| EU Commission proposal | Comments by Georgia | Comments by North Macedonia | Comments by Energy Community Secretariat |
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| **Title of the Procedural Act**<br><br>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 | This PA shall regulate exchange of information only in relation to the reciprocity mechanism, and it goes beyond | The proposed PA should deal only with implementing the Article 25', i.e. the reciprocity article. The information flow between the EU Commission, the Secretariat and the Contracting Party in question shall only be relevant in the context of the reciprocity mechanism.<br><br>As from the title, but even more from the provisions in the draft PA, it appears that the European Commission is proposing an act that covers topics beyond cooperation and exchange of information for the purpose of assessment related to ensuring reciprocity.<br><br>The draft also affects the institutional framework of the Energy Community Treaty within the meaning of Article 218(9) TFEU and it discriminates against other Parties within the meaning of Article 7 of the Energy Community Treaty.<br><br>The proposed draft Procedural Act fails to cover any assessment required to "switch-on" and enabling mutual rights and | The proposed Procedural Act goes beyond the draft reciprocity mechanism in Article 25' and significantly affects the institutional set-up of the Energy Community. |

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| | | obligations towards a Contracting Party, which is one of the few reasons for which the Contracting Parties are still negotiating Treaty amendments.<br><br>Instead, it only focuses itself on infringements, non-compliance and potential breaches giving rise to "switching-off".<br><br>Such extension of the scope of this PA cannot be justified. | |
| **Legal basis**<br><br>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,<br><br>Having regard to the proposal by the European Commission, | | | A Procedural Act can only be proposed by a Party (such as the European Union) or the Secretariat, but not the European Commission (Articles 87, 82). |
| **Article 1**<br><br>***Purpose***<br><br>(1) These rules specify the exchange of information and cooperation between | **Article 1(2)**<br><br>Seems to be a very broad purpose and goes way beyond Para. 1. | The Procedural Act shall focus on the information flows between the EU Commission and the Secretariat only for the purpose of assessing whether certain rights and obligations shall be enabled towards the | The proposed Procedural Act goes beyond the draft reciprocity mechanism in Article 25' and significantly affects the institutional set-up of the Energy Community. |

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| 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.<br><br>(2) As a consequence these rules also adjust and harmonise existing rules and procedures concerning the application and interpretation of Treaty obligations. | As noted above, we were of the understanding that this PA shall regulate exchange of information only in relation to the reciprocity mechanism | Contracting Party in question, and should give EU Commission the right to request from the Secretariat information on:<br><br>- whether a dispute settlement case related to the rights and obligations that should be "switched-on" has been initiated,<br>- whether there is a complaint and potential infringement pending related to the rights and obligations that should be "switched-on", or<br>- what the status of implementation and compliance with the specific provision of the *acquis* subject to reciprocity is.<br><br>In case mutual rights and obligations have been "switched-on" but the Contracting Party is not sufficiently complying with its obligations under the Treaty in relation to that particular reciprocal right, the Secretariat should have the obligation to inform the EU Commission only for the purpose of assessing whether certain rights and obligations shall be | It constitutes an "act supplementing or amending the institutional framework of the agreement" within the meaning of Article 218(9) TFEU. Based on the TFEU and as confirmed by established case law of the Court of Justice of the European Union, in a case where the institutional framework of the agreements is to be amended or supplemented, the procedure should follow the same procedure for the conclusion of an agreement, in which case the Council acts unanimously and the Parliament's consent is required.<br><br>The interpretation of the Treaty is up to the European Court of Justice (Article 94), or the Ministerial Council in a manner and procedure defined by the latter's Rules of Procedure. Interpretation is case-specific and cannot be subject to a blanket mandate to the European Commission. |

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| | | "switched-off" towards the Contracting Party in question:<br><br>- if a dispute settlement case related to the rights and obligations that should be "switched-on" has been initiated,<br>- if the Secretariat based on a complaint or based on *ex officio* assessment finds out that the Contracting Party in question fails to comply with the rights and obligations that should be "switched-on" and intends to initiate dispute settlement case, or such failure to comply is to be reported in its implementation reports. | |
| **Title II**<br>Matters related to compliance with obligations under the Treaty | | | The proposed Title does not focus on cooperation between the European Commission and the Secretariat within the framework of the draft reciprocity mechanism (Article 25') but applies generally to all cases of compliance assessment, i.e. also in situations purely limited to the implementation of Energy Community law by non-EU Contracting Parties. |

