

Amended RULES OF PROCEDURE OF THE ENERGY COMMUNITY ADVISORY COMMITTEE

The Advisory Committee established by the Ministerial Council of the Energy Community under Article 32 of the Procedural Act PA 2008/01/MC-EnC of 27 June 2008 on the Rules of Procedure for Dispute Settlement under the Energy Community Treaty as amended by Procedural Act PA/2015/04/MC-EnC of 19 October 2015 (“the Dispute Settlement Rules”),

Aiming to contribute to the structured settlement of disputes and the enforcement of the Energy Community *acquis communautaire* in accordance with the provisions of Title VII of the Energy Community Treaty (“the Treaty”),

Committed to assist the Ministerial Council of the Energy Community (“the Ministerial Council”) in adopting legally sound decisions under Article 91 of the Treaty,

Committed to assist in ensuring the coherent application and interpretation of Energy Community law in the Contracting Parties,

Having regard to the amendments to the Dispute Settlement Rules in 2015 in relation to the composition, mandate and procedure in front of the Advisory Committee as well as to its strengthened role as the independent and legal expert body in the dispute settlement procedure,

HAS GIVEN ITSELF THE FOLLOWING AMENDED RULES OF PROCEDURE

Article 1

Purpose

These rules determine the structure, operation and procedures of the Advisory Committee as established by the Ministerial Council under Articles 2 (3), 32, 33 and 41 of the Dispute Settlement Rules.

Article 2

Composition of the Advisory Committee

(1) The Advisory Committee is a body with advisory functions to the Ministerial Council in the decision-making process under Article 91 and Article 92 of the Treaty and to the Secretariat under Article 2 (3) of the Dispute Settlement Rules.

- (2) It shall be composed of five members nominated by the Parties to the Treaty and appointed by the Ministerial Council.
- (3) The composition of the Advisory Committee shall be published on the Energy Community website.

Article 3

President and Vice President

- (1) The members of the Advisory Committee shall, immediately after being appointed, elect among themselves a President for the period of two years. If at least one member so requests, the election shall take place by secret ballot. The President of the Advisory Committee shall be a member who obtained the majority of votes. If no member obtains more than half of the votes, the ballots shall be held as long as the majority is attained and a member for the office of the President is elected.
- (2) A Vice President shall be elected following the procedure outlined in paragraph 1.
- (3) The President shall organize and preside over the deliberations of the Advisory Committee and hearings before its body. The President shall also ensure a proper functioning of the services of the Advisory Committee. The Administrative Unit of the Secretariat shall assist the President in that respect.
- (4) The President shall represent the Advisory Committee towards other bodies and institutions of the Energy Community
- (5) If the office of the President falls vacant before the date of expiry, the Advisory Committee shall, without delay, elect a successor for the remainder of the term. Until such an election takes place, the Vice President shall act in the capacity of President.
- (6) The members and alternate members of the Advisory Committee shall communicate their contact details (e-mail address and telephone number) to the President and the Secretariat and make sure that they can be reached during working hours.

Article 4

Independence and replacement of members

- (1) The members and alternate members of the Advisory Committee shall perform their duties impartially and independent from all personal, commercial, institutional or national interests.
- (2) Upon appointment, each member and alternate member shall make a declaration by which he/she undertakes that he/she will perform his/her duties independently, conscientiously and impartially, that he/she will perform his/her duties solely guided by Energy Community law and not in the interest of any national authority, international institution, natural person or commercial entity, and that he/she will preserve the confidentiality of the deliberations of the Advisory Committee. The members and alternate members shall be bound by their declarations during and after their terms of office. Those declarations shall be published on the Energy Community website.
- (3) A member shall not participate in the Advisory Committee's duties in relation to a case where a risk of any personal interest emerges therein, if a member has previously been involved as representative of one of the parties or if there are other reasons that give rise to doubts about a member's independence or impartiality. If a member cannot participate because of one of these reasons or any other reason, the member must communicate it without delay to the President and must refrain from taking part in the Advisory Committee's duties in relation to that case. The member is replaced by an alternate

member who shall act as a member of the Advisory Committee for the purposes of that case. If there is more than one alternate member, the replacement follows the principle of seniority. If there are alternate members with the same seniority, the selection shall be made based on their age ranking the oldest member first.

