

INTERPRETATIVE NOTE

on

References to the Procedural Act 2022/01/MC-EnC for pan-EU terms and conditions or methodologies approved by ACER

23/02/2024

On 15 December 2022, the Energy Community Ministerial Council adopted Decision 2022/03/MC-EnC on the incorporation of the European Union's electricity market *acquis* in the Energy Community together with Procedural Act 2022/01/MC-EnC on fostering regional energy market integration in the Energy Community. This decision adapted and incorporated i.a. Regulation (EU) 2016/1719 (EnC FCA), Regulation (EU) 2015/1222 (EnC CACM) and Regulation (EU) 2017/2195 (EnC EB GL).

Article 4(6) of the EnC FCA, Article 9(6) of the EnC CACM and Article 5(2) of the EnC EB GL define the application of pan-EU terms and conditions or methodologies (TCMs), developed by all TSOs or all NEMOs in the European Union, in the Energy Community. In particular, these Articles specify that the TSOs and NEMOs of the Energy Community shall apply the pan-EU TCMs listed in the respective Articles and any amendments thereof subject to approval by ACER (adopted by means of individual decisions).

For the EnC FCA and the EnC EB GL, the above-named Articles include, for ACER, a reference to 'Article 2 of Procedural Act No 2022/01/MC-EnC'. However, the Procedural Act 2022/01/MC-EnC in general, and as follows Article 2 thereof, addresses matters affecting Contracting Parties and neighboring Member States, as defined in Article 27 of the Treaty establishing the Energy Community. In particular, Article 2(1)(b) of the Procedural Act 2022/01/MC-EnC¹ explicitly refers to ACER's 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*', i.e. regional matters and regional TCMs affecting Contracting Parties and neighboring Member States. This reading is confirmed by the fact that ACER's tasks related to pan-EU TCMs listed in Article 5(2) of Regulation (EU) 2019/942 have been deleted from the version of the same Regulation when adapted and adopted by the Energy Community.

Therefore, the references to Article 2 of the Procedural Act 2022/01/MC-EnC in Article 4(6) of the EnC FCA and Article 5(2) of the EB GL, as adopted by the Ministerial Council Decision 2022/03/MC-EnC, are not employable and are to be considered clerical errors.

¹ Article 2(1)(a) and (c) of the Procedural Act 2022/01/MC-EnC refer to different cases, namely ACER opinions and recommendations and other tasks assigned to ACER, but not individual decisions which are to be taken in case of TCMs.