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| | | | It should be strictly limited to the implementation of the reciprocity clause.<br><br>As it stands, this Title changes the institutional set-up of the Energy Community and weakens independent and neutral enforcement of EU law in third countries covered by the Energy Community.<br><br>It also runs counter to the existing Energy Community rules and is likely to create procedural confusion and ultimately inefficiency. |
| **Article 2**<br><br>***Tasks of the Secretariat***<br><br>**(1)** The Secretariat shall submit any reasoned request for decision by the Ministerial Council under Articles 91 and 92 of the Treaty 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 | Timeline is different from the one established under the DSR | This is not in line with deadlines under the DSR, which provide for preliminary procedure in Article 91 cases and a period of five months in order to enable the Advisory Committee to deliver its opinion, as well as for a period of two months in Article 92 cases.<br><br>It takes away from the Contracting Parties to defend themselves and to be heard in infringement actions – one of the basic rights granted by international law and the Energy Community DSR which provide for "*ample opportunity to be heard at all stages of the procedure*". | The proposed deadlines contravene the existing deadlines stipulated by the Energy Community Dispute Settlement Rules of Procedure (DS-RoP), which envisage a minimum of 5 months for cases under Article 91 (which is needed to carry out the full procedure, including a hearing by and an opinion of the Advisory Committee of independent lawyers), and 2 months for cases under Article 92.<br><br>The term "immediately" is not defined.<br><br>Within the 3-months deadline suggested, an orderly procedure cannot be carried out, and even less so in 2 weeks when assessment should |

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| under [draft] Article 25' of the Treaty. | | | concern competition and State aid cases.<br><br>The DS-RoP envisages special rules for urgency, which are pending adoption. They would provide the correct framework for addressing cases requiring deviations from the normal procedure in exceptional and urgent cases only. |
| **Article 2**<br><br>**(2)** In case of potential non-compliance by a Contracting Party with Treaty obligations, or in case of potential non-compliance by the EU with Treaty obligations under [draft] Article 25', the Secretariat shall inform the European Commission already at an early stage of the process and without delay about:<br><br>(a) upcoming reasoned requests for decisions by the Ministerial Council pursuant to Articles 91 and 92 of the Treaty; | *"already at an early stage"*<br><br>The definition is needed, as it is a very broad concept<br><br>*"upcoming reasoned requests"*<br><br>Please kindly elaborate the meaning<br><br>Shall be specified that these provisions relate only to those cases where the relevant mutual rights and obligations are | | The first half of the first sentence goes beyond the draft reciprocity mechanism (Article 25').<br><br>A duty by the Secretariat to inform the European Commission (an institution of one Party, the European Union in all cases (including those against non-EU Contracting Parties), discriminates against other Contracting Parties (Article 7 of the Treaty).<br><br>It also is not related to the extensive information and participation rights enjoyed by the European Commission under the existing DS-RoP.<br><br>Complaints by private bodies are protected by confidentiality and data protection rules. This confidentiality is |

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| (b) substantive 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<br><br>(c) substantive 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. | concerned, as referred to in paragraph 25(1).1<br><br>*"substantive complaints"*<br><br>Does this include all complaints under Article 90 (1)?<br><br>The confidentiality requirements are missing | | key for the effectiveness of the Energy Community dispute resolution system.<br><br>"Substantive" is not legal terminology.<br><br>As a non-institution of the Energy Community, the European Commission receives the same information and enjoys the same access rights as other institutions of Parties.<br><br>Sharing with the European Commission "substantive concerns" of the Secretariat, "based on other information" "own investigations and findings" is even more intrusive of the Secretariat's activities related to enforcement in favour of only one Party.<br><br>This forced sharing of information at a stage when the decision of whether or not to initiate a case has not yet been taken necessarily affects the independent legal assessment and decision-making by and within the Secretariat. |
| **Article 2**<br><br>**(3)** The Secretariat shall communicate the information referred to in | | | The European Commission already enjoys access to the case file. The Secretariat adopted an effective and well-balanced Procedural Act on |

