



PROVISIONAL INSTITUTIONS OF SELF GOVERNMENT

KUVENDI I KOSOVËS
СКУПШТИНА КОСОВА
ASSEMBLY OF KOSOVO

LAW No.2004 / 5

**ON TRADE OF PETROLEUM
AND PETROLEUM PRODUCTS IN KOSOVO**

Assembly of Kosovo

Pursuant to UNMIK Regulation, Nr. 2001/9 of May 15, 2001 of the Constitutional Framework for Provisional Self Government of Kosovo, Chapter 5.1 (d), 5.7, 9.1.26 (a)

In order to provide the legislative support for Trade of Petroleum and other petroleum derivatives

Hereby adopts the following:

**LAW ON TRADE OF PETROLEUM
AND PETROLEUM PRODUCTS IN KOSOVO**

PURPOSE, APPLICATION AND SCOPE

Article 1

1.1. The purpose of the present law is to encourage -free and fair competition in the Petroleum Sector in Kosovo; to ensure payment of full tax liabilities and fiscal duties on Petroleum and Petroleum Products; to eliminate unlawful conduct in the Petroleum Sector; and to help to ensure the quality, safety, and security of supply of Petroleum and Petroleum Products.

1.2. The present law shall apply to all Persons engaged in the wholesale, retail, Transport, Storage or sale of Petroleum and/or Petroleum Products in Kosovo.

DEFINITIONS OF TERMS

Article 2

2.1. Whenever used in the present law, each of the following terms shall have the indicated meaning unless the context within which such term appears clearly intends another meaning:

Strategic reserves of petroleum products - Quantity of petroleum products created, placed and saved into determined locations, which shall be used and utilized for supply for needs in particular circumstances foreseen to the Law.

Emergent reserves of petroleum products - Quantity of petroleum products dedicated for use in cases of natural and social disasters, technical- technological catastrophes.

Technological disasters - mean disorder caused by enormous defects in system parameters – electroenergetical system, informative system, transport, as well as the massive consequence due to petroleum products with no quality.

Council - means a body, to be established within the Ministry of Trade and Industry, responsible for regulating and monitoring the Petroleum Sector in Kosovo.

Professional Service - means the MTI Department that performs technical and administrative matters for the Council.

Customs Clearance - means the official written authorization issued by the Customs Service allowing the import or export of Petroleum and/or Petroleum Products.

Customs Service - means -the agency duly vested with the authority and responsibility for Customs Clearance, including the authority to assess and collect from importers and exporters customs duties on Petroleum and Petroleum Products.

Quality of fuel - means the provisions determined by the authorized body pertaining to the quality and in accordance with EU standards.

Deceptive Trade Practice - means the concealment, suppression or omission of any material fact with the intent to defraud consumers in connection with the purchase or sale of Petroleum or Petroleum Products.

License - means the official written authorization issued by the Council under the present law that establishes the terms and conditions upon which Persons may participate in specified, authorized activities of the Petroleum Sector in Kosovo.

Licensee - means a natural Person or legal Person who has received a license for wholesale, retail sale, transport, storage and other operations pertaining to the trade of Petroleum and Petroleum Products.

Natural Person - means a natural Person, and/or Person who has business registered as a Personal Business Enterprise.

Legal Person - means a Joint Stock Company, Limited Liability Company, Publicly Owned Enterprise, Organizations and other registered Associations.

Minister - means the Minister of the Ministry of Trade and Industry.

Ministry - means the Ministry of Trade and Industry established pursuant to UNMIK Regulation 2001/19.

Petroleum - means crude oil as natural hydrocarbon- and other unrefined hydrocarbons.

Petroleum Product - means gasoline, diesel fuel, auto diesel (gas oil), industrial diesel, aviation fuel, kerosene, lubricating oil, motor oil, liquefied petroleum gas, naphtha, anti-freeze, brake fluid, heavy fuel oil, and such other products identified by the Council by Administrative Direction, except asphalt.

Petroleum Sector - means the Petroleum and Petroleum Product -business in Kosovo.

Record - means the Council's recording in a database of the names, addresses, tax identification numbers and, if applicable, Certificate of Registration numbers of License applicants that are recorded by the Council.

Wholesaler - means any Person who buys the Petroleum Product with aim of selling or offering to sell any Petroleum Products for industrial, commercial, or domestic use to any Person except the ultimate consumer of such Petroleum Products.

