

RULES OF PROCEDURE of 16 October 2015 of the Permanent High Level Group of the Energy Community

Procedural Act 2006/01/PHLG-EnC of 17 October 2006 on adoption of internal Rules of Procedure of the Permanent High Level Group of Energy Community as amended by Procedural Acts 2013/01/PHLG-EnC of 23 October 2013 and 2015/01/PHLG-EnC of 16 October 2015 amending Procedural Act of the Permanent High Level Group of 17 October 2006

I. GENERAL

1. These rules establish the internal procedures for operation of the Permanent High Level Group (called "PHLG") as an institution under the Treaty establishing the Energy Community.
2. In case of any contradiction between these rules and the Treaty establishing the Energy Community (the "Treaty"), the rules of the Treaty shall be applied.

II. MEMBERS – PARTICIPANTS - OBSERVERS

1. (i) The PHLG shall consist of representatives of the Parties to the Treaty. Each Contracting Party to the Treaty shall have one representative at the PHLG; the European Community shall have two representatives upon its internal decision.
- (ii) The members of the PHLG shall be senior officials in the ministry in charge of energy. The act of appointment shall provide evidence that the member is mandated to express the position of the respective Party in a manner binding on that Party and has the obligation as well as all necessary powers to coordinate positions internally before expressing them at the meetings of the PHLG.
2. The members of the PHLG shall express the positions of the relevant Parties. In case a member of the PHLG cannot attend its meeting, he/she might be represented by another person at the appropriate level.
3. In accordance with Article 54 of the Treaty, one non-voting representative of each Participant may participate in the meetings.
4. In accordance with Article 96 of the Treaty, Observers may attend the meetings of the PHLG. Each Observer may have one representative.
5. The Presidency and the Vice-Presidency may agree to invite any other bodies to attend a relevant meeting on *ad hoc* basis.
6. Where the Presidency and the Vice-Presidency agreed to invite other bodies as observers, including representatives of Civil Society Organizations and participants in the meetings of the Parliamentary Plenum, the President shall inform the Parties at least three weeks before the meeting. The Parties decide on the invitation by simple majority by submitting their views to the Secretariat within five working days from receiving this information. Tacit agreement is assumed where no reaction is received by the Secretariat within this deadline.

III. PRESIDENCY

1. The Contracting Party holding the Presidency of the Ministerial Council shall also hold the Presidency of the PHLG.
2. The Presidency shall chair the PHLG meetings with the operational support of the European Commission.¹
3. The Presidency shall be assisted by one representative of the European Community and one representative of the incoming Presidency as Vice-Presidency.
4. Should the Presidency be not in a position to perform its duties for a particular meeting, the latter will be chaired by the Vice-Presidency who represents the European Community.

IV. PREPARATION OF THE MEETINGS

1. The PHLG shall meet on regular basis at least once every six months. In urgent circumstances, agreed between the Presidency and the Vice –Presidency, the Presidency shall convene PHLG also outside the regular meetings.
2. The Presidency shall convene the PHLG in a place decided upon by the Presidency after consultation with the Vice-Presidency. In principle, following the requirements of most cost effective approach, the meetings of the PHLG shall take place in Vienna, Austria. Any proposal for a meeting in other place shall consider the relevant financial, administrative and organizational aspects.
3. The date of the meetings shall be agreed between the Presidency, the Vice-Presidency and the Energy Community Secretariat (“the Secretariat”). In principle, the dates shall be agreed at least two months prior to the relevant meeting.
4. The draft agenda of the meetings shall be agreed by the Presidency and the Vice-Presidency. It shall be distributed at least two weeks prior to the relevant meeting. Should there be documents, related to any agenda item, these should be distributed to the representatives specified in Section II, Paras. 1 to 4 together with the agenda.
5. The Secretariat is responsible for the preparation of the meetings. It will inform the Presidency and the Vice-Presidents periodically and upon request about the preparation process and follow their requests and guidance in this relation.
6. Should this be found necessary, the Presidency and the Vice-Presidents may propose that a committee/commission under the authority of the PHLG is established. The decision of the PHLG shall take a form of a Procedural Act and shall include concrete list of participants as well as the scope of work, which should be performed, together with relevant deadlines.

¹ See Article 4 of the Treaty, page 13.