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| paragraphs 1 and 2 above to the European Commission directly and without the need for the Commission to ask for access to the file. | | | access to the case file with short deadlines for response.<br><br>There is neither a reason for representatives of the European Commission not to follow this procedure, nor would it be in line with the principle of equal treatment between Parties. |
| **Article 2**<br><br>**(4)** 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. | This is in conflict with Art. 70 of the Treaty, prohibiting the Secretariat from seeking instructions from the Parties.<br><br>Furthermore, even if the abovementioned article were not an issue, such provision would probably result in long delays in terms of communication between the CPs and the Secretariat | This is in breach of Article 70 of the Treaty based on which the Secretariat is not allowed to seek instruction from any Party (including the EU).<br><br>Furthermore, information related to Article 2 of the DSR is not related with reciprocity under Article 25' and such link should first be established. | The cooperation between the Secretariat and Contracting Parties' institutions, as stipulated in Article 2 of the DS-RoP, is part of the assistance provided by the Secretariat under Article 67 of the Treaty. In order to come to efficient results beneficial for the improvement of a Contracting Party's implementation record, a bilateral set-up and an atmosphere of trust are key. The DS-RoP provide specifically the right to the Secretariat and a Party concerned to enter in bilateral negotiations, and based on those negotiations to settle a dispute settlement procedure.<br><br>This is a procedure that has proven to be very successful for reaching compliance through assistance and bilateral negotiations.<br><br>A consultation duty with the European Commission would prolong the process |

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| | | | and deprive it of much of its effectiveness. Moreover, there is no link at all to reciprocity. |
| **Article 2**<br><br>**(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. | In addition to routinely assessing the level of compliance with the acquis, the Secretariat has traditionally played a very important role by swiftly providing expert opinions and supporting with development of solutions and national measures for the problems the CP might have faced in relation to implementation of the acquis.<br><br>This provision seems to deteriorate the position of the CPs and might require them to seek expensive legal services, resulting in wasted resources and time.<br><br>While implementing the acquis, the CP should know if its efforts are stillborn due to incorrect understanding of its obligations. | This is in conflict with the DSR, principles of transparency and legal certainty:<br><br>- when the Secretariat initiates a case against a Contracting Party it has to do so on the basis of legal assessment and "*in response to alleged non-compliance*"[1] and to follow certain procedure including transparent publications based on the DSR such as:<br><br>• Article 12 – initiation of a case has to be published;<br>• Article 29(5) - reasoned request has to be published;<br>• Article 31 – the Secretariat shall notify the world (Parties and Participants, the Regulatory Board, the Advisory Committee as well as persons and bodies participating in the preliminary procedure) about a reasoned request and any reply to it;<br><br>- The Secretariat has obligation to communicate the | The Secretariat does ensure confidentiality, namely each individual staff members in line with the Staff Regulations, and the institution in line with the DS-RoP and the Rules on Access to the Case File.<br><br>Communication with the public, however, serves the purpose of transparency and public accountability.<br><br>Public communication is part of the Secretariat's core tasks, and it is envisaged explicitly by the DS-RoP. For example, the initiation of a case has to be published (Article 12 DS-RoP), as well as the Reasoned Request (Article 29(5) DS-RoP). Communication on implementation cannot be prohibited, even by the Ministerial Council, under the independence rule of Article 70 of the Treaty. Moreover, there is no link at all to reciprocity. |

[1] Article 12(2) DSR of 2015.

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| | Why should we wait for the MC decision if a dispute can be avoided altogether? | documents - Opening Letter, Reasoned Opinion, Reasoned Request – with the authorities of the Contracting Party in question;<br>- The Secretariat has right to request information at any stage of the preliminary procedure from any authority of the Contracting Party, as this is the manner in which we as Contracting Parties are expressing our position on the case;<br>- The Secretariat has right to enter in bilateral negotiations with the Contracting Party and based on those negotiations it has the right to suspend and discontinue dispute settlement procedure at any time - used extensively for the benefit of the Contracting Parties as many of the cases are closed and do not reach the Ministerial Council - the Contracting Parties are assisted by the Secretariat in reaching compliance exactly through such bilateral negotiations. | |
| **Article 3**<br><br>***Tasks of the European Commission***<br><br>**(1)** In case of potential non-compliance by a | It shall be specified that these provisions relate only to those cases where the relevant mutual rights and obligations are concerned, as referred to in paragraph 25(1).1 | | The provisions, apparently mirroring the Secretariat's obligations under the previous Article, are void of any meaning, as the European Commission does not enforce Energy Community law against Contracting Parties (lit a). |