(4) When members resigned or are otherwise unable to sit on the Advisory Committee, they shall be replaced by alternate members. If there is more than one alternate member, the replacement follows the principle of seniority. If there are alternate members with the same seniority, the selection shall be made based on their age ranking the older member first.

(5) If there is no eligible alternate member available, the Advisory Committee shall carry out its duties in a reduced composition. However, the number of members must not fall below three. If there are less than three members available to carry out the Advisory Committee's duties in relation to a case, the case shall be postponed until the nomination of additional alternate members by the Ministerial Council.

Article 5

Opinions of the Advisory Committee

(1) The Advisory Committee shall provide an Opinion to the Ministerial Council on each reasoned request submitted under Article 29 of the Dispute Settlement Rules.

(2) The Advisory Committee shall provide an Opinion to the Secretariat on each request according to Article 2(3) of the Dispute Settlement Rules.

(3) Where two or more reasoned requests concern the same subject matter, the President may decide to join them for the purpose of giving an Opinion.

(4) An Opinion shall be duly reasoned. The legal assessment shall be based on Energy Community law. The Opinion according to paragraph 1 shall pronounce itself on the reasoned request, taking into account the reply by the Party concerned.

(5) The Opinion shall be adopted by majority of the members of the Advisory Committee.

(6) An Opinion according to paragraph 1 shall propose to uphold or dismiss the reasoned request either entirely or partially.

(7) An Opinion according to paragraph 1 shall contain:

- the date of its delivery,
- the names of the President and members taking part in it,
- the case number(s) and the description of the parties,
- a brief summary of the facts,
- information about the public hearing conducted,
- the grounds for the Opinion,
- the operative part of the Opinion.

(8) Opinions shall be signed by the President on behalf of the Advisory Committee.

Article 6

Procedure upon receipt of a reasoned request

(1) Immediately upon receipt of a reasoned request under Article 29 or Article 11(3) of the Dispute Settlement Rules, the Presidency and the Vice-Presidency of the Ministerial Council shall send it together with the annexes to the President of the Advisory Committee and ask for the Advisory Committee's Opinion.

(2) The Secretariat shall forward a copy of each reasoned request submitted as well as the documentation of the preliminary procedure from the case file by electronic mail to all members of the Advisory Committee.

Article 7

Preparatory phase

(1) The President may designate a member, including him-/herself, to act as *rapporteur*. The *rapporteur* shall draft an Opinion as the basis for the Advisory Committee's deliberations. Upon expiry of the appropriate deadline set by the President the *rapporteur* shall submit its draft Opinion to the other members. The President may re-designate the *rapporteur* if the original *rapporteur's* draft Opinion is not submitted upon expiry of the deadline set by the President.

(2) The *rapporteur* shall draft an Opinion concerning a dispute settlement procedure on the basis of the reasoned request and the documentation of the preliminary procedure from the case file, and after a hearing conducted by the Advisory Committee.

(3) The *rapporteur's* Opinion on a dispute settlement procedure shall contain proposals for the Advisory Committee on a reasoned request in the examined case.

Article 8

Hearings

(1) The Advisory Committee shall conduct a public hearing in dispute settlement cases unless the parties to the case agree that a public hearing can be dispensed with. The public hearing shall take place at the premises of the Energy Community Secretariat.

(1a) Under exceptional circumstances the public hearing in dispute settlement cases may, if the Advisory Committee so decides, be conducted wholly or partially as remote video proceedings. The Advisory Committee shall ensure that the proceedings are made available in a manner to be specified with the Energy Community Secretariat for the purpose of enabling members of the public to see and hear the proceedings.

