

PROCEDURAL ACT OF THE ENERGY COMMUNITY SECRETARIAT

2021/03/ECS-EnC: Rules on Public Access to Documents of the Secretariat

The Energy Community Secretariat ('the Secretariat'),

Recognizing the public interest of access to documents of the Secretariat within a clearly defined legal framework,

Acknowledging that access to certain documents contributes to greater transparency and legitimacy of the Secretariat's work,

Wishing to ensure a high level of transparency and efficiency by adopting binding rules in this regard,

Ensuring that any request for access to documents shall to the greatest extent possible be governed by the principle of openness and of good administrative practices,

Acknowledging the particular sensitivity of specific (categories of) documents, in particular but not limited to documents relating to the communication with the European Community and the Contracting Parties ('Parties'), institutions and other stakeholders of the Energy Community,

Recognizing the importance of informal exchanges between staff members and internal decision-making processes for the ability of the Secretariat to carry out its tasks,

Ensuring compliance with the principles and rules established in Procedural Act 2019/01/ECS-EnC on the Secretariat's Data Protection Policy,

Without prejudice to rights of access to documents to the extent required by applicable legislation in the field of public procurement,

Without prejudice to rights of access to documents adopted by the Parties and other institutions,

ADOPTS THE FOLLOWING PROCEDURAL ACT:


Article 1

The Director of the Energy Community adopts the Rules on Public Access to Documents of the Secretariat as attached.

Article 2

This Procedural Act enters into force on the day of its adoption.

For the Energy Community


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Janez Kopač

Done in Vienna on 27 April 2021

**Energy Community Rules
on Public Access to Documents of the Secretariat**

**Article 1
Purpose**

This Procedural Act lays down the principles, conditions and limits governing the right of the public' to access documents of the Secretariat not already published on its website, and regulates the procedural aspects of access to such documents.

**Article 2
Scope**

1. Any natural or legal person shall have a right of access to documents of the Secretariat in accordance with this Procedural Act.

2. For the purpose of this Procedural Act, the term "documents of the Secretariat" comprises any communication, regardless of its medium (written on paper or stored in electronic form or as a sound, visual or audiovisual recording) which relates to any matter relating to the activities of the Secretariat and its officials within the scope of the Treaty establishing the Energy Community, which was created by officials of the Secretariat or on its behalf, and is in the Secretariat's possession.

3. The right of access does not cover:

(a) documents not created by officials of the Secretariat or on behalf of the Secretariat in the exercise of their/its tasks under the Treaty establishing the Energy Community;

(b) documents previously already sent to the applicant by the Secretariat;

(c) documents which were published by the Secretariat and are accessible to the public via the Secretariat's website;

(d) documents reflecting internal communication, i.e. communication between officials of the Secretariat, or between officials of the Secretariat and its contractor(s);(e) documents which are produced for or in the context of court proceedings, arbitrations or any other dispute settlement procedure for the duration of such proceedings;(f) documents covered by Article 2 of the Procedural Act 2018/06/ECS-EnC rules on access to the case file.

4. Access to a document which contains both content created by or on behalf of the Secretariat, and content created by a representative of a Party, entity or institution not associated with the Secretariat shall be refused if the Party, entity or institution which created the content objects to the document's disclosure within 10 business days after having been informed of a request by the Secretariat. In case of such objection, the Secretariat shall inform the applicant of the identity of the Party, entity or institution which created the content in question.

**Article 3
Exceptions**

1. Access to a document shall be refused where disclosure would undermine the protection of:

- (a) public security of any Party or parts of it, or the Energy Community or parts of it;
- (b) personal data in line with Procedural Act 2019/01/ECS-EnC on the Secretariat's Data Protection Policy.

2. Access to a document shall be refused where disclosure would undermine the protection of:

- (a) commercial interests of a natural or legal person, including but not limited to intellectual property and sensitive business and technical information;
- (b) any legal advice given by external professionals subject to legal privilege;
- (c) confidentiality or non-disclosure agreements validly entered into by the Secretariat.

unless there is an overriding public interest in disclosure.

3. If only parts of the requested document(s) are covered by any of the above exceptions, the applicant shall be granted access to the remaining part(s) of the document(s) in the form of a redacted/blackened versions of the document(s).

4. The above exceptions shall only apply for the period during which protection is justified on the basis of the content of the document(s).

Article 4 Applications

1. Access to documents is generally granted with the upload of a document on the Secretariat's website. If a document is not published on the Secretariat's website, access is granted upon application.

2. All applications for access to a document shall be sent by mail or e-mail in English to a member of the Legal Unit designated for this purpose.

3. The application must identify the document to which access is requested in a sufficiently precise manner to enable the Secretariat to identify the document. If an application is not sufficiently precise, the Secretariat shall ask the applicant to clarify the application and to provide additional information making it possible to identify the document requested.

4. In the event of an application which requires a substantial amount of work on behalf of the Secretariat to identify and grant access to the document(s), the Secretariat may confer with the applicant informally in order to narrow down the scope of the application.

Article 5 Procedure

1. The member of the Legal Unit designated for this purpose shall reply to applications within 15 working days from the date of receipt of the complete application, stating whether access will be granted or not.

2. In the case of complex and/or extensive applications in the sense of Article 4(4), the deadline may be extended by the Secretariat. Reasons will be given for any extension of the deadline and it will be notified to the applicant before expiry of the initial deadline.

3. In the event of a total or partial refusal of access to a document, the reasons for the refusal of access shall be communicated to the applicant by the member of the Legal Unit designated for this purpose.

4. If the applicant does not agree with the decision and the reasoning provided, it may ask for reassessment of the application by the Head of the Legal Unit of the Secretariat which will review the decision by the member of the Legal Unit designated for this purpose and communicate to the applicant within 15 working days.

Article 6 **Access following an application**

1. If access to a document is granted, as far as reasonably possible, access shall be granted by transmitting the relevant document(s) to the applicant via email. The applicant is responsible for providing the technical environment for receiving the documents in terms of volume, accessibility and security settings. The Secretariat is not liable for the receipt of the document(s) sent by it to the applicant.

2. In case of more voluminous requests, the timing and means of access shall be agreed between the applicant and the Secretariat, having due regard to the number and volume of the document(s) requested.

