

**PROCEDURAL ACT  
OF THE MINISTERIAL COUNCIL OF THE ENERGY COMMUNITY**

2022/PA/02/MC-EnC:

**on amending Procedural Act No 2006/03/MC-EnC on the adoption of Energy Community Procedures for the Establishment and Implementation of Budget, Auditing and Inspection, Procedural Act No 2009/04/MC-EnC, the Energy Community Staff Regulations of 18 December 2007 as amended by Procedural Act No 2009/04/MC-EnC, and Procedural Act No 2006/02/MC-EnC on the adoption of Rules for Recruitment, Working Conditions and Geographical Equilibrium of the Secretariat's Staff of the Energy Community, as amended by Procedural Act No 2016/01/MC-EnC**

THE MINISTERIAL COUNCIL OF THE ENERGY COMMUNITY,

Having regard to the Treaty establishing the Energy Community, and in particular Articles 69, 74, 82, 83, 86, 87 and 88 thereof,

Whereas the Energy Community's Budgetary Rules require more clarity in a number of aspects such as the treatment of external funding for the Energy Community through grants and contracts, the annual work programme, the establishment plan and the organigram of the Secretariat, the transfer of appropriations the accounting function and internal control of budget implementation within the Secretariat, and the tasks of the Budget Committee and External Auditors,

Whereas the Energy Community's Staff and Recruitment Regulations and Rules should be amended with respect to the mandate of the Director and the function of a Deputy Director,

Whereas the Permanent High Level Group, at its meeting on [...] endorsed the present Procedural Act,

Having regard to the joint proposal by the Secretariat and the European Commission,

HAS ADOPTED THIS PROCEDURAL ACT:

**Article 1**

**Amendments to Procedural Act No 2006/03/MC-EnC on the adoption of Energy Community Procedures for the Establishment and implementation of Budget, Auditing and Inspection**

1. The second paragraph of Article 2 shall be amended to read as follows:

"2. The Parties shall transfer 75% of their financial contributions to the Energy Community no later than 31 March of each year. The Parties shall transfer the remaining 25% of their contributions no later than 30 June of each year."

2. The first paragraph of Article 14 shall be amended to read as follows:

“Revenue earmarked for specific purposes in the form of grants, contracts and donations shall be used only to finance them in accordance with these Rules.”

3. The first paragraph of Article 15 shall be amended to read as follows:

“The Director may accept revenue within the meaning of Article 14 paragraph 1 only upon and in advance agreement of the Budget Committee, based on written information about the amount and the purpose of the donation and the financial charges involved.”

4. A second sentence shall be inserted in the second paragraph of Article 15 with the following text:

“It will also include information about the number of posts actually filled against the number of authorised number of posts in the establishment plan.”

5. A third paragraph shall be inserted in Article 15 with the following text:

“3. Revenue earmarked for specific purposes in the form of grants, contracts and donations shall be included in an estimate of the revenue and expenditure pursuant to Article 25 of the present Rules if this revenue is known for the upcoming budgetary period.”

6. The first paragraph of Article 18 shall be amended to read as follows:

“The Director may decide on transfers of appropriations within the overall budget, other than human resources within the total limit of 10% of the appropriations of the budget line from which the transfer is done, where those transfers do not significantly affect the nature of the actions and the objectives of the work programme.”

7. In the fifth paragraph of Article 20, the following text shall be inserted at the end:

“; the budgetary allocation per activity; all earmarked revenue and related expenditure per activity and its mode of implementation.”

8. A new Chapter 9 shall be inserted at the end of Title III with the following text:

“Chapter 9  
INTERNAL CONTROL OF BUDGET IMPLEMENTATION

Article 21bis

1. The budget of the Energy Community shall be implemented in compliance with effective and efficient internal control.

2. For the purposes of the implementation of the budget, internal control is defined as a process applicable at all levels of the management and designed to provide reasonable assurance of achieving the following objectives:
- (a) effectiveness, efficiency and economy of operations;
  - (b) reliability of reporting;
  - (c) safeguarding of assets and information;
  - (d) prevention, detection, correction and follow-up of fraud and irregularities;
  - (e) adequate management of the risks relating to the legality and regularity of the underlying transactions, taking into account the multi-annual character of programmes as well as the nature of the payments concerned.
3. Effective and efficient internal control shall be based on best international practices and include, in particular, the elements laid down in Article 36(3) and (4) of Regulation (EU, Euratom) 2018/1046 of the European Parliament and the Council<sup>1</sup>, taking into account the structure and size of the Energy Community, the nature of the tasks entrusted to it and the amounts and financial and operational risks involved.
- <sup>1</sup> Regulation (EU, Euratom) 2018/1046 of the European Parliament and the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union (OJ EU L 193, 30.7.2018, p.1).
9. A fourth paragraph shall be inserted in Article 22 with the following text:
- “4. All internal rules and procedural acts having an impact on budgetary and financial management shall be consulted timely with the Budget Committee before adoption. The Budget Committee may propose modifications of internal rules and procedural acts having an impact on budgetary and financial management.”
10. The fourth paragraph of Article 23 shall be amended to read as follows:
- “The Budget Committee shall hold at least two ordinary meetings a year. Optionally the Budget Committee can meet using the options available through web based media. In addition, it shall meet at the instance of the Chairperson or at the request of at least one third of its members. The Budget Committee may also meet upon proposal by the Director.”
11. In letter b. of the third paragraph of Article 25, the following text shall be inserted at the end:
- “, per type of funding (annual contributions, earmarked revenue including grants, contracts and donations).”
12. In the third paragraph of Article 25, the following two letters shall be inserted after letter c.:
- “d. An organisation chart
  - e. A short description of the mission and activities of the different units.”

