

RULES OF PROCEDURE of 16 October 2015 of the Ministerial Council of the Energy Community

Procedural Act 2006/01/MC-EnC of 17 November 2006 on adoption of internal Rules of Procedures of Ministerial Council of Energy Community as amended by Procedural Acts 2013/01/MC-EnC of 24 October 2013 and 2015/02/MC-EnC of 15 October 2015 amending Procedural Act of the Ministerial Council 2006/01/MC-EnC of 17 November 2006

I. GENERAL

1. These rules establish the internal procedures for operation of the Ministerial Council (the “Council”) as an institution under the Treaty establishing Energy Community (the “Treaty”).
2. In case of any contradiction between these rules and the Treaty, the rules of the Treaty shall be applied.

II. MEMBERS, PARTICIPANTS, OBSERVERS

1. The Council shall consist of representatives of the Parties to the Treaty. Each Party to the Treaty, with the exception of the European Community, shall have one representative at the Council; the European Community shall have two representatives determined pursuant to its internal decision. Parties should in principle be represented in the Council at ministerial level or equivalent.
2. In accordance with Article 95 of the Treaty, one non-voting representative of each Participant may participate in the Council meetings.
3. In accordance with Article 96 of the Treaty, Observers may attend the meetings of the Council.
4. The Presidency and the Vice-Presidency may agree to invite representatives of other institutions to attend a relevant meeting on an *ad hoc* basis.
5. Where the Presidency and the Vice-Presidency agreed to invite other bodies, including representatives of Civil Society Organizations and participants in the meetings of the Parliamentary Plenum, the President shall inform the Parties at least three weeks before the meeting. The Parties decide on the invitation by simple majority by submitting their views to the Secretariat within five working days from receiving this information. Tacit agreement is assumed where no reaction is received by the Secretariat within this deadline.

III. PRESIDENCY

1. The Presidency of the Council shall be held in turn by each Contracting Party¹ in alphabetical order, following the names of the Parties as indicated in the Treaty, starting with the former Yugoslav Republic of Macedonia.
2. The Presidency shall chair the Ministerial Council. It will be assisted by one representative of the

¹ A Contracting Party is any Party, for which the Treaty is into force, excluding the European Community.

European Community and one representative of the incoming Presidency as Vice-Presidency.

3. Should the Presidency be not in a position to perform its duties for a particular meeting, the latter will be chaired by the Vice-President who represents the European Community.

IV. PREPARATION OF THE MEETINGS

1. The Council shall meet at least once per year. In urgent circumstances, agreed between the Presidency and the Vice-Presidents, the Presidency may convene the Council also outside the regular meetings.

2. The place of Council meetings shall be decided upon by the Presidency after consultations with the Vice-Presidency and the Energy Community Secretariat (the Secretariat). Normally, this decision shall be made at least two months prior to the relevant meeting.

3. The date of the meetings shall be agreed between the Presidency, the Vice-Presidency and the Energy Community Secretariat (the Secretariat). In principle, the dates shall be agreed at least two months prior to the relevant meeting.

4. The draft agenda of the meetings shall be agreed by the Presidency and the Vice-Presidency. It shall be distributed at least two weeks prior to the relevant meeting. Should there be documents related to any agenda item, these should be distributed to the representatives specified in section II paragraphs 1 to 3 together with the agenda.

5. Without prejudice to the decision making process under Title VI of the Energy Community Treaty, the Permanent High Level Group may identify Measures for adoption by the Ministerial Council without further discussion. The identified Measures shall be included in the draft agenda of the next Ministerial Council as "A" items. The draft Agenda shall specify the Title and Chapter of the Treaty under which the draft Measure identified as an "A" item will be presented for voting in the Ministerial Council. This does not exclude the possibility for any Party to have statements included in the conclusions.

6. The Secretariat is responsible for the preparation of the meetings. It will inform the Presidency and the Vice-Presidency periodically and upon request about the preparation process and follow their requests and guidance in this relation.