(2) The President, with the support of the Secretariat's Administrative Unit, shall:

- a) set a date for the hearing,
- b) immediately after setting the date of the hearing invite the parties to the case to the hearing,
- c) publish a notice about the date and the subject of the public hearing on the Energy Community website at least two weeks before the public hearing inviting interested parties to participate at the hearing,
- d) chair the hearing,
- e) ensure a proper conduct of the oral proceeding based on the provisions and his/hers obligations established under this Article, especially by observing the right of the Party concerned to have exhaustive opportunity to express its position on the points of fact and of law raised in the reasoned request. The President can give directions to the parties on the conduct of the hearing in advance of the hearing.

(3) If so requested by any of the parties to the case, the President may decide to hear the case entirely or partially in camera. In this decision he has to take into account whether issues of national security or commercially sensitive information would be jeopardised were the case heard in public. The minutes of an in camera hearing shall not be published.

(4) A registrar will be designated and will be tasked to take the minutes of the hearing. They shall be signed by the President and the registrar.

Article 9

Deliberations

- (1) The President shall organize the deliberations on the basis of a draft Opinion prepared by the *rapporteur* and in case of dispute settlement cases after the hearing. Once a reply by the Party concerned has been received in accordance with Article 30 of the Dispute Settlement Rules that reply shall be duly taken into account.
- (2) Deliberations and voting may take place by means of telecommunication and exchange of drafts, and include all members of the Advisory Committee engaged in the case in question.
- (3) If the President considers it necessary, the Advisory Committee may meet in person at a place to be decided by the President.
- (4) Once the Advisory Committee has adopted the final Opinion, the President shall immediately forward it to the President of the Permanent High Level Group, the Party concerned and the Secretariat within five working days upon its adoption.
- (5) The deliberations of the Advisory Committee and all preparatory documents as well as internal communication shall be and remain confidential.

Article 10

Proceedings of the Permanent High Level Group

The President of the Advisory Committee shall be heard at the next Permanent High Level Group meeting following the adoption of the Opinion by the Advisory Committee. The President may delegate this task to the Vice President or the *rapporteur*.

Article 11

Language

- (1) All communication between the members of the Advisory Committee, as well as with other bodies, shall be exclusively in English.
- (2) The Advisory Committee's Opinion shall be in English.

Article 12

Withdrawal

In the event the reasoned request is withdrawn by its initiator, the Advisory Committee shall immediately terminate its procedure.

Article 13

Opinions on the coherent interpretation or application of Energy Community law

- (1) If the Secretariat consults the Advisory Committee on the coherent interpretation or application of Energy Community law pursuant to Article 2 (3) of the Dispute Settlement

Rules Articles 5 through 11 apply accordingly.

(2) Article 8 only applies if the Advisory Committee requires a hearing in order to give its opinion.

Article 14

Written Opinions in case of serious and persistent breaches

(1) If the Presidency or the Vice-Presidency of the Ministerial Council asks the Advisory Committee for a written Opinion under Article 41 (2) of the Dispute Settlement Rules Articles 5 through 11 apply accordingly.

(2) Article 8 only applies if the Advisory Committee requires a hearing in order to give its opinion.

Article 15

Revocation of decision by the Ministerial Council

(1) When the Advisory Committee is giving its legal Opinion upon a request under Article 43(2) of the Dispute Settlement rules Articles 5 through 11 apply accordingly.

(2) Article 8 only applies if the Advisory Committee requires a hearing in order to give its opinion.

Article 16

Final provisions

(1) These amended Rules of Procedure shall enter into force upon their adoption by the Advisory Committee. They replace the initial Rules of Procedure of 18 July 2013.

(2) The Secretariat shall publish these amended Rules of Procedure on the Energy Community website.

Amended on 11 May 2020

For the Advisory Committee:

Wolfgang Urbantschitsch, President