

PROCEDURAL ACT OF THE ENERGY COMMUNITY SECRETARIAT

2019/01/ECS-EnC on the Secretariat's Data Protection Policy

The Energy Community Secretariat ("the Secretariat"),

Committed to protect the fundamental rights and freedoms of natural persons, and in particular their right to privacy with respect to the processing of personal data,

Wishing to provide a set of regulations binding on the Secretariat and its staff members aimed at ensuring a high level of data protection,

Having regard to the Agreement between the Energy Community and the Republic of Austria regarding the Seat of the Secretariat of the Energy Community and the immunities provided therein, in particular Articles 4(2), 5(1) and (4), 9, and 14(1),

ADOPTS THE FOLLOWING PROCEDURAL ACT:

I. General Provisions

Article 1 Purpose

1. This Procedural Act lays down the rules relating to protection of users, officials and other natural persons with regard to the processing of their personal data by the officials of the Secretariat.
2. This Procedural Act applies to processing of personal data, regardless of whether wholly or partly by automated means or other than by automated means, which form part of a filing system or are intended to form part of a filing system.

Article 2 Definitions

For the purposes of this Procedural Act:

- (a) 'personal data' shall mean any information relating to an identified or identifiable natural person ('data subject'), including officials of the Secretariat as well as any other natural persons;
- (b) 'identifiable natural person' shall mean a natural person who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person;

- (c) 'processing' shall mean any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction;
- (d) 'restriction of processing' shall mean the marking of stored personal data with the aim of limiting their processing in the future;
- (e) 'pseudonymisation' shall mean the processing of personal data in such a manner that the personal data can no longer be attributed to a specific data subject without the use of additional information, provided that such additional information is kept separately and is subject to technical and organisational measures to ensure that the personal data are not attributed to an identified or identifiable natural person;
- (f) 'filing system' shall mean any structured set of personal data which are accessible according to specific criteria;
- (g) 'officials of the Secretariat' shall have the meaning as defined in the Energy Community Staff Regulations in their latest version and include the Director;
- (h) 'official in charge' shall mean officials who, in exercising their tasks, are engaged in the processing of personal data;
- (i) 'third party' shall mean a natural or legal person, public authority, agency, international organization or body outside the Energy Community and other than the data subject, to which personal data are disclosed;
- (j) 'consent' of the data subject shall mean any freely given, specific, informed and unambiguous indication of the data subject's wishes by which he or she, by a statement or by a clear affirmative action, signifies agreement to the processing of personal data relating to him or her;
- (k) 'profiling' means any form of automated processing of personal data consisting of the use of personal data to evaluate certain personal aspects relating to a natural person, in particular to analyse or predict aspects concerning that natural person's performance at work, economic situation, health, personal preferences, interests, reliability, behaviour, location or movements;
- (l) 'objection' of the data subject shall mean any indication of the data subject's wishes by which he or she, by a written request or by a clear sign of protest, signifies disagreement to the processing of personal data relating to him or her;
- (m) 'data concerning health' shall mean personal data related to the physical or mental health of a natural person, including the provision of health care services, which reveal information about his or her health status;
- (n) 'without undue delay' shall mean as soon as possible given the complexity of the request(s) to be dealt with and the availability of the staff member in charge but not later than within one month of receipt of the request;
- (o) 'electronic means' shall mean electronic mail (e-mail);

- (p) 'non-personalized electronic mass mailings' shall mean electronic mails sent simultaneously to a multitude of data subjects listed in a filing system (mailing list);
- (q) 'cookies' shall mean data sent from the Energy Community website and stored on a data subject's computer by the web browser while the data subject is browsing.

Article 3 General Principles of Data Processing

1. The Secretariat will process personal data in line with the present Procedural Act.
2. The Secretariat will collect personal data only for the specified, explicit and legitimate purposes listed in Article 4(1), and not process them further in a manner incompatible with those purposes ("purpose limitation"). It will process them in a manner adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed ("data minimization"). Personal data will be kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed ("storage limitation").
3. Personal data shall be kept accurate and up to date. Personal data that are inaccurate shall be erased or rectified without delay by the officials in charge.
4. Officials in charge shall be responsible for processing personal data in a manner that ensures appropriate security of the personal data, including protection against processing not covered by this Procedural Act and against accidental loss, alteration or destruction.