Retail Dealer -means any Person selling or offering to sell any Petroleum or Petroleum Products to Persons who are the ultimate consumers.

Transport means to move by pipeline, railroad train or motor vehicle, except as fuel in the fuel tank of an operating railroad train or motor vehicle and used solely for the propulsion of that railroad train or motor vehicle.

Petroleum Depot - means the space, tank according to the determined conditions for storage of Petroleum and Petroleum Products for own production or consumption usage with purpose of selling or leasing.

UNMIK Regulation 2002/5 - means UNMIK Regulation No. 2002/5 of 4 March 2002, “Amending UNMIK Regulation No. 2001/19 on the Executive Branch of the Provisional Institutions of Self-Government in Kosovo,” Section 1.1 (j) and Annex XI.

2.2. As used in the present law, the singular includes the plural, and the plural includes the singular. References to “Article” are references to Articles of the present law unless otherwise indicated.

CREATION OF THE COUNCIL AND ITS POWERS

Major Provisions

Article 3

3.1. The Council is constituted from five (5) members, including the chairperson, three (3) members from the Ministry of Trade and Industry, one (1) from the Ministry of Finance and Economy, and one (1) from the Ministry of Energy and Mines. The members of the Council shall be proposed by the relevant Ministries and be appointed by the Government. A gender and ethnical harmony shall be taken into consideration and ensured during the appointment process.

3.2. The Council members will not receive regular payment for their work, but shall be remunerated with an allowance rate at level in Kosovo, for participation in the Council meetings.

3.3. If a member of the Council has family or personal relation to an applicant applying for a license or license renewal, along decision making process on suspending or revoking the license of such an applicant, or in any other circumstance that may impact the impartiality of a member, the member shall declares the conflict of interest of and shall abstain from the review and voting process. In case to a conflict of interest the relevant Member of Council has not been declared to be party of interest as it was inquired herein the Law and has taken part to the decision making process then the Decision issued of Council deem to be invalid

3.4. The mandate of the initial members of the Council shall be:

- a). 4 years for the Chairman;
- b). 3 years for two members;
- c). 3 years for two members.

3.5. The mandate of the each subsequent member of the Council shall be four years.

3.6. Each member of the Council, comprising the initial members, may be reappointed for an additional four-year mandate.

3.7. Each member of the Council shall have a university degree and knowledge in at least one of the following areas: finance, law, urban planning, technical profiles, and European standards relevant to said scope.

3.8. The members of the Council shall not:

- a). be government or political official;
- b). perform work for an enterprise which carry out business activity in the Petrol sector;
- c). perform any other activity that may give rise to a conflict of interest.

3.9. A member may be dismissed before his/her mandate expire date only in cases when he/she :

- a). gives his or her resignation;
- b). seriously breaches his professional duties;
- c). is convicted of a criminal offense under herein or another law;
- d). is mentally or physically incapable of performing his duties for a period of three months or longer;
- e). acts in contrary to Article 3.3 and the conditions as set out to Article 3.11 of herein Law

3.10. The Council is obligated to:

- a) Cooperating with the respective Department of MTI keep records on data regarding Persons who execute business activity to the Petroleum Sector as well as records on persons who submits request to the Council on issuing license;
- b) issue, renew, suspend, and revoke Licenses complying the provisions of herein Law;
- c) requires Licensees to maintain information relative to its operations and provide reports to the Council within time lines determined by the Council;
- d) encourages competition and deter predatory behavior by and among Licensees;
- e) investigates any suspected or possible violations of the present law or any implementing administrative rule and/or instructions adopted hereunder; and,

3.11. In accomplishment of its responsibilities the Council shall conduct all activities and operations in a transparent and non-discriminatory manner, with Council meetings open to the public. All operations by the Council shall:

- (a) be clearly authorized by, and consistent with the concerned provisions of the present law;
- (b) be clearly related to, and necessary for the achievement of the goal intended;
- (c) be implemented in such a manner that creates the least possible interference with the operation of the Petroleum Sector;
- (d) not be contrary to any international agreement that is binding upon Kosovo;
- (e) be in compliance with International and European standards.

LICENSING

Article 4

4.1. No Person may engage in the Transport, Storage, or sale of Petroleum and/or Petroleum Products, within the wholesale or retail capacity, for commercial purposes without a currently valid License, issued by the Council.

