

ANNUAL ACTIVITY REPORT OF THE BUDGET COMMITTEE 2016

Background and Mandate

This Annual Activity Report ("report") follows the reporting requirements of the Budget Committee ["BC"] defined in the "*Internal Rules of Procedure of the Budget Committee*" ("*rules*"), in its item III.3, of 30 January 2008. It has been prepared to be presented at the Budget Committee meeting on 27 June 2017.

Activities in 2016

In 2016, the Budget Committee met two times to discuss budgetary and/or financial matters in the context of the implementation of the budget of the Energy Community. The minutes of the meetings (that include the headings of the agenda) are annexed to this report (see annex).

The Budget Committee was consulted at all stages, when required under the rules, on budget and financial matters. Among others, it had several topics of strategic importance on its agenda during 2016, such as:

- Approval of financial reports with relevance for Ministerial Council decision,
- Discussion of amendments to the Energy Community *Recruitment Rules* and procedure for submission to the Ministerial Council,
- Approval of the Terms of Reference for the External Audit for the biennium 2016 –as required under Article 80 of the *Procedures for the Establishment and Implementation of Budget Audit and Inspection*.
- Discussion and providing agreement on (starting with 2016) receiving sponsors' monies for defined initiatives (Energy Community Summer School, Vienna Forum on European Energy Law),
- As well as any other topics (to be seen from the minutes).

In 2016, Mrs. Paloma ABA-GARROTE was in charge of chairing the Budget Committee meetings.

Conclusions

In 2016 the Budget Committee received from the Secretariat all requested information of financial relevance in order to carry its tasks of supervision and advice.

At the time of this report, the Energy Community year-end accounts for 2016 were audited and an unqualified audit opinion was issued.

Based on all reports related to the budget execution for 2016, the Budget Committee concluded to propose to the Ministerial Council of the Energy Community the discharge the director for year 2016 at its next meeting in October 2017.

27th meeting of the Budget Committee

Location: Energy Community Secretariat, Vienna

Date and time: 20 May 2016, 11:00 – 13:00

1. Opening of the meeting: Welcome and agenda approval

- 1.1. Chair of the Budget Committee, Mrs. Paloma Aba-Garrote, welcomed representatives of the Contracting Parties to the meeting and presented the draft agenda.
- 1.2. Follow-up of the Budget Committee minutes have been planned for discussion under agenda point no. 5.

2. Audit 2015

- 2.1. Chair of the Budget Committee, Mrs. Paloma Aba-Garrote, welcomed representatives from the external audit company, KPMG, Mr. Andreas Bauer and Mrs. Edith Oberbeck, and asked for the presentation of the year-end results as presented in the issued Audit Report.
- 2.2. Mr. Bauer referred to the Financial Statements of the Energy Community for the period ending December 2015 and in particular to the reconciliation between the statement of financial performance and budget report. Not used budget appropriations of the year 2015 were explained the same as legal commitments taken over from 2015 into the financial year 2016.
- 2.3. The overall summary of the audit confirmed that neither objections nor concerns came to the attention of the auditors, internal control system was defined in adequate way to ensure the sound financial management of funds. Further no indications of fraud was found.
- 2.4. In conclusions, Mr. Bauer informed about a recommendation issued on the application of IPSAS rule regarding the foreign currency, in cases of relevance, in the coming periods. All recommendations from the previous years have been accordingly considered and implemented by the management of the Energy Community.
- 2.5. In the context of expiring mandate for carrying out the external audit services, Secretariat informed that invitation to tender shall be issued in the coming 2-3 weeks, being subject to discussion and approval of the terms of reference (see Annex 8) by the Budget Committee.
- 2.6. Chair thanked the representatives of KPMG for the presentation of the details.

3. Term of External Audit Company (see 6.1.Misc.)

- 3.1. As a continuation of discussion under Audit agenda point, Chair asked the members on the comments regarding the draft terms of reference. In conclusion of short discussion related to the document, present members agreed with the content of the document.

4. Financial Reporting for the year 2015: 'A' points at the Ministerial Council meeting

- 4.1. Under this next agenda point, Chair invited the Secretariat to present all reports issued for the purpose of the Ministerial Council.
- 4.2. At first, the Director presented the Budget Utilisation Report under Art. 75 of the Treaty for the year 2015, in details. Following short discussion, it was agreed that the presentation of the utilisation of the institutional budget (page 14 of the draft) shall refer only to the actual expenses occurred for the institutions in 2015. Secretariat was asked to consider technical update of the draft report. No other comments were received.
- 4.3. Further, reports of the Budget Committee to the Ministerial Council on the Audit 2015, as well as Annual Activity Report (AAR) of the Budget Committee - required under item III.3 of the Internal Rules of Procedure, were discussed in short and agreed upon in the presented draft versions.
- 4.4. As the last point, the draft Decision on the Discharge of the Director from his administrative and management responsibility for the year 2015 was tabled. This draft document presented for information purposes shall be endorsed, the same as the other documents, at the meeting of the PHLG in June 2016.