Article 4 Permitted data processing

1. Processing of personal data by officials of the Secretariat is permitted only if and to the extent that at least one of the following applies:
 - (a) the data subject has given consent to the processing of his or her personal data for one or more specific purposes, or has not objected to the processing of his or her personal data in line with Articles 10 to 13;
 - (b) processing is necessary for the performance of a contract with the Secretariat and/or the Energy Community to which the data subject is party, or in order to take steps at the request of the data subject prior to entering into such a contract;
 - (c) processing is necessary for compliance with a legal obligation applicable to the Secretariat, the Energy Community and/or individual officials;
 - (d) processing is necessary in the context of administrative, court or arbitration proceedings to which the Secretariat, the Energy Community and/or individual officials are party, and in particular for the establishment, exercise or defence of legal claims;
 - (e) processing is necessary for the performance of the tasks carried out by the Secretariat and/or the Energy Community, including promotion, publications and the organization of events;
 - (f) processing is necessary for historical, statistical, research or academic purposes;

(g) processing is necessary, in specific cases, for other overriding legitimate grounds.

2. Where processing is based on consent or non-objection, the official in charge shall be able to demonstrate that the data subject has consented or not objected to processing of his or her personal data. The data subject shall have the right to withdraw his or her consent or object at any time. The withdrawal of consent or the objection shall not affect the lawfulness of processing based on consent before its withdrawal or objection. Withdrawal or objection shall not affect the lawfulness of data processing in accordance with paragraph 1(b) to (g) of this Article.

3. Processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union or party membership, and the processing of data concerning health or a natural person's sex life or sexual orientation shall be prohibited, unless

- (a) the data subject has given explicit consent to the processing of those personal data for one or more specified purposes;
- (b) such processing relates to personal data to which have been manifestly made public by the data subject;
- (c) processing of data concerning health is necessary for the purposes of assessing the working capacity of officials of the Secretariat (including medical certificates for the purpose of leave requested in accordance with Item 10 of the Staff Regulations), improving his or her working conditions, protection of other officials of the Secretariat and third persons, or the relation with insurances entered into by the Secretariat and/or the Energy Community for the benefit of its officials.

4. Profiling shall not be permitted.

5. Personal data may only be disclosed to third parties if the data have been collected in accordance with paragraph 1 and are necessary for the legitimate performance of tasks covered by the competence of the third party. The officials in charge shall take all reasonable efforts to ensure that the third party processes the personal data only for the purposes for which they were disclosed. At the least, in any communication involving the disclosure of data, the official in charge shall require the third party in question to process the personal data only for the purposes for which they were disclosed. This is without prejudice to the obligations on officials of the Secretariat under Item 3.5 of the Staff Regulations.

Article 5 Right to Information

1. A data subject may, at any time, request and obtain the following information from the Secretariat:

- (a) the purpose(s) of the processing for which the personal data are intended, as well as information on any purpose other than that for which the personal data were collected, if any;
- (b) the legal basis for processing the personal data in accordance with Article 4(1);
- (c) the source of the personal data where they have not been obtained from the data subject;
- (d) the period for which the personal data will be stored, or if that is not possible, the criteria used to determine that period;

- (e) third parties or categories of third parties to which personal data has been or are intended to be disclosed, if any;
- (f) actions taken by the Secretariat upon receipt of an objection or withdrawal of consent, or the receipt of a request for rectification, erasure or restriction in accordance with Articles 6 and 7;
- (g) the right to lodge a complaint with the data protection officer (Article 8).

2. Any request shall be addressed by electronic means to the data protection officer. It shall be dealt with without undue delay and answered by electronic means.

3. Paragraphs 1 (a) to (g) and 2 shall not apply where and insofar as the data subject already has the information or where statutory confidentiality obligations prevent the Energy Community from disclosure. In these cases the data subject shall be informed accordingly.

Article 6 Right to Rectification

1. The data subject shall have the right to obtain without undue delay the rectification of inaccurate personal data concerning him or her. Taking into account the purposes of the processing, the data subject shall have the right to have incomplete personal data completed, including by means of providing a supplementary statement.