4.2. The Council is authorized to Record data concerning License applicants intending to participate in the Petroleum Sector in Kosovo and issue the following licenses:

- (a) In cooperation with Custom Authority, the license for import of Petroleum Products,
- (b) General Petroleum License, which authorizes the holder to Transport, Store and sell Petroleum and Petroleum Products,
- (c) Petroleum Transport License, which authorizes the holder to Transport Petroleum and Petroleum Products,
- (d) Petroleum Storage License, which authorizes the holder to Store Petroleum and Petroleum Products,
- (e) Petroleum Sales License, which authorizes the holder to sell or offer to sell Petroleum and Petroleum Products; and
- (f) Petroleum Service License, which authorizes the holder to Transport, Store and sell or offer to sell lubricating oil, motor oil, anti-freeze and brake fluid.

4.3. There shall be no limitation on the number of License applicants that may be recorded or the number of Licenses that may be issued by the Council.

4.4. Ministry of Trade and Industry shall issue a sub-normative act specifying the requirements for reviewing and evaluating licenses, thirty (30) days after the promulgation of herein Law.

4.5. The term of the License shall be two years from the date of issuance, -unless it is suspended or revoked prior to the expiration of the term in accordance with the provisions of the present law.

4.6. Persons registered with the Business Registration of Kosovo with an purpose to operate in the Petroleum sector ore vehicle servicing, with gross annual sales not exceeding fifty thousand Euros (50,000 €) within a year, may Transport, Store and sell or offer to sell lubricating oil, motor oil, anti-freeze and brake fluid without a License.

4.7. Licenses well be singe by Minister.

4.8. Licenses may not be transferred to the third person.

APPLICATION PROCEDURES AND APPROVAL STANDARDS

Article 5

5.1. The Minister shall issue Ministerial Direction to prescribe precise, written, non-discriminatory procedures for the application, Recordation, processing and issuance of Licenses, and any renewals thereof;

5.2. List of tariffs for issuance and renewal of the following Licenses:

- a) General import 5.000 €,
- b) Import of LPG (ethane, ethylene, butane, propane or a composition of all or any of the these) 2.500 €,
- c) Import of heavy fuel oil 2.000 €,
- d) Transport of petroleum products 2.000 €,
- e) Storage of petroleum products 2.000 €,
- f) Sale of other petroleum products composed of gas and petroleum 2.000 €,
- g) Sale of LPG - (ethane, ethylene, butane, propane or a composition of all or any of the these) 1.000 €,
- h) Wholesale of petroleum products 3.000 €,
- i) Retail sale of petroleum products 2.000 €,
- j) Services license 300 €,

5.3. The request for Licensing shall be made in writing on a form prescribed by the Council. The Council shall confirm the time and date of receipt of each application, or any renewals thereof.

5.4. Through respective Department of MTI, the Council shall Record data concerning each -License applicant submitting an application, in accordance with article 4.2 in the present law.

5.5. The Council shall make -a decision to approve or disapprove - a License application or request for renewal, in writing, not later than thirty (30) days after receipt of the application.

5.6. The Council shall approve an application for a License or renewal thereof, that, attached to the application, includes the following:

- a) a certified copy of its Certificate of Business Registration;
- b) a certified copy of its Taxpayer Certificate;
- c) a statement, certified under testimony , that it: has fulfilled it obligation to pay income taxes;
- d) is not in bankruptcy or receivership;
- e) has not been convicted of a -criminal offense and sentenced to serve a prison term of six (6) months or more;
- f) has not had a License suspended on two or more occasions or revoked by the Council;
- g) has paid the necessary application fee; and
- h) has, concurrent with the issuance of the License, an “all risk” third party liability insurance, valid through the term of the License, in the minimum amount of fifty thousand Euros (50.000 €) per incident and an aggregate of one million Euros (1.000.000 €), this License shall be issued to all companies which have a minimum of capacity to store 1000 cubic of each product.

5.7. If, thirty (30) days after submission of an application, the Council has not approved a License for an applicant submitting an application compliant with Article 5.6 (a) through (d), above, the applicant is presumptively Licensed and shall be entitled to receive, upon application to the Council together with proof of its possession of the insurance required by Article 5.6 (d), the License for which it applied. The Council shall issue such License without delay.

5.8. As part of the Licensing process, the Council is authorized to request such information from the applicant that is reasonably required to verify the information filed, and the applicant's compliance with the provisions of the present law.