5. Budget 2016

- 5.1. Under this agenda point, Secretariat presented the current status of budget utilization in 2016 (status as of end of April 2016).
- 5.2. Details of studies planned for 2016 were presented. After consideration of the studies launched (on Public Procurement and VAT issues), further planning to allocate the available budget (estimated EUR 186.000,00) will be undertaken.
- 5.3. In particular Director explained the background of initiated procedure for obtaining the assistance for the negotiation skills training (for stakeholders of EnC) that shall be part of the Training budget available (2016: EUR 169.000,00) in the estimated amount of EUR 130.000,00.
- 5.4. Under the forecast of activities, Secretariat informed about two grant contracts being in the final stage of negotiation with the responsible DG of the EU. Following this introduction, Director explained the background of the EU4Energy and CONNECTA initiatives. With these commitments, the Secretariat will engage in the financial management of grants as follows (1) EU4Energy: EUR 6.8 Mio for the duration of 48 months and (2) CONNECTA; EUR 1 Mio for the duration of 48 months; Separate reporting obligations will have to be followed within the scope of the Grant Contracts and be in line with PRAG requirements.
- 5.5. In conclusion, the Director informed also about ongoing talks with the governments of Poland and UK regarding further donations in future, however, with an unknown outcome yet, subject to further reporting to the Budget Committee.
- 5.6. In the context of this agenda point, Chair proposed discussing of the details of the decision request presented in *Annex 9* of the meeting documents.
- 5.7. In response, Secretariat explained in short the background of the request and described the 2 initiatives of the Secretariat that are planned on recurring basis in the future. As a matter of success, the Secretariat managed to obtain sponsorship for the named **Summer School of the Energy Community** (starting for the 1st time in September 2016) and the **Vienna Forum on the European Energy Law** that took place in April 2016, already for the 3th time. Sponsorship, understood as grant received, will be also targeted for these initiatives in future. Therefore, relevant request for approval was tabled and presented.

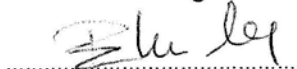
6. Recruitment Rules of the Energy Community

- 6.1. As a follow up of the discussions at the Budget Committee in December 2015, Secretariat informed about concrete amendment proposals in the Recruitment Rules of the Energy Community.
- 6.2. The background of the proposals was recalled. In particular the reason for introducing of the flexibility rule on the use of human resources budget in cases, where permanent staff members requested part-time work or unpaid leave for an agreed period of time. Against the proposal explained, Budget Committee suggested the new rule to be introduced in the Final Provisions of the Recruitment Rules.
- 6.3. Further amendments of the Rules, concerning the extension of the geographical scope (from Contracting Parties to Observers) and shortening of the advertisement period of the vacancies (from 2 months to 1 month), present Budget Committee members confirmed their consent.
- 6.4. Further, Chair suggested to present as soon as possible cited procedural rules for the appointments of temporary staff – a draft already attached to the draft conclusions following written procedure. Chair suggested considering the general principles of recruitment in drafting of the procedural rules.

7. Misc.

- 7.1. Agenda point 6.1 was discussed and concluded under the item 3.1 of the Minutes of this meeting.
- 7.2. Agenda point 6.2 was discussed and concluded under item 5.4 and 5.6 of this document.
- 7.3. Under this agenda point, the Director informed about the Notice of Arbitration received from the Permanent Court of Arbitration (PCA) in Hague at the end of March 2016 as a result of a claim submitted by the former employee of the Energy Community, Mrs. Emica Divic. Further, the Director informed about the current *status quo* regarding the procedural steps that include the ongoing nomination of the sole arbitrator and payments of initials fee. Energy Community, the same as claimant Mrs. Divic, has engaged law service provider from Vienna to be represented in front of the Permanent Court. Estimated duration of the procedure is 2 to 3 years, depending also on the Sole Arbitrator, to be appointed at this time of reporting. Director shall inform about the progress made, from time to time, as relevant for the Budget Committee (approvals of e.o. expenditures).
- 7.4. In concluding remarks, Mrs. Aba-Garrote recalled the fact that today's Budget Committee lacked quorum for the decision making in respect of any of the annexes discussed. Consequently, Secretariat was tasked to prepare written procedure notice to be circulated to the Budget Committee in order to take decision on the required. Further, Mdme Chair asked for taking into account reasons for the frequent absences of the members at the meeting that might be needed to be addressed at a higher level (like PHLG or MC).