2. The official in charge shall communicate any rectification of personal data carried out in accordance with this Article to each third party to whom the personal data have been disclosed, unless this proves impossible or involves disproportionate effort.

Article 7 Right to Erasure, Restriction and Pseudonymisation

1. The data subject shall have the right to obtain without undue delay the erasure of personal data concerning him or her where one of the following grounds applies:

- (a) the personal data are no longer necessary in relation to the purposes for which they were collected or otherwise processed;
- (b) the data subject withdraws consent on which the processing is based, or objects to the processing according to Articles 4(1)(a), 10 to 12, and where there is no other relevant legal ground for the processing the personal data in accordance with Article 4(2);
- (c) the personal data have been processed without a basis in Article 4;
- (d) the personal data have to be erased for compliance with a legal obligation legal obligation applicable to the Secretariat.

2. Where the Secretariat is obliged pursuant to paragraph 1 to erase the personal data, the official in charge, taking account of available technology and the cost of implementation, shall take reasonable steps, to erase any links to, or copy or replication of, those personal data. He or she shall inform the data protection officer.

3. Instead of erasure of personal data, the Secretariat and the data subject may also agree to a restriction of processing personal data or of its pseudonymisation. Such agreement shall require the explicit consent of the data subject.

4. The official in charge shall communicate any erasure, restriction of processing of personal data or pseudonymisation carried out in accordance with this Article to each third party to whom the personal data have been disclosed, unless this proves impossible or involves disproportionate effort.

Article 8 Right to Complain

1. Every data subject shall have the right to lodge a complaint with the data protection officer if the data subject considers that the processing of personal data relating to him or her contravenes this Procedural Act.

2. The data protection officer shall inform the complainant on the progress and the outcome of the complaint, as well as the scope of the rights available to the complainant. Her or she shall also inform the official in charge.

3. If the data subject is not satisfied with the outcome of his/her complaint, any dispute between him/her and the Energy Community and/or the Secretariat shall be settled by a tribunal composed of a single arbitrator appointed by the Secretary General of the Permanent Court of Arbitration, Peace Palace, Carnegieplein 2, 2517 KJ The Hague, the Netherlands, in accordance with Article 5(4) of the Agreement between the Energy Community and the Republic of Austria regarding the Seat of the Secretariat of the Energy Community and in accordance with the relevant Optional Rules for Arbitration involving international organizations and private parties.

II. Special Categories of Processing

Article 9 Staff members

Protection of personal data of data subjects in their capacity as staff members of the Secretariat in line with Article 3 of the present Procedural Act is subject to the Staff Regulations in their most recent version, as well as Procedural Act 2019/02/ECS-EnC on the content of and access to personnel files. Articles 5 to 7 of the present Procedural Act shall not apply to the extent the Staff Regulations in their most recent version and Procedural Act 2019/02/ECS-EnC apply.

Article 10 Data subjects seeking professional relationship with the Secretariat

1. Personal data of data subjects which have contacted the Secretariat for the establishment of a professional relationship shall be erased by the officials in charge after the relationship has been expired or terminated, or once it has become clear that such relationship will not be established.

2. Cases under paragraph 1 include, but are not limited to

- (a) applicants for a position with the Secretariat as well as locally recruited and assigned to hourly rates and research fellows;
- (b) participants in procurement procedures and applicants for the Secretariat's roster of experts;
- (c) applicants for the panel of mediators set up by the Dispute Resolution and Negotiation Center;
- (d) applicants for the Summer School.

3. Responses by the official in charge to data subjects which have contacted the Secretariat for the establishment of a professional relationship of the kind described in paragraph 2 shall bear the following and clearly visible text:

Please note that your personal data will be stored and processed by the Secretariat in line with and for the period required by the purpose of your request.

The Energy Community Secretariat is committed to protect the right to privacy and has implemented measures to ensure data protection. If you want to learn more or have concerns, please send an email to data-protection@energy-community.org.

4. Should the recruitment procedure involve the establishment of a reserve list (as per Article 19 of Procedural Act 2006/02/MC-EnC on the adoption of Rules for Recruitment, Working Conditions and Geographical Equilibrium of the Secretariat's Staff of the Energy Community, as amended by Procedural Act 2016/01/MC-EnC), the vacancy notice shall mention that. Personal data of data subjects shall be deleted as soon as the reserve list expires.