7. Should this be found necessary, the Presidency and the Vice-Presidency may propose that a particular committee/commission is established. The decision of the Council shall take the form of a Procedural Act and include concrete list of participants as well as the scope of work, which should be performed, together with relevant deadlines.

V. MEETINGS OF THE COUNCIL – PROCEDURAL RULES

1. The meetings of the Council shall not be public unless the Council decides otherwise.

2. Any member of the Council or any other attendee of the meeting may be accompanied by officials who assist them. The names and functions of those officials shall be notified in advance to the Secretariat. As a principle, these officials should not be more than three for any Party to the Treaty, and not more than two for any other participant in the meeting. However, the Presidency may further

advise on the maximum number of representatives per delegation.

3. The Council may take decisions only if two thirds of the Parties are represented. Abstentions in a vote from the Parties present shall not count as votes cast.
4. As provided in Article 80 of the Treaty, each Party shall have one vote.
5. The Agenda for the meeting shall be approved at its beginning. In urgent circumstances, new items may be included also during the meeting subject to the agreement of the President and Vice-Presidency.
6. Re-opening discussion on Measures included in the draft agenda of the next Ministerial Council as "A" items requires simple majority.
7. The Participants may participate in the discussions but they do not take part in voting.
8. The observers may make statements upon permission or invited by the Presidency. The Observers do not have voting rights.
9. Conclusions of each meeting shall be drawn up with the assistance of the Secretariat. These shall be signed by the Presidency and distributed to the members and the attendees. In case it is not possible to finalize the conclusions by the end of the relevant meeting, the Presidency shall assure that they are drafted and distributed within 7 days after its end². Further, any member of the Council might request corrections within 7 days upon receipt of the draft. The Presidency shall arrange that the final version is distributed within 7 days upon the expiry of the deadline for comments.
10. Any vote shall be explicitly described in the Conclusions.
11. The conclusions cannot in any way restrict the scope or effects of legal acts or the Treaty. No statements or conclusions which contradict binding legal provisions shall be made. Conclusions cannot form part of legal acts nor have any normative effect.

VI. ACTS OF THE COUNCIL – PROCEDURAL ASPECTS

1. To ensure that the objectives set out in the Treaty are attained, the Council provides general policy guidelines, takes Measures and adopt Procedural Acts.

1. General Policy Guidelines

2. The Council shall provide general policy guidelines, when requested or upon its own initiative.
3. The general policy guidelines shall reflect the political consensus of the Parties on strategic issues of mutual interest in line with the Treaty objectives.
4. The issue or amendment of general policy guidelines may be requested by any member of the Council. The request shall be in writing and shall contain sufficient information explaining the necessity of adoption of the proposed guidelines by the Council.
5. The written request shall be submitted by the requesting member of the Council to the Presidency with copy to the Vice-Presidency. The Presidency notifies all members of the Council within seven days after the request has been received.

² All days are calendar days.

6. The Presidency, in consultation with the Vice-Presidency, shall organize the preparation of a draft position of the Council, which shall be presented for discussion at the next Council meeting. The draft position shall be sent to the Members of the Council at least 30 days before the meeting.

7. General policy guidelines might be adopted *ad hoc* on the ground of consensus of all members of the Council.

2. Measures

8. Unless otherwise specified in these rules or in a separate decision of the Council, the adoption of Measures (Decisions and Recommendations) shall follow the same procedure.

9. Any proposal for a Measure from the European Commission, from the relevant Party or from the Secretariat shall be made in writing at least 60 days before the meeting of the Council at which it shall be discussed.

10. The proposal shall be sent to the Presidency with copy to all the members of the Council and to the Secretariat. It shall be accompanied by relevant explanatory notes. Where necessary, position of the Regulatory Board shall be requested by the Party or the institution, which makes the relevant proposal for a Measure.

