

PROCEDURAL ACT 2022/02/MC-EnC OF THE MINISTERIAL COUNCIL OF THE ENERGY COMMUNITY

on fostering regional energy market integration in the Energy Community

The Ministerial Council of the Energy Community,

Having regard to the Treaty Establishing the Energy Community (the Treaty), and in particular Articles 47, 86 and 87 thereof,

Whereas;

- (1) *Integrated energy markets comprising Contracting Parties and the territories of the European Union referred to in Article 27 of the Treaty can support affordability, decarbonization and security of supply;*
- (2) *The integration of regional energy markets requires a level playing field to be created by reciprocity of rights and obligations among energy sector stakeholders from Contracting Parties and Member States alike;*
- (3) *Integration of regional energy markets further requires the involvement of a regulatory body independent of energy sector stakeholders, and competent to advise, support, monitor and take autonomous decisions in situations concerning trade and infrastructure across the borders between Contracting Parties and Member States, and hence complement the role of the Regulatory Board in situations concerning the borders between Contracting Parties only;*
- (4) *The European Union, by virtue of Regulation (EU) 2019/942, has created an Agency for the Cooperation of Energy Regulators which has the resources and experience to discharge with such tasks;*
- (5) *The Treaty constitutes an agreement as referred to in Article 43 of Regulation (EU) 2019/942, and thus empowers the Agency for the Cooperation of Energy Regulators to exercise its tasks with regard to Contracting Parties, provided that the Contracting Parties have mandated the Agency accordingly;*
- (6) *To ensure coherence and consistency in the regional energy market, the ENTSO for Electricity will have to assume a similar role as in the European Union;*
- (7) *The creation of a level playing field also requires cross-border cooperation among enforcement authorities in ensuring that Contracting Parties apply European competition and State aid rules in the same manner as the institutions of the European Union and its Member States;*
- (8) *The legal remedies available against binding decisions by the Agency for the Cooperation of Energy Regulators are those established by the Treaty on the Functioning of the European Union, whereas enforcement of the obligations undertaken by the Parties to the Treaty establishing the Energy Community follows the procedures stipulated by that Treaty.*

Having regard to the proposal made by the Secretariat,

HAS ADOPTED THIS PROCEDURAL ACT:

Article 1

Reciprocity among Energy Sector Stakeholders

(1) For the purpose of the present Procedural Act, regulatory and other designated authorities, transmission and distribution system operators, nominated electricity market operators, regional security coordinators, synchronous area and LFC block monitors are defined as energy sector stakeholders.

(2) Where a Decision adopted by the Ministerial Council or the Permanent High Level Group under both Title II and Title III of the Treaty obliges energy sector stakeholders to perform tasks and activities involving other energy sector stakeholders, the energy sector stakeholders of both Contracting Parties and Member States of the European Union covering the territories referred to in Article 27 of the Treaty shall perform such tasks and activities, unless the Decision provides otherwise.

(3) Where a Decision adopted by the Ministerial Council or the Permanent High Level Group under both Title II and Title III of the Treaty provides that energy sector stakeholders from Contracting Parties apply terms, conditions and methodologies already adopted in accordance with procedures of European Union law, the participating energy sector stakeholders from the European Union, in particular transmission system operators and nominated electricity market operators shall treat the energy sector stakeholders from Contracting Parties in the same manner as energy sector stakeholders from the European Union.

Article 2

Powers of the Agency for the Cooperation of Energy Regulators

(1) Where a Decision adopted by the Ministerial Council or the Permanent High Level Group under both Title II and Title III of the Treaty refers to the present Article, the Agency for the Cooperation of Energy Regulators (the Agency) shall:

- a) provide opinions and recommendations to energy sector stakeholders of both Contracting Parties and Member States of the European Union covering the territories referred to in Article 27 of the Treaty, as well as to the Secretariat and the European Commission;
- b) adopt individual decisions binding on energy sector stakeholders of both Contracting Parties and Member States of the European Union covering the territories referred to in Article 27 of the Treaty;
- c) adopt individual decisions on regulatory issues having effects on trade or system security across the borders between Contracting Parties and Member States of the European Union covering the territories referred to in Article 27 of the Treaty, which require a joint decision by at least two regulatory authorities of which at least one is from a Contracting Party and from a Member State of the European Union covering the territories referred to in Article 27 of the Treaty, in the following situations:

(i) in cases concerning exemptions, as provided for in Article 63(5) of Regulation (EU) 2019/943, as adapted and adopted by Ministerial Council Decision 2022/xx/MC-EnC and Article 36(4) of Directive 2009/73/EC, as adapted and adopted by Ministerial Council Decision 2011/02/MC-EnC;

(ii) in other cases where the competent regulatory authorities have not been able to reach an agreement within six months of referral of the case to the last of those regulatory authorities, or within four months in cases under point (f) of Article 62(1) of Directive (EU) 2019/944, as adapted and adopted by Ministerial Council Decision 2022/xx/MC-EnC;

(iii) on the basis of a joint request from the competent regulatory authorities.

d) carry out any other tasks assigned to it by the Decision in question.

Before adopting a decision in the circumstances referred to in points b) and c), the Agency shall consult the Regulatory Board at least four weeks in advance, unless the Decision in question provides for a different consultation period. In case the Regulatory Board cannot reach an opinion, it shall forward a summary of its deliberations to the Agency immediately.

Where a case has been referred to the Agency under point c), the Agency shall issue a decision within six months of the date of referral, or within four months thereof in cases pursuant to point (f) of Article 62(1) of Directive (EU) 2019/944, as adopted and adapted by Ministerial Council Decision 2022/xx/MC-EnC, and may, if necessary, provide an interim decision to ensure that security of supply or operational security is protected.

(2) At the request of the Agency, the energy sector stakeholders of both Contracting Parties and Member States of the European Union covering the territories referred to in Article 27 of the Treaty shall provide to the Agency the information necessary for the purpose of carrying out its tasks under this Procedural Act.

For the purpose of information requests as referred to in the first subparagraph, the Agency shall have the power to issue decisions. In its decisions, the Agency shall specify the purpose of its request, shall make a reference to the legal basis under which the information is requested, and shall state a time limit within which the information is to be provided. That time limit shall be proportionate to the request.

(3) The Agency shall use confidential information received pursuant to this Procedural Act only for the purpose of carrying out the tasks assigned to it in this Regulation. The Agency shall ensure the appropriate data protection of the information pursuant to Article 41 of Regulation (EU) 2019/942.

(4) For the purpose of this Article, the Agency shall act independently, objectively, and in the interest of the Energy Community as a whole.

(5) Decisions adopted by the Agency pursuant to this Article shall be open to appeals pursuant to Article 28 of Regulation (EU) 2019/942 and the remedies available under European Union law. Non-compliance with a final decision by the Agency shall be considered a failure by the Party concerned to implement a Decision addressed to it within the meaning of Article 1 of Procedural Act No 2008/01/MC-EnC.

Article 3

Cooperation with the ENTSO for Electricity

(1) Where a Decision adopted by the Ministerial Council or the Permanent High Level Group under both Title II and Title III of the Treaty refers to the present Article, the ENTSO for Electricity shall carry out the tasks stipulated by the act in question.

(2) The ENTSO for Electricity shall publish data and information of transmission system operators from Contracting Parties on its website and include them on its platforms and data environments in the same manner as transmission system operators from the European Union.

(3) For the purpose of carrying out the tasks referred to in paragraphs 1 and 2, energy sector stakeholders as well as the Secretariat, the Regulatory Board, and the European Commission shall cooperate with the ENTSO for Electricity. In particular, they shall submit all required information and data to the ENTSO for Electricity within a time period as required by the Decision in question, or as determined by the ENTSO for Electricity.

Article 4

Cooperation among competition authorities

When enforcing prohibitions in the field of competition and State aid, as enshrined in Articles 18 and 19 of the Treaty, in cases with the potential of distorting competition or of affecting trade amongst the Contracting Parties and the Member States of the European Union covering the territories referred to in Article 27 of the Treaty, the national enforcement authorities of the Contracting Parties shall cooperate with national enforcement authorities of those Member States, with the European Commission and with the Secretariat.

Article 4

Entry into force and review

(1) This Procedural Act shall enter into force on the day of its adoption and is addressed to the Parties and institutions of the Treaty.

(2) The Permanent High Level Group shall review this Procedural Act on the basis of a report by the Secretariat, by 1 June 2025.

For the Ministerial Council

Presidency