5. Officials in charge shall screen their filing system and erase all existing data not required anymore in accordance with paragraphs 1 and 4 of this article.

6. All vacancy notices shall include the following clearly visible text:

Please note that your personal data will be stored and processed by the Secretariat in line with and for the period required by the purpose of your request.

The Energy Community Secretariat is committed to protect the right to privacy and has implemented measures to ensure data protection. If you want to learn more or have concerns, please send an email to data-protection@energy-community.org.

Article 11

Participants to Energy Community Events Eligible for Reimbursement or Advance Payment

1. Data subjects which qualify as participants eligible for reimbursement (as defined by Articles 3-6 of Procedural Act 2018/04/ECS-EnC on the adoption of the Energy Community Reimbursement Rules) to Energy Community events (as defined by Article 2 of Procedural Act 2018/04/ECS-EnC on the adoption of the Energy Community Reimbursement Rules) shall be informed, in the first response to their request for reimbursement or advance payment of the special personal data protection rules applicable to them.

2. The official in charge shall store the personal data for as long as needed for reimbursement, advance payment, audit or other legitimate purposes.

3. Responses by the official in charge to data subjects which have contacted the Secretariat for reimbursement or advance payment shall include the following and clearly visible text:

The Energy Community Secretariat is committed to protect the right to privacy and has implemented measures to ensure data protection. If you want to learn more or have concerns, please send an email to data-protection@energy-community.org.

4. Reimbursement and advance payment forms shall also include the following check-box:

I agree for my personal data to be stored and processed by the Secretariat in line with and for the period required by the purpose of my reimbursement / advance payment request.

Article 12

Non-personalized Electronic Mass Mailings

1. Non-personalized electronic mass mailings for the purpose of communicating with institutions or bodies of the Energy Community Treaty, including any sub-groups, working groups, networks, committees, task forces etc., shall be addressed by the official in charge only to the members of such institution or body, unless the institution or body has decided otherwise. Members of such institutions or bodies are entitled to the rights in Articles 5 to 8 of this Procedural Act.

2. Subscriptions messages for the purpose of disseminating information to registered users shall include the following clearly visible text:

To unsubscribe or update your subscription preferences click [HERE](#) to log into your profile.

3. Non-personalized electronic mass mailings for the purpose of disseminating information about the Secretariat and its activities, including invitations to participate in conferences or other academic events, shall bear the following and clearly visible text:

If you no longer wish to receive newsletters or invitations to events from the Energy Community Secretariat by email", please reply to this message with "unsubscribe.

The Energy Community Secretariat is committed to protect the right to privacy and has implemented measures to ensure data protection. If you want to learn more or have concerns, please send an email to data-protection@energy-community.org.

4. Upon receipt of an objection in reply to this, or any other format, the official in charge shall remove the data subject objecting from the list used for the mailing in question without undue delay, and provide information on the action taken to the data subject by electronic means, as well as to the data protection officer. Where the staff member in charge has reasonable doubts concerning the identity of the natural person objecting, he or she shall request the provision of additional information necessary to confirm the identity of the data subject.

5. Any mailing lists kept at the Secretariat shall comply with the principles and rules set out in Articles 3 and 4. The mailing lists shall contain no other personal data than the data subjects' e-mail addresses. They may be collected only through previous contacts with the data subject or from publicly available sources. Mailing lists shall be constantly kept up to date by the officials in charge.

Article 13 Visual Recording

To the extent events organized by the Secretariat are visually recorded (photographs, videos, films etc.), invitations to participate shall bear the following and clearly visible text:

Please note that [photos will be taken at this event] [and it may be video-recorded in whole or in parts]. Pictures will be used by the Energy Community for promotion of its activities and not for commercial purposes. If you do not want to feature on the photos, please make yourself known to the organizers at the beginning of the event.

Article 14 Energy Community Website

1. For all new users wishing to create an account on the Energy Community Secretariat's website, as well as new and existing users wishing to register for an event, the respective registration pages and registration forms shall include the following clearly visible text:

The Energy Community Secretariat is committed to protect the right to privacy and has implemented measures to ensure data protection. If you want to learn more or have concerns, please send an email to data-protection@energy-community.org.

