

**DRAFT**

**PROCEDURAL ACT**

**OF THE MINISTERIAL COUNCIL OF THE ENERGY COMMUNITY**

**Procedural Act [2019/... /...] on the exchange of information and cooperation between the European Commission, the Secretariat and the Contracting Parties in the fields of compliance with Treaty obligations and the reciprocity mechanism**

The Ministerial Council of the Energy Community,

Having regard to the Treaty Establishing the Energy Community, and in particular Articles 4, [draft] 25' (6), 47(c), 67(d), 86 and 87 thereof,

Having regard to the proposal by the European Commission,

Whereas

- (1) [...]
- (2) [Reference to relevant substantive ECT provisions, for instance Articles 18, 19]
- (3) [Given the particular complexity and sensitivity of State aid and competition law issues, specific rules are appropriate in this respect]

HAS ADOPTED THIS PROCEDURAL ACT:

**Title I  
General Provisions**

**Article 1**

**Purpose**

(1) These rules specify the exchange of information and cooperation between the European Commission, the Secretariat and the Contracting Parties as regards compliance with Treaty obligations including with the reciprocity mechanism under [draft] Article 25' of the Treaty.

(2) As a consequence these rules also adjust and harmonise existing rules and procedures concerning the application and interpretation of Treaty obligations.

**Commented [A1]:**

As regards the general comment by EnSC that the proposed Procedural Act (PA) would go beyond the new reciprocity mechanism in Article 25' and significantly affect the institutional set-up of the ECT:

The proposed PA would actually be based not only on draft Article 25' (6) but on several other ECT provisions, for instance 47 (c) and 67 (d), which allow for a broader approach. It is intended to cover a number of elements (coordination, flow of information) which are linked to the new reciprocity mechanism under Article 25' ECT as well as other ECT amendment such as of Article 18 ECT on transparency of State Aid.

For economy of procedure, consequences of such ECT amendments in terms of interaction between COM, EnCS, Contracting Parties, MC and PHLG, is done in the same PA. The rules proposed in this PA would prevail over the rules in other existing PA (in particular on dispute settlement) as *lex posteriori* in case of conflicts.

The institutional set up established under the ECT is not being significantly affected, in particular as regards Article 70 ECT.

**Title II**  
**Matters related to compliance with obligations under the Treaty**

Article 2

**Tasks of the Secretariat**

(1) The Secretariat shall submit any reasoned request for decision by the Ministerial Council under Articles 91 and 92 of the Treaty ~~as soon as possible immediately~~ and in any case at least 3 months before the envisaged Ministerial Council, including as regards non-compliance by a Contracting Party or the EU with obligations under [draft] Article 25' of the Treaty.

**Commented [A2]:** Addressing comment by the EnCS

(2) In case of ~~potential evidence-based [substantiated]~~ non-compliance by a Contracting Party with Treaty obligations, or in case of ~~potential evidence-based [substantiated]~~ non-compliance by the EU with Treaty obligations under [draft] Article 25', the Secretariat shall inform the European Commission already ~~as soon as possible within the at an early stage of the process~~ and without delay about:

**Commented [A3]:** Suggestion to address comments from Georgia.

**Commented [A4]:** Suggestion to address comment by Georgia.

(a) upcoming reasoned requests ~~to be put in the agenda~~ for decisions by the Ministerial Council pursuant to Articles 91 and 92 of the Treaty;

**Commented [A5]:** Suggestion to address comment by Georgia on what is "upcoming reasoned request".

(b) ~~substantive substantiated~~ complaints from private bodies pursuant to Article 90 (1) of the Treaty; the Secretariat shall also provide a preliminary assessment of the complaint together with a summary; the European Commission may define, in consultation with the Secretariat, a template for receiving this information

(c) ~~substantive substantiated~~ concerns of the Secretariat based on any other information brought to the attention of the Secretariat or its own investigations and findings The Secretariat shall also provide a preliminary assessment of the concern together with a summary. The European Commission may define, in consultation with the Secretariat, a template for receiving this information.