Chair of the Budget Committee

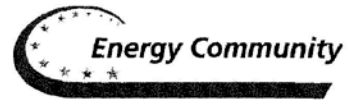


Signature and date



Minutes of the meeting

27th Budget Committee



List of annexes

Audit Report 2015	Annex 1
KPMG – Presentation slides	Annex 1a)
Director's Report on Budget Utilisation 2015 (under Art. 75 of the Treaty)	Annex 2
Budget Committee Report on Audit 2015 (under Art. 81 of the Energy Community Budgetary Procedures)	Annex 3
Budget Committee's Annual Activity Report for the year 2015 (under item III.3. of the Internal Rules of Procedure of the Budget Committee)	Annex 4
Draft Decision on the Discharge of the Director from his administrative and management responsibility for the year 2015	Annex 5
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Follow-up on discussed amendment proposals to the Energy Community Recruitment Rules	Annex 7
Term of External Audit Company 2016-2017	Annex 8
Energy Community Initiatives and financing under sponsorship	Annex 9

List of participants

Mrs. Paloma Aba-Garrote – European Commission	Chair
Mr. Didier Hannot	EU representative
Mrs. Aferdita Daja-Bareti	ALBANIA – Ministry of Energy and Industry
Mrs. Natalia Lukovic	SERBIA Ministry of Energy, Development and Environment Protection
Mr. Janez Kopac	ECS Director
Mrs. Bozena Mazur	ECS Head of Financial Unit

28th meeting of the Budget Committee

*Location: Energy Community Secretariat, Vienna
Date and time: 19 December 2016, 14:00 – 16:00*

1. Opening of the meeting: Welcome and agenda approval

- 1.1. Chair of the Budget Committee, Mrs. Paloma Aba-Garrote, welcomed new representatives of the Parties (EU – Mr. Roderic van Voorst, Former Yugoslav Republic of Macedonia, Ukraine) to the meeting and presented the draft agenda for approval. At the same time, Mdme Chair informed about her leaving the function of the Chair of the Budget Committee at the end of 2016. Further information on who is going to replace Ms. Aba-Garrote will be forwarded early 2017.

2. Follow-up of 27th meeting of the Budget Committee

- 2.1. Secretariat referred to the items discussed in the last budget Committee meeting, namely issues of donation received from the Republic of Poland and of ongoing legal proceedings with the former employee of the Energy Community.
- 2.2. In the context of donation received, Secretariat recalled the decision of the Budget Committee dated 4 November 2016 through which it provided its prior agreement for the acceptance of the donation from the Republic of Poland for the specified amount and purpose. Secretariat received the donation in the amount of EUR 30,000 on 18/11/2016 to its bank account. The donation will be dedicated to support the work of the Advisory Committee established under the Energy Community Rules of Procedure for Dispute Settlement (PA 2008/01/MC-EnC as revised by the Ministerial Council in October 2015, PA 2015/04/MC-EnC) within the year 2017.
- 2.3. On the ongoing employee claim, Secretariat informed about the current status quo of the proceedings, next steps planned in accordance with the Procedural Order in 2017. In general, the case refers to a claim by a staff member employed by the Energy Community in the years 2007-2013 at the position of an accounting officer who challenges the Director's non extension decision of her Employment Contract in April 2013. Despite the fact that non extension does not require any justification, the employee requests, *inter alia*, to "...investigate the circumstances, the reasons, the applicable rules and the evidence relied upon ..." as well as "... compensation (...) for the unjustified release from duties". The overall estimate of claim is for an amount of ca. EUR 1,5 Mio – EUR 2Mio. Costs aspects of the procedure were addressed as well as the obligation to build provisions at the end of the financial year 2016. Budget Committee highlighted the high cost spent for the legal advice (EUR 75.000) by the end of October 2016 and asked to ensure that these costs are kept at the minimum level possible. Secretariat ensured it would consider all available measures to do so.

3. Energy Community Budget 2016 – Current Status of Utilization and year-end forecast

- 3.1. Secretariat presented the current status of utilisation confirming the usage of budget at the level of 70% at the end of November 2016 (see Annex). At the same time, plans regarding necessary commitments in relation with the office establishment as of 2017 were listed. In this context Secretariat presented the details of planned initiatives and financial resources.
- 3.2. In conclusion, an overview of credits and debits Party per Party was presented. Contracting Parties being entitled to refunding of not used budget appropriations from last year were explicitly advised to consider it when paying-in the budget contribution for the budget 2017. Ukraine was kindly advised to settle the payment of accumulative amount, i.e. not paid yet contributions in the last years, at the latest with the payment of upcoming budgetary obligation for 2017. Secretariat informed that requests for budget contributions for the year 2017 will be sent to the Parties late December 2016.