11. During the meeting of the Council at which the proposal for a Measure shall be discussed, the Presidency shall identify the required quorum in accordance with the Treaty. The Presidency shall do so prior to the discussion of the proposal. The quorum availability will be respectively reflected in a protocol.

12. Measures under Title II of the Treaty – extension of the *acquis communautaire* – shall be taken by a majority of the votes cast only on the ground of a proposal from the European Commission, which may alter or withdraw its proposal at any time before the final adoption of the Measure.

13. Measures under Title III of the Treaty – Mechanism for operation of Network Energy Markets – shall be taken by a two third majority of the votes cast, including a positive vote of the European Community, upon a proposal from a Party or the Secretariat, which also shall take account of a position of the Regulatory Board.

14. Measures under Title IV – The Creation of a Single Energy Market – may be taken on a proposal from a Party only by unanimity. The European Commission on its own initiative or upon request of any party may request a position of the Regulatory Board.

3. Procedural Acts

15. The Council adopts Procedural Acts in cases envisaged in the Treaty and in accordance with the required majority. During the meeting of the Council at which the proposal for a Procedural Act shall be discussed, the Presidency shall identify the required quorum in accordance with the Treaty. The Presidency shall do so prior to the discussion of the proposal. The quorum availability will be respectively reflected in a protocol.

16. Unless otherwise envisaged by the Treaty, any member of the Council may propose adoption of a Procedural Act.

17. The preparation of draft Procedural Acts is coordinated by the Presidency in consultation with the Vice-Presidency. The Presidency may ask the Party, which has initiated the preparation of a Procedural Act, and/or the Secretariat to assist in the process of this preparation.

18. Draft Procedural Acts, related to organizational, budgetary and transparency issues, shall be distributed at least 30 days before the meeting at which they will be discussed.

19. Procedural Act related to the appointment of the Director of the Secretariat, provided for in Article 69 of the Treaty, shall be proposed by the European Commission. The draft shall be distributed at least 30 days before the meeting at which it will be discussed.

20. Procedural Act on budgetary matters, provided for in Article 73 and 74 of the Treaty, shall be proposed by the European Commission at least 30 days before the meeting at which it will be discussed.

21. Procedural Act conferring powers on the Regulatory Board, provided for in Article 47(c) of the Treaty, may be proposed by any member of the Council or by the Secretariat, at least 30 days before the meeting at which the relevant proposal shall be discussed. In case the opinion of the Regulatory Board is requested through the Presidency, it shall be part of explanatory documents to be submitted with the proposal for that act.

4. Work Programme

22. The Council shall adopt a work programme for the next two years. A proposal for the work programme is prepared by the Secretariat and sent to the Council Members upon agreement by the President and Vice-President.

5. Rules For Decision-Making by Correspondence

23. The Council may, in the intervals between the meetings of the Council, take decisions by correspondence. The Presidency, upon the proposal by a Party for a decision to be taken by correspondence or upon its own initiative shall decide, after consulting and in agreement with the Vice-Presidency, whether the matter warrants the taking of the decision by correspondence.

24. When it is decided that a decision should be taken by correspondence, the Presidency shall instruct the Secretariat to dispatch a letter or telefacsimile to each Party containing the proposed decision together with such information as the Presidency, after consultation and in agreement with the Vice-Presidency, considers necessary to an informed decision. The Presidency, after consultation and in agreement with the Vice-Presidency, shall also specify whether and, if so, under which conditions, amendments to the proposal may be made by the Parties.

25. Presidency, after consultation and in agreement with the Vice-Presidency, shall determine the date and hour by which responses must be received, which shall in no case be earlier than 10 calendar days from the date of transmission of the letter or facsimile referred to above. In exceptional circumstances, upon request or at its own discretion, may the Presidency, after consultation and in agreement with the Vice-Presidency, extend the time limit for the receipt of responses. Any Party who has not replied in writing (including telefacsimile) within the given time limit is regarded as abstaining from the vote.