(3) The Secretariat shall communicate the information referred to in paragraphs 1 and 2 above to the European Commission directly and without the need for the Commission to ask for access to the file.

(4) The Secretariat shall ~~inform consult~~ ex-ante the European Commission without delay on any new or updated guidance, policy document or draft replies to referrals from Contracting Parties or Courts and opinions given by the Secretariat pursuant to Article 2 of the Rules of procedure on dispute settlement. ~~The Commission shall be given reasonable time to react which shall not be less than two weeks. The Secretariat shall take in due account the opinion of the European Commission.~~

**Commented [A6]:** This modification and the changes further below to address concerns by EnCS and some CPs.

(5) The Secretariat shall ensure strict confidentiality in respect of communication with the public and abstain from any public statement on its views on the legality of the national measure in question, ~~including from any relevant exchange of views with the authorities in the concerned Contracting Party~~, until when the Ministerial Council has taken a decision on the matter.

**Commented [A7]:** This deletion would be a middle ground to cater for the comments of the EnCS which resembles more to the Commission policy in the context of infringements, i.e. confidentiality as regards outside world, but possibility to interact with the affected Party.

Article 3

**Tasks of the European Commission**

(1) In case of evidence-based [substantiated] potential non-compliance by a Contracting Party with Treaty obligations, including as regards non-compliance with obligations under [draft] Article 25' of the Treaty, the European Commission

**Commented [A8]:** Suggestion to address comments from Georgia.

**Commented [A9]:** Suggestion to address comments from Georgia

(a) shall inform the Secretariat without delay about upcoming reasoned requests to be put in the agenda for decisions by the Ministerial Council pursuant to Articles 91 and 92 of the Treaty ;

**Commented [A10]:** Suggestion to address comment by Georgia on what is "upcoming reasoned request".

(b) may inform the Secretariat about sufficiently substantiated substantive complaints submitted to the European Commission, subject to EU confidentiality requirements;

(c) may inform the Secretariat about sufficiently substantiated substantive concerns of the Commission based on any other information brought to the attention of the Commission or its own investigations and findings, subject to EU confidentiality requirements.

(2) In accordance with [draft] Article 25' (3) of the Treaty, the European Commission shall inform all Contracting Parties and the Secretariat without delay about decisions of the EU to enact mutual rights and obligations defined in the decisions of the Ministerial Council pursuant to [draft] Article 25' (1) of the Treaty. The European Commission shall specify the Contracting Party concerned and the date when the mutual rights and obligations will be enacted.

(3) In accordance with [draft] Article 25' (4) of the Treaty, the European Commission shall inform all Contracting Parties and the Secretariat without delay about decisions of the EU to suspend mutual rights and obligations defined in the decisions of the Ministerial Council pursuant to [draft] Article 25' (1) of the Treaty. The European Commission shall specify the Contracting Party concerned and the date when the mutual rights and obligations will be suspended.

The European Commission shall give the Contracting Party concerned, the Presidency and the Secretariat advance notice and a reasonable time to react which would, in principle, be no less than one week of its proposals to the Council of the European Union to suspend mutual rights and obligations defined in the decisions of the Ministerial Council pursuant to [draft] Article 25' (1) of the Treaty. In accordance with [draft] Article 25' (4) of the Treaty such notification-advanced notice is not required in cases of urgency.

**Commented [A11]:** Accommodating comments by Georgia and EnCS

For the purposes of [draft] Article 25' (4) of the Treaty and this Procedural Act, cases of urgency mean cases of serious material breach of the Treaty by a Contracting Party which may result in an irreparable damage in the near future.

(4) For the purpose of [draft] Article 25' (5), potential breach shall be an evidence based [substantiated] concern.

**Title III**

## Specific rules for matters related to competition law and State aid

### Article 4

#### **Scope of this Title**

The following specific rules shall apply in respect of compliance with Articles 18 and 19 of the Treaty. These rules shall be without prejudice to the general rules set out in Title II above, where applicable.

