



17th MC/Annex 21a/11-10-2019

**PROCEDURAL ACT
OF THE MINISTERIAL COUNCIL
OF THE ENERGY COMMUNITY**

PA 2019/03/MC-EnC: on the distribution of proceeds from penalty payments under Article 92' of the Treaty establishing 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 90 to 94, as well as Articles 47(c), 82, 83, 86 and 87 thereof,

Whereas Article 92' of the Treaty introduces a possibility for the Ministerial Council, upon a proposal from Party, the Secretariat or the Regulatory Board, to adopt decisions imposing penalty payments in cases where a Contracting Party has not taken the necessary measures to comply with a decision of the Ministerial Council under Article 92 within a deadline set by the Ministerial Council,

Whereas, according to Article 92' of the Treaty, any proceeds resulting from penalty payments shall be used to support measures contributing to improvement of the social and environmental situation in the Contracting Parties on the basis of equality,

Whereas a just transition away from fossil fuels towards a carbon-neutral economy is one of the greatest challenges of our time,

Whereas the Contracting Parties of the Energy Community supported the call for enhanced action on climate change provided by the Paris Agreement,

Whereas the Permanent High Level Group, at its meeting on [...] endorsed the present Procedural Act,

Having regard to the proposal submitted by the Secretariat,

HAS ADOPTED THIS PROCEDURAL ACT:

**Article 1
Purpose**

This Procedural Act implements Article 92' of the Treaty by establishing the principles and the procedure according to which the proceeds from penalty payments are distributed among the Contracting Parties.

Commented [A1]: This PA should define, what is meant by the term 'equality'. Does this mean equal amounts to all parties except the one having paid the penalty?

Article 2 Priorities

The proceeds from penalty payments may be used to support projects promoted by public or private actors aiming at objectives such as:

- i. Accelerating the transition away from fossil fuels to clean forms of energy leading to a reduction of pollution and/or greenhouse gas emissions by the Contracting Parties concerned;
- ii. Supporting the development and upgrade of smart digital infrastructure solutions;
- iii. Mitigating the social impact of the transition, in particular in regions depending on coal;
- iv. Promoting the creation, protection and expansion of carbon sinks in Contracting Parties;
- v. Supporting the transition through the development and marketing of innovative technologies and solutions;
- vi. Designing and implementing measures aimed at tackling energy poverty and at protecting vulnerable consumers;
- vii. Supporting climate change adaptation measures;
- viii. Increasing capacity and improving governance for the management of the energy and climate transition, including awareness-raising and the inclusion of non-state actors.

Article 3 Management of revenues from penalty payments

1. Within five months from the adoption of the present Procedural Act, the Secretariat shall open a new budget line, "Energy Community Transition Fund", under which all the payments made by the Contracting Parties following Decisions under Article 92' will be collected.

~~2. Third parties such as international finance institutions, public or private bodies may contribute to the budget line referred to in paragraph 1 on the basis of a bilateral grant agreement with the Energy Community.~~

~~3.2.~~ The funds allocated to the budget line referred to in paragraph 1 shall be managed by the Secretariat, in line with the budgetary rules of the Energy Community, exclusively for awarding grants to projects shortlisted by the Ministerial Council up to the maximum amount and in line with any conditions imposed by the Procedural Act referred to in Article 4.

~~4.3.~~ The budget line referred to in paragraph 1 shall provide grants to projects selected by the Ministerial Council in line with Article 4 below on the basis of an agreement with the project promoter.

Commented [A2]: This paragraph risks to undermine the rules and purpose of donations to the Energy Community budget and donors.

Commented [A3]: Who exactly would be the parties to this agreement?

~~5.4.~~ Information about the budget line referred to in paragraph 1, eligibility for and modalities of project funding, and the amount of funding available shall be made public.