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| Contracting Party with Treaty obligations, including as regards non-compliance with obligations under [draft] Article 25' of the Treaty, the European Commission<br><br>(a) shall inform the Secretariat without delay about upcoming reasoned requests for decisions by the Ministerial Council pursuant to Articles 91 and 92 of the Treaty ;<br><br>(b) may inform the Secretariat about substantive complaints submitted to the European Commission, subject to EU confidentiality requirements;<br><br>(c) may inform the Secretariat about 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. | | | It is not listed in Articles 91 and 92 of the Treaty as initiator of dispute settlement cases, nor is it addressed by the DS-RoP.<br><br>To the extent the European Commission may actually have something to inform about (lit b and c), the provisions using "may", hence at the full discretion of the subject to that provision (the European Commission) and thus not reflecting the "shall" provisions the draft puts on the Secretariat. Moreover, confidentiality requirements are only reflected on the side of the European Commission, but not on the Secretariat. |

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| **Article 3**<br><br>**(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.<br><br>**(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 | | | These paragraphs actually relate to the switch-on and switch-off mechanisms in draft Article 25'and should form the core of the proposed Procedural Act.<br><br>Since the Secretariat, and not the EU Commission, is tasked to "*review the proper implementation by the Parties of their obligations under the Treaty*" (Article 67), it would be very useful for the EU (through the Commission) to request information on whether the Contracting Party in question is implementing and enforcing effectively its obligations under the Treaty.<br><br>It could also require information and assistance by the Secretariat related to assessment of potential breach of the competition and environmental *acquis* in case the particular rights and obligations are to be "switched-on" or "switched-off" only in the context of the reciprocity. |

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| 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.<br><br>The European Commission shall give the Contracting Party concerned, the Presidency and the Secretariat advance notice 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.<br>In accordance with [draft] Article 25’ (4) of the Treaty such notification is not required in cases of urgency. 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 | The definition [the case of urgency] is quite broad and subject to interpretation. Bearing in mind that in case of a dispute concerning meaning of urgency, there is no appeals body to review the case, such cases of urgency shall be defined in advance in an exhaustive manner | | |

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| Contracting Party which may result in an irreparable damage in the near future. | | | |
| **Title III**<br><br>Specific rules for matters related to competition law and State aid<br><br>**Article 4**<br><br>***Scope of this Title***<br><br>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. | | When it comes to assessment by the EU on potential breaches of competition or environmental *acquis* provided that mutual rights and obligations are enabled, the EU Commission could ask for compliance assessment to be performed by the Secretariat, or in case it performs such assessment by itself (since based on the proposed amendments to Article 18 of the Treaty, the Contracting Parties would be required to send the final State aid decisions to the EU Commission as well), it should inform the Secretariat on its findings.<br><br>Already giving right to one Party to the Treaty (that is the EU represented by the EU Commission) to assess compliance of other parties to the Treaty is as such problematic, because the DSR would require a decision on compliance to be adopted by the Ministerial Council. | To comply with competition law and State aid rules is one of the key duties of Contracting Parties (Articles 18 and 19). The obligation is not only one to harmonize competition and State aid rules with those of the European Union's (as under bilateral agreements between Contracting Parties and the Union), but to apply it in each individual case.<br><br>Unlike in the European Union, there is no central enforcement of competition and State aid rules. This is done by each Contracting Party's own authorities.<br><br>As a consequence, competition and State aid law enforcement in the energy sectors in the Energy Community is notoriously weak. As a matter of fact, this weakness was and is one of the key obstacles to full implementation of the European acquis in the Contracting Parties and on creating equal conditions between them and the Member States.<br><br>A Contracting Party not or wrongly applying Articles 18 and 19 of the |

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| | | | Treaty is in a state of non-compliance with its obligations under the Treaty, which the Secretariat can and has been bringing to the Ministerial Council under Articles 91 and 92 of the Treaty.<br><br>In this sense, the Secretariat acts as the only effective line of defense against non-respecting competition and State aid rules. Cases are normally initiated upon complaints by individuals or NGOs. They include cases concerning state guarantees for the financing of new coal-fired power plants, often by Chinese investors, which are clearly not in line with the European decarbonization and investment agenda.<br><br>The rules proposed by the draft Procedural Act weaken enforcement in the area of State aid and competition law rather than strengthening it, by confusing roles and procedures.<br><br>There is also no need to create a special regime for enforcement cases in State aid and competition, as they follow the same rules as other infringement cases in the Energy Community, and are often linked in the sense that a competition or State aid law infringement also violates the Third Energy Package rules. |