### Article 5

#### **Tasks of the Contracting Parties**

(1) In accordance with [draft] Article 18 (3) of the Treaty, the Contracting Parties shall provide without undue delay the European Commission and the Secretariat with final decisions of their national authorities in the area of State aid.

(2) Upon request from the European Commission, the Contracting Parties shall provide the European Commission without undue delay and at the latest within 2 weeks, with all requested additional information concerning the State aid decision in question.

(3) The European Commission and the Secretariat shall treat the information received under paragraph (1) and (2) according to its confidentiality requirements for State aid notifications.

### Article 6

#### **Tasks of the Secretariat**

(1) The Secretariat shall circulate to the European Commission and among the Contracting Parties non-confidential summaries of State aid decisions communicated by a Contracting Party in accordance with [draft] Article 18 (3) of the Treaty.

(2) The Secretariat shall submit reasoned requests for decisions by the Ministerial Council under Articles 91 and 92 as regards non-compliance by a Contracting Party with Articles 18 and 19 of the Treaty immediately and in any case at least 4 months before the envisaged Ministerial Council.

(3) In case of evidence-based [substantiated] potential non-compliance by a Contracting Party with obligations under Article 18 and Article 19 of the Treaty, the Secretariat shall inform the European Commission, as well as other Contracting Parties, without delay about:

(a) upcoming reasoned requests to be put in the agenda for decisions by the Ministerial Council pursuant to Article 91 and 92 of the Treaty;

(b) substantiated complaints from private bodies pursuant to Article 90 (1) of the Treaty; Secretariat shall also provide a preliminary assessment of the complaint together with a summary of it. The European Commission may define, in consultation with the Secretariat, a template for receiving this information;

**Commented [A12]:** Suggestion to address comments from Georgia.

**Commented [A13]:** Suggestion to address comments from Georgia.

**Commented [A14]:** Suggestion to address comment by the EnCS on breach of the principle of equal treatment.

**Commented [A15]:** Suggestion to address comment by Georgia on what is "upcoming reasoned request".

(c) ~~substantive~~-substantiated concerns of the Secretariat based on any other information brought to the attention of the Secretariat or its own investigations and findings. The Secretariat shall also provide a preliminary assessment of the concern together with a summary. The European Commission may define, in consultation with the Secretariat, a template for receiving this information.

(4) The Secretariat shall communicate the information referred to in paragraphs 2 and 3 above to the European Commission directly and without the need for the Commission to ask for access to the file.

(5) The Secretariat shall ensure strict confidentiality in respect of communication with the public. The Secretariat shall abstain from any public statement on its views on the legality of the national measure in question under Article 18 and Article 19 of the Treaty, including from any relevant exchange of views with the authorities in the concerned Contracting Party, until when the Ministerial Council has taken a decision on the matter.

(6) If necessary, the Secretariat shall contact competition and State aid authorities in the concerned Contracting Party in order to obtain the necessary information for the assessment of the national measure in question under Article 18 and Article 19 of the Treaty, without expressing its opinion on the legality of the measure.

(7) Upon request from the European Commission, the Secretariat shall provide the European Commission without undue delay and at the latest within 2 weeks, with all requested additional information about the assessment of competition and State aid cases performed by the Secretariat.

(8) The Secretariat shall consult ex-ante the European Commission without delay on any new or updated guidance, policy document or draft replies to referrals from Contracting Parties or Courts and opinions given by the Secretariat pursuant to Article 2 of the Rules of procedure on dispute settlement related to competition or State aid law under Articles 18 and 19 of the Treaty.

#### **Title IV**

#### **Final provisions**

#### **Article 7**

In the event of conflict between a provision of this Procedural Act and a provision of any of the Procedural Acts listed below, the provisions of this Procedural Act shall apply:

- (a) Rules of Procedure of 2015 on dispute settlement under the Treaty;
- (b) Rules of Procedure of 2015 of the Ministerial Council of the Energy Community;
- (c) Rules of Procedure of 2015 of the Permanent High Level Group of the Energy Community.

DRAFT