26. The votes cast by correspondence shall be reviewed by at least three persons, including a representative of the Presidency, the European Commission and the Secretariat. Once a decision is adopted, it shall be promptly circulated by the Secretariat to all Parties and Participants, together with the information on the votes cast in favor of the decision. It shall be formally signed by the Presidency at the earliest meeting of the PHLG.

27. This procedure may be used for adoption of Measures or other decisions following agreement of the President and Vice-Presidents.

VII. RULINGS ON DISPUTE SETTLEMENT AND IMPLEMENTATION OF DECISIONS

1. Any Party to the Treaty, the Secretariat or the Regulatory Board may bring to the Council's attention circumstances which suggest that a Party failed to comply with a Treaty obligation or failed to implement a Decision addressed to it within the required period.

2. A Party's, Secretariat's or Regulatory Board's communication to the ministerial Council pursuant to the preceding paragraph shall take the form of a reasoned request. The request shall therefore be based on concrete factual findings and backed up by sufficient analysis. The request also shall contain a proposal for a Council's decision.

3. The request shall be made at least 30 days before the meeting of the Council.

4. The notification shall be sent to the Presidency and the Vice-Presidency. Prior to including the item on the Council's agenda, the Presidency, in consultation with the Vice-Presidency, may request additional information from the Party or the institution which has made the notification.

5. The Presidency shall inform the Party, which is subject to the claim, within 7 days after receiving it, by sending the relevant materials, and ask it to present its views in writing.

6. During the meeting of the Council at which the request or other issue under Title VII of the Treaty is discussed, the Presidency shall identify the required quorum in accordance with the Treaty. The Presidency shall do so prior to the discussion of the proposal. The quorum availability will be respectively reflected in a protocol.

VIII. INTERPRETATION OF THE TREATY

1. The Council may give guidance to the interpretation of the Treaty upon request by any Party or any of the institutions established by the Treaty.

2. The request for interpretation shall be submitted to the Presidency and copied to the Vice-Presidency.

3. The Presidency shall ask the European Commission and the Secretariat for a reasoned opinion regarding the interpretative issue specified in the request.

4. Unless otherwise decided, any guidance on interpretation of the Treaty, given by the Council, shall be immediately enforceable and is binding on the Parties and the institutions under the Treaty.

IX. DISCLOSURE OF DOCUMENTS

1. The draft agenda and the relevant materials shall be distributed to all the members of the Council, to the Participants and to the Observers. Material of interest to them will also be distributed to the representatives of any other institutions, which are invited to take part in the relevant meeting. Any of the Presidency and the Vice-Presidency may request that the draft agenda and the relevant materials are distributed to other institutions.
2. Unless otherwise decided, the finalized documents of the meetings (agenda, conclusions, etc.) shall be made public via the website of the Secretariat.

X. FINAL PROVISIONS

1. The Participants, Observers and other attendees are expected to follow any requirements for confidentiality, which are valid to the Parties. Such requirements are reflected in the conclusions of the relevant meeting.
2. All acts of the Ministerial Council shall be signed by the Presidency.
3. The Rules have been adopted by the Council on the ground of Article 49 of the Treaty. In accordance with that provision, any amendments to these Rules shall be adopted by a Procedural Act.
4. If application of these Rules to a specific situation is unclear or ambiguous, the Presidency in consultation and agreement with the Vice-Presidency shall interpret the Rules to resolve the situation.
5. The Council meetings shall be conducted in a businesslike manner.
6. At the latest one year from the entry of these Rules into force, based on the practical experience with their application, the Secretariat may propose eventual amendments to these Rules it deems useful or necessary. Where a Party wishes to propose such amendment, it is encouraged to consult it first with the Secretariat.

The Rules become effective on 16 October 2015, which is the day of their adoption by the Energy Community Ministerial Council.