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| | | | Draft Article 6(2)-(5) and (8) is without any additional value or justification, the comments made on Article 2 apply. |
| **Article 5**<br><br>***Tasks of the Contracting Parties***<br><br>**(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. | It shall be specified that these provisions relate only to those cases where the relevant mutual rights and obligations are concerned, as referred to in paragraph 25(1).1<br><br>It would be a better solution to provide the relevant decisions to the Secretariat, whereas the Secretariat would share it with other parties.<br><br>In addition, it should be made sure that Georgia is exempted from this provision, as per the terms of the AP | | This provision reflects the Commission's proposal for Treaty amendments (new paragraph 3 for in Article 18). If it were adopted, the paragraph does not any additional value. |
| **Article 5**<br><br>**(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 | Two weeks as time period is too short for most of the CPs. In addition, it should be specified, that this period starts from the date of receipt of the official request | | This provision confers obligations under the Energy Community Treaty towards an institution of one of the Parties (the European Commission), and a complementary right of the European Commission to receive unspecified information concerning State aid decision. |

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| concerning the State aid decision in question.<br><br>(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. | | | This turns the institutional architecture of the Treaty completely up-side down.<br><br>The institution charged with enforcement by the Treaty and the DS-RoP is the Secretariat, which actually is independent from Parties (unlike the European Commission, a non-Energy Community institution).<br><br>The reason for which the European Commission would need and use this information is unclear, as it cannot follow up by enforcement action. It is probably for political purposes in the context of bilateral negotiations with individual Contracting Parties. If the European Commission wants to put obligations such as the ones envisaged on Contracting Parties, these bilateral agreements provide the correct framework. |
| **Article 6**<br><br>***Tasks of the Secretariat***<br>(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 | | | **Article 6(2) to (5), (8)**<br><br>See comments on draft Article 2(1) to (5) |

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| accordance with [draft] Article 18 (3) of the Treaty.<br><br>(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.<br><br>(3) In case of 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 without delay about:<br><br>(a) upcoming reasoned requests for decisions by the Ministerial Council pursuant to Article 91 and 92 of the Treaty;<br><br>(b) substantive complaints from private bodies | **Article 6(2) – (3)**<br><br>It shall be specified that these provisions relate only to those cases where the relevant mutual rights and obligations are concerned, as referred to in paragraph 25(1).1<br><br>Timeline is different from the one established under the DSR<br><br>Confidentiality requirements are missing<br><br>Does this include all complaints under Article 90 (1)? | | |

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| 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;<br><br>(c) substantive 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.<br><br>(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 | | | |

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| Commission to ask for access to the file.<br><br>(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.<br><br>(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 | **Article 6(5)**<br><br>In addition to routinely assessing the level of compliance with the acquis, the Secretariat has traditionally played a very important role by swiftly providing expert opinions and supporting with development of solutions and national measures for the problems the CP might have faced in relation to implementation of the acquis.<br><br>This provision seems to deteriorate the position of the CPs and might require them to seek expensive legal services, resulting in wasted resources and time.<br><br>While implementing the acquis, the CP should know if its efforts are stillborn due to incorrect understanding of its obligations. Why should we wait for the MC decision if a dispute can be avoided altogether? | **Article 6(6)**<br><br>This would deny the rule of law within the Energy Community.<br><br>The Secretariat in dispute settlement cases is a party to a case and participates to:<br><br>• the Advisory Committee (Article 32(4) – a public hearing held in front of the Advisory Committee), | **Article 6(6)**<br><br>This Article largely overlaps with the existing DS-RoP and creates confusion on the applicable rules. |

