

RULES OF PROCEDURE OF THE ENERGY COMMUNITY ADVISORY COMMITTEE

The Advisory Committee established by the Ministerial Council of the Energy Community under Article 32 of the Procedural Act No 2008/01/MC-EnC of the Ministerial Council of the Energy Community on the Rules of Procedure for Dispute Settlement under the Energy Community Treaty (“the Dispute Settlement Rules”),

Aiming to contribute to the structured settlement of disputes and the enforcement of the Energy Community *acquis communautaire* in accordance with the provisions of Title VII of the Energy Community Treaty (“the Treaty”),

Committed to assisting the Ministerial Council of the Energy Community (“the Ministerial Council”) in adopting a legally sound decision under Article 91 of the Energy Community Treaty,

Having regard to the Dispute Settlement Rules, and in particular Article 32(4) thereof,

HAS GIVEN ITSELF THE FOLLOWING RULES OF PROCEDURE

Article 1

Purpose

These rules determine the structure, operation and procedures of the Advisory Committee as established by the Ministerial Council of the Energy Community under Article 32 and Article 42 of the Dispute Settlement Rules.

Article 2

Composition of the Advisory Committee

- (1) The Advisory Committee is a non-permanent body with advisory functions to the Ministerial Council of the Energy Community in the decision-making process under Article 91 and Article 92 of the Treaty.
- (2) It shall be composed of three members nominated by the Parties to the Energy Community Treaty and appointed by the Ministerial Council.
- (3) The composition of the Advisory Committee shall be published on the Energy Community website.

Article 3

Members

- (1) Every two years, each Party to the Treaty shall be invited by the Secretariat to nominate one candidate for members of the Advisory Committee. All candidates shall possess the qualifications required for appointment to the highest judicial office in their respective Party.
- (2) The members of the Advisory Committee shall be selected from among the qualified candidates and appointed by the Ministerial Council for a period of two years, including the candidate nominated by the European Union. The Ministerial Council may also appoint up to three substitute members from among the qualified candidates.
- (3) Members and substitute members may be reappointed. Members and substitute members shall keep their positions until new members and substitute members have been appointed.
- (4) The member nominated by the European Union shall act as chairperson of the Advisory Committee. The chairperson shall represent the Advisory Committee towards other bodies of the Energy Community and shall organize and direct its proceedings and deliberations.

(5) The members and substitute members of the Advisory Committee shall communicate to the chairperson and the Secretariat contact details (email and telephone number) and make sure that they can be reached during working hours.

Article 4

Independence and replacement of members

(1) The members and substitute members of the Advisory Committee shall perform their duties impartially and independent from all personal, commercial, institutional or national interests.

(2) Upon appointment, each member and substitute member shall declare by which he/she undertakes that he/she will perform his/her duties independently, conscientiously and impartially, that he/she will perform his/her duties solely guided by Energy Community law and not in the interest of any national authority, international institution, natural person or commercial entity, and that he/she will preserve the confidentiality of the deliberations of the Advisory Committee. The members and substitute members shall be bound by their declarations during and after their terms of office.

(3) A member shall not participate in the Advisory Committee's duties in relation to a case if he/she has any personal interest therein, if he/she has previously been involved as representatives of one of the Parties or if there are other reasons that give rise to doubts as to his/her independence or impartiality. If a member cannot participate for one of these reasons or for any other reason, the member must communicate it without undue delay to the chairperson and must refrain from taking part in the Advisory Committee's duties in relation to a case. The member is replaced by a substitute member who shall act as a member of the Advisory Committee for the purposes of this case. If there is more than one substitute member the replacement follows the alphabetic order of their last names.

(4) Members resigning or otherwise unable to sit on the Advisory Committee shall be replaced by a substitute member. If there is more than one substitute member the replacement follows the alphabetic order of their last names.