EXSITING LICENCES

Article 6

6.1. Licenses issued prior to the date of entry into force of the present law shall remain valid for a period of four (4) months after the promulgation of this law, provided that the Licensee is in compliance with all terms and conditions of License.

6.2. All Licensed Persons, not later than sixty (60) days, have to apply for renewal of the License in accordance with the provisions of the present law.

RENEWAL OF LICENCES

Article 7

7.1. Sixty (60) days prior to the expiration of the term of a License, the Council shall send the Licensee written notification of such expiration. Any Licensee that intends to continue providing a licensed service beyond the term of the original License may renew its Licensee by:

- a) paying to the particular account renewal fee of fifty euro (50 €) and
- b) fulfilling the obligations from article 5.6 by d.

7.2. To be eligible for renewal of a License, the Licensee must be in substantial compliance with Council's licensing requirement

SUSPENSION AND REVOCATION OF LICENCES

Article 8

8.1. In case of suspension or termination of a business by Business Registry of Kosovo, the License issued by the Council is terminated automatically, (an inexistent or illegal business).

8.2. The Council is authorized to suspend or revoke a License upon a factual determination, by a preponderance of the evidence voted by a majority of Council Members, that:

- a) The Licensee has violated provision of the present law, the rules established hereunder, or the material terms and conditions of the License;
- b) The Licensee is more than ninety (90) days in arrears in fulfilling its tax obligations; or
- c) The Licensee has engaged in Deceptive Trade Practices.
- d) The Licensee has not contained the obligation for issuing the emergent reserves.

8.3. The Council's decision to suspend or revoke a License shall be based solely on the evidence presented at the hearing.

RECONSIDERATION AND APPEAL OF COUNCIL DECISION

Article 9

9.1 Any person aggrieved by a Council decision, can table the complain to the Ministry within 15 days time line from the day of taking decision. The complain should have an argumentation.

9.2. Ministry shall take the decision of the second level, within 30 days, and submit it to the complainer.

9.3. In spite of the decision to the second level can be open the administrative contest.

HARMONIZATION WITH THE EUROPEAN UNION

Article 10

10.1. To offset or diminish the negative consequences of an insufficient supply of Petroleum and/or Petroleum Products in accordance with EU standards, the Council shall recommend to the Minister alternative means to establish a strategic reserve of fuel.

10.2. Quality of Petrol and Diesel Fuels:

a). The Council shall consider and recommend to the Minister standards for petrol and diesel fuel quality in order to reduce vehicle emissions harmful to the environment, and to ensure that Kosovo does not become an attractive market for low specification fuels, all types of diesel or gasoline products can have into the contain maximally 0.2 sulfur, lead free petrol contained maximally of 0.15% lead.

b). The Council shall consider and recommend to the Minister the standards for the quality of fuel that are, in a timeframe consistent with the economic development of Kosovo.

EMERGENCY AND OPERATIONAL RESERVES

Article 11

11.1. The Ministry supervises, and is responsible for ensuring safe, regular and quality of supply of Petroleum and Petroleum Products.

11.2. Strategic reserves of Petroleum and Petroleum Products are determined as intervention stocks in case of basic disasters, epidemics or technological disasters.

11.3. Licensees holding a General Petroleum License or a Petroleum Storage License shall retain and earmark five percent (5%) of their Storage capacity as a strategic reserve until the creation of material reserves of Kosovo.

11.4. The relationship between the Licensee and Ministry, for the purpose of strategic reserves is regulated through a contractual agreement, and is entered into on the same day a License is granted, and has the same term as the License.

11.5. The Government of Kosova can recommend the alternative means to establish a strategic reserve of Petroleum.

11.6. The Minister shall determine the terms and conditions for the use of the strategic reserves and its regional allocation.

11.7. Petroleum suppliers, supplying electric power stations, city heating and bakeries are responsible to secure operational reserves, an average of fifteen (15) day consumption of the previous year, provided that in the previous year have consumed at least twenty five (25) tons of Petroleum.

DECEPTIVE TRADE PRACTICES

Article 12

12.1. Licensees shall not engage in any activity involving the Transport, Storage, advertisement, offer for sale, or sale of Petroleum or Petroleum Products in Kosovo, in such a manner that they may deceive, tend to deceive or have the effect of deceiving the average purchaser or user, with respect to:

- a) the identity of the Petroleum or Petroleum Product producer,
- b) the Petroleum and Petroleum Product's brand name,
- c) the name or identity of the -Licensee;
- d) the price of Petroleum and Petroleum Product; and
- e) Petroleum Product's composition, grade, quantity.