Registration pages shall also include the following two mandatory check-box statements:

I agree for my personal data to be stored and processed by the Secretariat in line with and for the period required by the purpose of my registration request.

I also agree for my personal data to be stored for purposes of future cooperation.

2. The Energy Community website (www.energy-community.org) shall feature, in the footer of its main page, a link entitled "Privacy Notice". The following text shall be displayed under that link

The Energy Community Secretariat is committed to protect the right to privacy and has implemented measures to ensure data protection. If you want to learn more or have concerns, please send an email to data-protection@energy-community.org.

3. To the extent the Energy Community website uses cookies, the link entitled "Privacy Notice" shall bear the following and clearly visible text:

"Cookies: The Energy Community website uses cookies to optimize users' experience. By continuing to browse the website, consent to place cookies on your device will be implied."

Article 15 Access to official documents

Personal data in official documents held by the Secretariat, including the case files under Article 7 of the Rules of Procedure on Dispute Settlement under the Treaty, may be disclosed by the officials in charge in accordance with the specific rules applicable to access to such documents.

III. Final Provisions

Article 16 Officials in Charge

1. Officials in charge shall comply with this Procedural Act. In case they come across a case of non-compliance, they shall without undue delay and, where feasible, not later than 72 hours after having become aware of it, notify the personal data breach to the data protection officer.
2. The obligation to comply with the present Procedural Act shall also be extended by way of a binding contract to persons locally recruited and assigned to hourly rates, as well as research fellows, to the extent they are involved in processing of personal data.

Article 17 Outsourced Processors

1. Where processing is carried out on behalf of or for the Secretariat by any other (legal or natural) person than a staff member (outsourced processor), the Head of Administrative and Financial Unit shall be responsible for ensuring that processing by or with the involvement of an outsourced processor complies with the requirements of this Procedural Act, and that the outsourced processor provides sufficient guarantees to implement appropriate technical and organisational measures to ensure compliance.
2. The conditions under which processing is carried out by an outsourced processor shall be stipulated in the contract with the outsourced processor. In particular, the contract shall guarantee that the outsourced processor
 - (a) processes the personal data only on documented instructions from an official in charge;
 - (b) has committed him- or herself to confidentiality;
 - (c) is liable for all breaches of data protection requirements;
 - (d) is capable of taking and takes the following measures, as required:
 - (i) the pseudonymisation and encryption of personal data;
 - (ii) ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
 - (iii) restore the availability and access to personal data in a timely manner in the event of a physical or technical incident;
 - (iv) a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing.
 - (e) does not engage and/or subcontract another processor without prior specific or general written authorisation of the data protection officer. In this case, the same data protection obligations as set out in the contract between the Secretariat and the outsourced processor shall be imposed on that other processor by way of a contract in such a manner that the

processing will meet the requirements of this Procedural Act and the outsourced processor remains fully liable;

- (f) taking into account the nature of the processing, assists the officials in charge and the data protection officer by appropriate technical measures in the fulfilment of the Secretariat's obligations under this Procedural Act;
- (g) at the choice of the Secretariat, deletes or returns all the personal data to the Secretariat after the end of the provision of services relating to processing, and deletes existing copies;
- (h) makes available to the Secretariat all information necessary to demonstrate compliance with the obligations laid down in this Article and allow for and contribute to audits, inspections, etc.

Article 18 Data Protection Officer

1. The Head of Legal Unit is designated as data protection officer. He/she may delegate the performance of the ensuing tasks to another member of the Legal Unit.
2. The data protection officer shall monitor the application of the provisions of this Procedural Act to all processing operations carried out by the Secretariat and its officials. He or she shall give guidance to officials in charge of data processing upon request. He or she shall handle complaints based on the rules and rights established by this Procedural Act from all data subjects, including officials of the Secretariat.
3. The data protection officer shall document any case of non-compliance, comprising the facts relating to the case, its effects and the remedial action taken. He or she shall report on an annual basis to the Director. The report may include advice on how data protection in the Energy Community can be improved.

Article 19 Entry into Force

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

For the Energy Community

Janez Kopač
Director



Done in Vienna on 1 March 2019, amended on 29 April 2019