Article 5

Opinions of the Advisory Committee (Article 28 of the Dispute Settlement Rules)

- (1) The Advisory Committee shall provide to the Ministerial Council an opinion on each reasoned request submitted under Article 28 of the Dispute Settlement Rules.
- (2) Where two or more reasoned requests concern the same subject matter, the chairperson may decide to join them for the purpose of giving an Opinion.
- (3) The Opinion shall pronounce itself on the reasoned request, taking into account the reply by the Party concerned. The Opinion shall be duly reasoned. The legal assessment shall be based on Energy Community law, including the Dispute Settlement Rules.
- (4) The Opinion shall contain
 - the date of its delivery,
 - the names of the chairperson and members taking part in it,
 - the majority voting,
 - the case number(s) and the description of the parties,
 - a brief summary of the facts,
 - the grounds for the Opinion,
 - the operative part of the Opinion.
- (5) Opinions shall be signed by the chairperson on behalf of the Advisory Committee.

Article 6

Procedure upon submission of a reasoned request

- (1) Immediately upon receipt of a reasoned request under Article 28(4) of the Dispute Settlement Rules, the Presidency and the Vice-Presidency shall inform the chairperson of the Advisory Committee accordingly and ask for the Advisory Committee's Opinion.

(2) The Secretariat shall forward a copy of each reasoned request submitted as well as the documentation of the preliminary procedure from the case file by electronic mail to all three members of the Advisory Committee.

Article 7

Preparatory phase

(1) Within two weeks following the request for the Advisory Committee's Opinion, the chairperson may designate a member, including him-/herself, to act as *rapporteur*. The *rapporteur* shall draft an Opinion as the basis for the Advisory Committee's deliberations. Upon expiry of the appropriate deadline set by the chairperson the *rapporteur* shall submit its draft Opinion to the other two members. The chairperson may re-designate the *rapporteur* if the original *rapporteur's* draft Opinion is not submitted upon expiry of the deadline set by the chairperson.

(2) The *rapporteur* shall draft the Opinion on the basis of the reasoned request and the documentation of the preliminary procedure from the case file.

Article 8

Deliberations

(1) The chairperson shall organize the deliberations in a way so that they can be finished not later than one month ahead of the meeting of the Ministerial Council in accordance with Article 32(3) of the Dispute Settlement Rules.

(2) The deliberations shall take place on the basis of a draft Opinion prepared by the *rapporteur*. Once a reply by the Party concerned has been received in accordance with Article 30 of the Dispute Settlement Rules, that reply shall be duly taken into account.

(3) Deliberations shall take place by means of telecommunication and exchange of drafts, and include all members of the Advisory Committee.

(4) If the chairperson considers it necessary, the Advisory Committee may meet in person at a place to be decided by the chairperson.

(5) The Advisory Committee shall adopt the final Opinion by majority, including the positive vote of the chairperson.

(6) Once the Advisory Committee has adopted the final Opinion, the chairperson shall submit it to the Presidency and the Vice-Presidency for distribution to the members of the Ministerial Council and the Permanent High Level Group. The Opinion shall be published on the Energy Community website once the decision is taken by the Ministerial Council.

(7) The deliberations of the Advisory Committee and all preparatory documents as well as internal communication shall be and remain confidential.

Article 9

Meeting of the Ministerial Council

Upon invitation by the Presidency, the chairperson may appear at the relevant meeting of the Ministerial Council to explain the Opinion delivered by the Advisory Committee.

Article 10

Language

(1) All communication between the members of the Advisory Committee, as well as with other bodies, shall be exclusively in English.

(2) The Advisory Committee's Opinion shall be in English.

Article 11

Withdrawal

In the event the reasoned request is withdrawn by its initiator, the Advisory Committee shall immediately terminate its deliberations.

Article 12

Written Opinions in case of serious and persistent breaches (Article 41 (2) of the Dispute Settlement Rules)

If the Presidency or the Vice-Presidency asks the Advisory Committee for a written Opinion under Article 41 (2) of the Dispute Settlement Rules Articles 5 -11 apply accordingly.

Article 13

Final provisions

- (1) These rules of procedure shall enter into force upon their adoption by the Advisory Committee.
- (2) The members of the Advisory Committee may change these rules upon proposal of the chairperson.
- (3) The Secretariat shall publish these rules, as well as any amendments, on the Energy Community website.

Done on 18 July 2013

A handwritten signature in black ink, appearing to read "W. Urbantschitsch".

For the Advisory Committee:

Wolfgang Urbantschitsch, Chairman