12.2. Licensees shall not keep, offer for sale or sell any Petroleum or Petroleum Product from any container, tank, pump or other distributing device other than those manufactured or distributed by the manufacturer or distributor indicated by the name, trademark, symbol, sign or other distinguishing mark or device appearing upon such tank, container, pump or other distributing device in which such products are sold, offered for sale or distributed.

12.3. Licensees shall not - use inaccurate measuring instruments.

12.4. Licensees shall not engage- in a practice requiring a License without first obtaining appropriate licensure from the Council.

12.5. Licensees that fail to comply with the provisions of this Article shall be deemed to have committed a Deceptive Trade Practice.

COURT INTERVENTION

Article 13

13.1. In addition to any other penalties and enforcement provisions in this Section, the Council may, subject to the approval of the Minister, apply to a court of competent jurisdiction to issue a cease and desist order on a activity if a Person is or has been violating the present law or any rules adopted hereunder.

13.2. In addition to any other penalties and enforcement provisions in this Article, the Council may, subject to the request of the Minister, apply to a court of competent jurisdiction to immediately stop the sale of and prevent further sales from a petroleum dispensing pump or other dispensing device from which Petroleum or Petroleum Products are offered for sale in violation of the present law.

13.3. In addition to any other penalties and enforcement provisions in this Article, the Council may, subject to the approval of the Minister, apply to a court of competent jurisdiction to enjoin a Person from engaging in a Deceptive Trade Practice.

IMPLEMENTATION

Article 14

14.1. The Ministry shall issue Ministerial Direction and guidelines for the implementation of the present law.

14.2. The Ministry shall supervise the administrative enforcement of the present law.

14.3. The authorized inspectorates carry out inspections and other bodies authorized such by the present law and other applicable laws.

14.4. The Council shall have jurisdiction to enforce any provision of this law that is deemed an administrative violation. The Council may contact Kosovo Police Service and other law enforcement agencies for assistance in enforcement regarding administrative violations and the extent of the involvement of law enforcement will prevent a breach or maintain the peace or take appropriate action in the event there is a breach of the peace.

14.5. Kosovo Police Service and other law enforcement agencies will have jurisdiction to enforce any provision of this law that is deemed to be a criminal violation.

14.6. The Council shall, upon request, provide any relevant information in its possession to the Kosovo Organized Crime Bureau, Central Criminal Investigation Unit, Criminal Intelligence Unit, Customs Service and/or any other law enforcement criminal investigation unit, without the necessity of a court order.

PENALTY PROVISIONS

Article 15

15.1. Any business exercising activity without a prior License will be fined an amount of 100.000 €.

15.2. Any Licensee that tends to deceive in respect to the identity of the Petroleum or Petroleum Product producer will be fined an amount of 50.000 €.

15.3. Any Licensee using a different name of the petroleum product will be fined an amount of 50.000 €.

15.4. Any Licensee using a different name or identity other than his own will be fined an amount of 50.000 €.

15.5. Any Licensee that tends to deceive in respect to the price of the Petroleum and Petroleum Product will be fined an amount of 30.000 €.

15.6. Any Licensee that tends to deceive in respect to the Petroleum and Petroleum Product's composition, grade, quantity will be fined an amount of 30.000 €.

15.7. Any Licensee using device, and/or measuring devices that are not certified will be fined an amount of 50.000 €.

15.8. Also the responsible person of the Licensee will be fined an amount of 50.000 €.

15.9. If second penalty happen, than its value will be doubled, and will be initiated the penal procedure.

15.10. Minister prescribes the form of License, its contain, procedures and expenses to bring it out, price on issuing licenses and the rate of 100 € for each petrol truck which pass beyond the board and the one which imports the petrol products in territory of Kosovo. Due to social sensitivity only gas and crude oil are exemption of the extra rate.

15.11. All the wages coming out of the provision applying of this Law go to the Consolidated Budget of Kosovo.

TRANSITIONAL AND FINAL PROVISIONS

Article 16

The present law shall enter into force after adoption by the Assembly of Kosova on the date of its promulgation by the Special Representative of the Secretary-General.

Law No. 2004 / 5
22 April 2005

President of the Assembly

Academic Nexhat Daci