13. Article 26 shall be amended to read as follows:

“Any required amendment to the budget related to the estimated expenditures, including the number staff of the Secretariat, shall be subject of an amended budget, preceded by an opinion of the Budget Committee and adopted by the Ministerial Council by the same procedure as the initial budget.”

14. In the first subparagraph of Article 29, the following second sentence shall be inserted:

“The establishment plan will include the requisites included in Article 25(3)(b).”

15. The first paragraph of Article 37 shall be amended to read as follows:

“Having due regard to the risks associated with the management environment and the nature of the actions financed, and without prejudice to the rules for recruitment of the staff of the Secretariat requiring approval of the organigramme by the Ministerial Council, the authorising officer shall put in place the organisational structure, the internal management, control systems and procedures (hereinafter “Internal Management Rules of the Energy Community”) suited to the performance of his duties, including where appropriate ex post verifications.”

16. The second paragraph of Article 41 shall be amended to read as follows:

“The Director may decide on the outsourcing of accounting support tasks upon justified request based on a cost/benefit analysis. The accounting function cannot be outsourced.”

17. In the third paragraph of Article 43, the following text shall be deleted:

“or decide on an outsourcing of the accounting function to the professional service provider as referred to in Article 41 above.”

18. An additional sentence shall be inserted in the third paragraph of Article 81 after the first sentence with the following text:

“The audit report shall describe the work performed in accordance with the approved Terms of Reference.”

19. The fifth paragraph of Article 81 shall be amended to read as follows:

“The External Auditors shall submit an audit report and certified accounts, together with a statement of assurance relating to the reliability of the accounts, and the legality and regularity of the underlying transactions, the adequate functioning of an effective and efficient internal control system and the correct allocation of expenditure between ordinary and extraordinary budget, to the Budget Committee so that they may be available to the Ministerial Council not later than eight months after the end of the financial year to which the accounts relate. The Budget Committee shall make to the Ministerial Council such observations on the documents submitted by the Auditors as it may consider appropriate.”

20. A sixth paragraph shall be inserted in Article 81 with the following text:

“6. External audit reports on expenditure funded by earmarked revenue shall be communicated to the budget committee.”

21. In Article 82, the following text shall be inserted at the end:

“, as well as the Director’s annual report on the execution of the budget.”

22. A second sentence shall be inserted in Article 83 with the following text:

“The annual discharge shall be adopted by Procedural Act of the Ministerial Council, following an opinion of the Budget Committee.”

## **Article 2**

### **Amendments to the Energy Community Staff Regulations of 18 December 2007 as amended by Procedural Act No 2009/04/MC-EnC**

1. The second sentence of Section 4.1. (“Appointment of the Director”) shall be amended to read as follows:

“This Procedural Act shall be proposed by the European Commission for a fixed term of five years renewable no more than once.”

2. A new Section 4.1.bis shall be inserted after Section 4.1 with the following text:

“Deputy Director

The Director may assign the function of Deputy Director to one of the existing heads of unit in the Secretariat. The Director shall define the scope of the function of Deputy Director.”

3. In Section 4.6. (“Substitute”), the following letter shall be inserted after letter b):

“c) The Director shall not be substitute of the Head of Administration and Finance for more than 6 months.”

## **Article 3**

### **Amendments to Procedural Act No 2006/02/MC-EnC on the adoption of Rules for Recruitment, Working Conditions and Geographical Equilibrium of the Secretariat’s Staff of the Energy Community, as amended by Procedural Act No 2016/01/MC-EnC**

1. Section II.1 shall be amended to read as follows:

"II.1. The Director of the Secretariat shall be appointed by a Procedural Act of the Ministerial Council on a proposal from the European Commission for a fixed term of five years renewable no more than once."

2. A second sentence shall be inserted in Section II.10 with the following text:

"The draft Act of Appointment shall be included in the annex to the Ministerial Council decision on the appointment of the Director".

3. A new Section II.bis shall be inserted after Section II with the following text:

"Section II.bis  
Deputy Director

The Director may assign the function of Deputy Director to one of the existing heads of unit in the Secretariat. The Director shall define the scope of the function of Deputy Director."

4. Section III.2 shall be amended to read as follows:

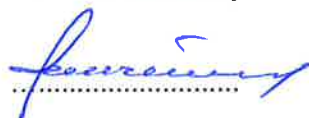
"III.2. The Ministerial Council shall adopt the Secretariat Organigramme, and any subsequent changes, based on a proposal of the Director of the Secretariat."

#### **Article 4 Entry into force**

1. This Procedural Act shall enter into force upon adoption.
2. By Articles 2(1) and 3(1) of this Procedural Act, the first mandate of the present Director of the Secretariat shall be extended from three to five years. Article 3(2) of this Procedural Act shall not apply to the present Director of the Secretariat.

Done in Vienna, on 15 December 2022

For the Presidency

A blue ink signature, likely of the President of the Energy Community, written over a dotted line.