Article 4 Shortlist of eligible projects

1. Every two years, the Secretariat shall make a public call to submit proposals of projects eligible to be funded from revenues from penalty payments.
2. The Secretariat shall forward the project proposals immediately to the Presidency and Vice-Presidencies and thereafter to the Ministerial Council at least three months in advance of its next meeting, together with a project file including an assessment and all information necessary for the Ministerial Council to shortlist of eligible projects.
3. The Secretariat shall, in consultation with the European Commission, submit a proposal for a Procedural Act of the Ministerial Council Upon proposal by the Secretariat, the Ministerial Council shall adopt a Procedural Act establishing a ranked shortlist of projects to be funded from the revenues from penalty payments, to the extent funding is available. The shortlist shall indicate a maximum grant amount for each project as well as any other possible conditions for funding.
4. In establishing the shortlist of eligible projects, the Ministerial Council shall take into account the following criteria, on the basis of indicators attributed in the Secretariat's proposal:
 - i. Whether and to what extent the project clearly contributes to one or more of the priorities in Article 2 of the present Procedural Act;
 - ii. whether the probability that the desired impact of the project will be achieved, including the prospects of commercial viability;
 - iii. The degree of innovation of the project, and its impact on job creation;
 - iv. The need for grant financing from Energy Community budget, and in particular additionality to other actual and potential sources of funding;
 - ~~iv-v.~~ That the funds are not made available for a project in a Contracting Party that is subject to financial penalties under Article 92' of the Treaty.
5. In shortlisting the projects to be funded, the Ministerial Council shall not aim to distribute the funds based on geographic considerations.
6. Before adopting the Procedural Act referred to above, the Ministerial Council shall hear representatives of any third-party contributors to the budget line established under Article 3.

Commented [A4]: To be replaced by "Energy Community Transition Fund", see above?

Commented [A5]: The term "geographic considerations" is not clear. In this context: It would be useful to have a mechanism to ensure that there is a distribution of the funds among the CPs and that they cannot be only concentrated in few of them.

Commented [A6]: With the proposed deletion of Article 3.2 on third parties contributions (see above), this paragraph does not seem necessary anymore. Otherwise, the meaning of this paragraph should be clarified.

Article 5 Eligibility and submission of applications

1. Public and private bodies established or operating in Contracting Parties are eligible to submit project proposals to the Secretariat in answering the public call by the Secretariat referred to in Article 4. Public authorities from Contracting Parties which have failed to pay penalty payments imposed by a Decision of the Ministerial Council under Article 92' in due time shall not be eligible to submit a project proposal.
2. In order to be considered by the Ministerial Council, the project promoter must demonstrate that the project contributes to one or more of the objectives mentioned in Article 2 of the present Procedural Act, or serve a comparable purpose.
3. The documentation for the projects submitted to the Ministerial Council shall also include a description of the project, the specification of the amount of the grant applied for, information about financing of the project including a justification for the need of additional grant financing by the Energy Community, an impact assessment, a timeline for implementation as well as any other relevant information and documentation.
4. Project promoters shall also demonstrate that the project is in line with Energy Community law, including Articles 18 and 19 of the Treaty, as well as other relevant standards related to aspects such as transparency, gender-balance and protection against fraud, embezzlement and corruption, ~~to be further specified by the Secretariat.~~

Commented [A7]: This restriction risks to discriminate against bodies in EU MS which are not yet established or operating in CPs.

Commented [A8]: This needs to be clarified.

Commented [A9]: This needs to be clarified especially for those cases in which the Decision under Article 92' has been revoked.

Article 6 Monitoring and reporting

1. The Secretariat shall stipulate the modalities of grants, including termination and possible recovery in case of abuse or non-implementation in a contract on the basis of a template drafted in consultation with international financial institutions.
2. The Secretariat shall monitor the use of grants to shortlisted in line with any conditions set, as well as the process of project implementation, with the support of the competent authorities in the Contracting Part(ies) concerned on the basis of a reporting plan established for each project.
3. The Secretariat and the European Commission may request information from the authorities of the Contracting Part(ies) concerned at any stage of implementation of the project.
4. The Secretariat shall report annually to the Ministerial Council on the amount of funds collected from penalty payments in the previous year and the process of the shortlisted projects under implementation.
5. Once a project is finalised, the Secretariat shall publish a report in a designated section on its website and shall present the report during the next Ministerial Council.

Commented [A10]: "International financial institutions" should be replaced by "European Commission".

Commented [A11]: COM should have the possibility of asking for these reports, possibly together with an assessment by the EnCS.

Article 7 Entry into force



This Procedural Act shall enter into force upon adoption.

**Article 8
Publication**

The Director of the Energy Community Secretariat shall make this Procedural Act available to all Parties and institutions under the Treaty within 7 days of its adoption and to the public on the website of the Energy Community.

Done in Chisinau, on 13 December 2019

For the Presidency

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