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| its opinion on the legality of the measure.<br><br>(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.<br><br>(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. | **Article 6(7)**<br><br>Confidentiality requirements shall be added<br><br>Does this mean that the Secretariat would have to assess the case within such a short period of time?<br><br>**Article 6(8)**<br><br>Seems to be in conflict with Art. 70 of the Treaty, prohibiting the Secretariat from seeking instructions from the parties.<br><br>Furthermore, it seems that this will result in long delays in communications between CPs and the Secretariat. Once again, this provision seems to deteriorate the position of the CPs and might require them to seek expensive legal services, resulting in wasted resources and time | • the Permanent High Level Group (Article 33(4) – the PHLG hears both parties, the Secretariat and the Contracting Party in question and decides on whether the reasoned request can be "A" point on the Ministerial Council agenda or not).<br><br>**Article 6(7)**<br><br>Such provision [two weeks assessment] denies the seriousness of assessing compliance with any provision under Energy Community law and even more assessment of compliance with competition and state aid *acquis*.<br><br>Since the Commission will be receiving the national state aid decisions from the Contracting Parties as well, and because the purpose of its assessment would be related to "switching-on" and "switching-off" Contracting Parties by the EU, it would be logical if it performs such assessment (or screening within two weeks) and if it requires the Secretariat to assist and provide details related to the problem in question | **Article 6(7)**<br><br>The purpose of this draft provision is unclear, it is likely to confuse and bias the purely legal enforcement procedures under Article 91 by political meddling from the Commission.<br><br>The appropriate place is again the bilateral agreements with Contracting Parties.<br><br>It also encroaches upon Article 70 of the Treaty, ensuring the independence by the Secretariat (also) in enforcement matters.<br><br>As a matter of detail, serious assessments of competition and State aid cases cannot be performed within two weeks. |

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| **Final provisions**<br><br>**Article 7**<br><br>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:<br><br>(a) Rules of Procedure of 2015 on dispute settlement under the Treaty;<br><br>(b) Rules of Procedure of 2015 of the Ministerial Council of the Energy Community;<br><br>(c) Rules of Procedure of 2015 of the Permanent Hight Level Group of the Energy Community. | It is better to avoid any conflict of provisions and bring this PA in compliance with the existing legal framework | This article is simply giving precedence of this act over all other procedural rules is not in line with the principle of transparency, clarity and legal certainty.<br><br>The draft PA for the purpose of Article 25' cannot and shall not set aside the whole procedure of the DSR including its timelines, and shall not take away the Contracting Parties their right to be heard in infringement actions by shortening the deadlines and time limits extensively.<br><br>To this extent, the draft PA is in conflict with Article 94 of the Treaty, which imposes an obligation on harmonious interpretation to the Treaty institutions only of "*term or other concept used in this Treaty that is derived from European Community law in conformity with the case law of the Court of Justice or the Court of First Instance*." | A clause giving general preference to the draft Procedural Act over the existing legal framework of the Energy Community pertaining to enforcement is not implementable.<br><br>The DS-RoP contain a system of very detailed procedural rules, which are likely to be superseded and affected by many of the provisions of the draft Procedural Act, given also the latter's vague and blurry language.<br><br>This creates the need for interpretation and dispute in individual cases, and hence legal uncertainty running counter the very objective of Procedural Rules. |
| | | **Other comments:**<br><br>The PA uses not legal terminology and vague concepts such as: | |

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| | | - "*shall inform the European Commission already at an early stage of the process*" without specifying which process it refers to;<br>- "*substantive complaints from private bodies*" – not clear what substantive means;<br>- the Secretariat shall communicate information to the EU Commission "*directly*" – unclear what directly and indirectly would be;<br>- "*without the need for the Commission to ask for access to the file*" – fails to respect the existing Procedural Act on access to the file, but also fails to differentiate between a situation when access to the file is required and communicating information related to a case that has not been initiated at all;<br>- "*upcoming reasoned requests*" on which the EU Commission shall inform the Secretariat – unclear if this only covers cases where the EU as a Party intends to submit a reasoned request against a Contracting Party (which has never happened until now);<br><br>The draft Procedural Act envisaged under Article 25' of the | |

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| | | Treaty shall only be prepared and drafted for the sole purpose on ensuring that the EU is sufficiently informed to take the right decision on “switching-on” or “switching-off” certain rights and obligations towards one or more Contracting Parties.<br><br>Such an act shall actually help the EU in making and informed and correct decision. Having the Secretariat as an independent institution under the Energy Community Treaty that is tasked to “*review the proper implementation by the Parties of their obligations under this Treaty*” and which is already performing compliance assessment and acting under the well-established DSR already since 2008, should be beneficial and useful for the EU. The PA should only ensure that there is proper information flow between the Secretariat and the EU Commission for implementing Article 25’.<br><br>Instead, the draft PA is not improving such communication and is unjustifiably infringing the provisions of the Energy Community Treaty as well as completely disregards and conflicts | |

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| | | the Dispute Settlement Rules and the rules of procedure of the PHLG and the Ministerial Council. Instead of amending them to the extent necessary (if at all necessary because those procedures function well and have been regularly updated), it only stipulates precedence of this draft rules over all the others without specifying any particular provision or procedure that requires adjustment. | |