ministers; in doing so, a sole confirmation of the respective Ministers articulated in clearly expressed way,, would suffice

- 1.4 Taking into account the established manner of Ministerial adoption of the Multi-Annual Plan by Conclusions following the Annual Meetings of Ministers on the development of the Core Regional Transport Network, as well as the Conclusions with subsequent Annex applied for adoption of the modified Core Network on the fifth Annual Meeting of Ministers held in Zagreb on December 3, 2009, with reference to the point 1.3 of this Opinion, the same form of approval is regarded suitable for Ministerial consent to the change of the formula for calculation of the Regional Participants' contributions to the SEETO budget, to be expressed on the 6th Annual Meeting of Ministers, to be held in Sarajevo on December 1, 2010
- 1.5 With view of the comparative analysis of documents, including legally-binding Agreements, such is the draft Multilateral Agreement on establishing the Transport Community Treaty, for which the technical negotiations have been concluded and thus allows for applicable comparisons and references, rather simple procedure is envisaged with respect to the changes of budget contributions for regionally established organisations or national participation fees; Article 34 of the aforesaid draft Treaty reads as follows: "Each Party shall contribute to the budget of the Transport Community as set out in Annex VI. The level of contributions may be reviewed every three years, on request of any Party, by a decision of the Regional Steering Committee".

Having in view the abovementioned, the SEETO Secretariat issues the following

CONCLUSIONS:

- 2.1 Article 26, paragraph 2 of the Agreement on the Establishment and Operation of SEETO, signed in Skopje on 10th November 2005 is deemed obsolete in relation to the Article 16, paragraph 2 and therefore, the overriding aim of the Signatory parties to approve the amended level of contribution to the SEETO Budget according to the proposal made by the consensus of the Steering Committee can be done in a commonly accepted manner by the Signatories, described in 2.2 of the conclusions of this Legal Opinion
- 2.2 Signatory parties are made fully aware of the changes of any item of the aforesaid Agreement by accepting the **Conclusions** released upon the Annual Meetings of Ministers on the development of the Core Regional Transport Network, whereby the Conclusions express the unequivocal will of the Ministers to adopt the full content of the Conclusions, including the Annexes and therefore, the changes accepted by Conclusions are not in contravention to the Article 26, paragraph 2 of the aforesaid Agreement
- 2.3 The Steering Committee is responsible to carry out the Conclusions of the Annual Meetings on Ministers in diligent manner, and in doing so, it is responsible to ensure the new agreed contributions to the SEETO budget are made available as of 2011