4. Energy Community budget 2018-2019 – draft proposal and further steps

- 4.1. The Director was invited to present the details of programming for the years 2018-2019, like the relevant outline of the work program for the same period and justification of further requested financial and human resources.
- 4.2. Commission representatives provided some comments on the prepared bi-annual draft budget 2018-2019. The major budget increase in 2018 is linked with the rent of the office space. From 2017 to 2026, the Austrian Ministry will participate with a fixed yearly donation of EUR 170 000. In 2016, the Energy Community was able to extend its space in the same building, but only by renting the full 6th floor. The landlord was not open to share smaller space. Hence, the Energy Community space increased from 750 m² to 1,380 m², when it was foreseen in the 2017 budget a total space of 1,000 m². The Budget Committee raised the point that this extra cost for that extra space might be an open point to evaluate for the next bi-annual budget 2018-2019. Secretariat informed that EU4Energy will also occupy a part of that extra space (around 200 m²) and will contribute to the renting and running costs. The Budget Committee suggested to re-evaluate the contribution of EU4Energy.
- 4.3. Another increase concerns the request for 4 new posts: 1 head of unit for environmental issues, 1 legal assistant, 1 administrative assistant foreseen as a event officer, and 1 referendaire in the context of the Advisory Committee. This request will also be subject to a deeper evaluation by the Budget Committee.
- 4.4. Refunding will also significantly increase (+42%) due to more reimbursement planned, like the new members of Georgia, the envisaged contribution to the running cost of the Advisory Committee and refunding of expenses for the meetings of new bodies (like Parliamentary Plenum) established.
- 4.5. The Chair requested details on the role of this permanent referendaire compared to the number of meetings and cases managed by the Advisory Board. Secretariat explained that a full-time Referendaire (at the level of an expert) is to assist the Advisory Committee in processing all information and documentation that is submitted to the Committee when approached by the Ministerial Council to give an opinion. This requires review not only of the Secretariat's Reasoned Request and of the Reply by the Party concerned, but it also requires detailed review of all the Annexes submitted by the Parties to the case (between 2 and 300 pages to review). The Referendaire is also expected to assist the Advisory Committee in drafting its Opinions. The estimated increase of work of the Advisory Committee is based on the number of Reasoned Requests submitted in 2016 to the Ministerial Council for Decision (13), which indicates the increased number of cases initiated by the Secretariat and all of

which have to be considered by the Advisory Committee before giving an opinion. Currently there are open infringement proceedings in ten (10) cases and approximately twenty (20) cases are pending, i.e. being analysed whether infringement proceedings can be initiated. All outlined activities in the area infringement will require substantial work to be coordinated by the Referendaire.

- 4.6. Commission representatives suggested to add in the explanatory memorandum the detailed expenditure table provided in the presentation of the Secretariat and to amplify the justification for the requested 4 human resources. The Secretariat will provide an update of the document as soon as possible as this will be required for further analysis by the members of the Budget Committee as well as for internal consultation within the Commission services.
- 4.7. Chair recalled also the procedure for the establishment of the Energy Community budget under which the European Commission shall propose the budget to the Ministerial Council of the Energy Community. As this procedure is lengthy, finalisation of the proposal will have to be finalised early 2017.


5. Misc.

- 5.1. In conclusion of the meeting, Secretariat informed about the meetings planned in 2017 on 20 June and 13 December 2017. Chair underlined the importance of being present at the meeting, in particular in view of the decisions to be taken at the meeting in June 2017.
- 5.2. In conclusion of the meeting, Director Kopač thanked Ms. Aba-Garrote for her continued support during her term as a Chair of the Budget Committee and wished her all the best for her professional future.

Chair of the Budget Committee

Paloma ABA GARROTE

Signature and date


23/12/2016

Minutes of the meeting

27th Budget Committee

List of annexes

Budget Committee - presentation slides

Annex

List of participants

Mrs. Paloma Aba-Garrote	Chair of the Budget Committee European Commission
Mr. Didier Hannot	EU representative
Mr. Roderic van Voorst	EU representative
Mrs. Aferdita Daja-Bareti	ALBANIA – Ministry of Energy and Industry
Ms. Magdalena Bilbilovska	Former Yugoslav Republic of Macedonia Ministry of Economy, Energy Department
Mrs. Natalia Lukovic	SERBIA Ministry of Energy, Development and Environment Protection
Mr. Aleksyi Glodkiy	UKRAINE - Ministry of Energy and Coal industry of Ukraine
Ms. Sofia Ugruimova	UKRAINE – Ministry of Energy and Coal industry of Ukraine
Mr. Janez Kopac	ECS Director
Mrs. Bozena Mazur	ECS Head of Financial Unit



Minutes of the meeting

27th Budget Committee