V. MEETINGS OF THE PHLG – PROCEDURAL RULES

1. The PHLG meetings shall be conducted in a business-like manner.
2. The meetings of the PHLG shall not be public unless the PHLG decides otherwise.
3. Any member of the PHLG or any other attendee of the meeting may be accompanied by experts who assist them. The names and functions of those experts shall be notified in advance to the Secretariat. As a principle, these experts should not be more than three for any Party to the Treaty, and not more than two for any other participant in the meeting. However, the Presidency may further advise on the maximum number of representatives per delegation.
4. PHLG may act only, if two third of the Parties are represented. Abstentions in a vote from the Parties present shall not count as votes cast.
5. The PHLG shall act in accordance with the voting rules required by the Treaty, depending on the agenda item. The Presidency shall identify the necessary majority before the vote on the ground of the substance of the agenda item.
6. As provided in Article 80 of the Treaty, each Party shall have one vote.
7. The Agenda for the meeting shall be approved in its beginning. In urgent circumstances, new items may be included also during the meeting subject to the agreement of the Presidency and Vice-Presidency.
8. The Participants may participate in the discussions, but they do not take part in voting (cf II.3).
9. The Observers may make statements upon permission or when invited by the Presidency. The Observers do not have voting rights.
10. At the end of each meeting, conclusions shall be drafted and discussed. They shall be distributed to the members and attendees by the Secretariat, The conclusions are final if, within five working days from their distribution, no change requests are submitted to the Secretariat. If a member or attendee requests amendments to a particular item in the conclusions, the items concerned shall be put on the agenda of and discussed at the next meeting. Items of the conclusions for which no changes have been requested within five working days shall be considered adopted. They are to be made publicly available by the Secretariat.
11. The Secretariat shall distribute draft conclusions for each Permanent High Level Group meeting one week ahead of the meeting to the Parties, Participants and Observers on the basis of the draft agenda and the documents received.
12. Any vote shall be explicitly described in the Conclusions.
13. The conclusions cannot in any way restrict the scope or effects of legal acts or the Treaty. No statements or conclusions which contradict binding legal provisions shall be made. Conclusions cannot form part of legal acts nor have any normative effect. Without prejudice to the decision making process under Title VI of the Energy Community Treaty, the Permanent High Level Group may identify Measures for adoption by the Ministerial Council without further discussion. This does not exclude the possibility for any Party to have statements included in the conclusions of the PHLG.

VI. ACTS OF THE PHLG – PROCEDURAL ASPECTS

1. General

1. The PHLG may take Measures (Decisions and Recommendations), if so empowered by the Ministerial Council, and adopt Procedural Acts.
2. The PHLG adopts Procedural Acts, not involving the conferral of tasks, powers or obligations on other institutions of the Energy Community, upon proposal of the Parties or the Secretariat.

2. Measures

3. Unless otherwise specified in these rules or in a separate decision of the PHLG or the Ministerial Council, the adoption of Decisions and Recommendations shall follow the same procedure.
4. Any proposal for a Measure from the European Commission, from the relevant Party or from the Secretariat shall be made in writing at least 30 days before the meeting of the PHLG when it shall be discussed.
5. The proposal shall be sent to the Presidency with copy to all the members of the PHLG and the Secretariat. It shall be accompanied by relevant explanatory notes. Where necessary in accordance with its competences, position of the Regulatory Board shall be requested by the Party or the institution, which makes the relevant proposal for a measure.
6. Measures under Title II of the Treaty – extension of the *acquis communautaire* – shall be taken by a majority of the votes cast only on the ground of a proposal from the European Commission, which may alter or withdraw its proposal at any time before the final adoption of the measure.
7. Measures under Title III of the Treaty – Mechanism for operation of Network Energy Markets – shall be taken by a two third majority of the votes cast, including a positive vote of the European Community, upon a proposal from a Party or the Secretariat, which shall also take account of a position of the Regulatory Board.
8. Measures under Title IV – The Creation of a Single Energy Market – may be taken on a proposal from a Party only by unanimity. The European Commission on its own request or upon request of any Party, might request a position of the Regulatory Board.

3. Rules for Decision-Making by Correspondence

9. The PHLG may, in the intervals between the meetings of the PHLG, take decisions by correspondence. The Presidency, upon the proposal by a Party for a decision to be taken by correspondence or upon its own initiative shall decide, after consulting and in agreement with the Vice-Presidents, whether the matter warrants the taking of the decision by correspondence.
10. When it is decided that a decision should be taken by correspondence, the Presidency shall instruct the Secretariat to dispatch a letter or telefacsimile to each Party containing the proposed decision together with such information as the Presidency, after consultation and in agreement with the

Vice-Presidency, considers necessary to an informed decision. The Presidency, after consultation and in agreement with the Vice-Presidency, shall also specify whether and, if so, under which conditions, amendments to the proposal may be made by the Parties.

11. Presidency, after consultation and in agreement with the Vice-Presidents, shall determine the date and hour by which responses must be received, which shall in no case be earlier than 10 calendar days from the date of transmission of the letter or facsimile referred to above. In exceptional circumstances, upon request or at its own discretion, may the Presidency, after consultation and in agreement with the Vice-Presidency, extend the time limit for the receipt of responses. Any Party, that has not replied in writing (including telefacsimile) within the given time limit, is regarded as abstaining from the vote.

12. The votes cast by correspondence shall be reviewed by at least three persons, including a representative of the Presidency, the European Commission and the Secretariat. Once a decision is adopted, it shall be promptly circulated by the Secretariat to all Parties and Participants, together with the information on the votes cast in favor of the decision. It shall be formally signed by the Presidency at the earliest meeting of the PHLG.

13. This procedure may be used for adoption of Measures or other decisions following agreement of the President and Vice-Presidency.

4. Procedural Acts

14. Procedural Acts shall regulate organizational and other issues, envisaged in the Treaty and also referred to in these Rules. They shall be binding.

15. Any member of the PHLG may propose adoption of a Procedural Act and submit the draft of the act itself.

16. When the PHLG has agreed on the necessity for a Procedural Act, it may ask the Presidency to organize its preparation in consultation with the Vice-Presidency.

17. The Presidency may ask the Party, which has initiated the preparation of a procedural act, and/or the Secretariat to assist in the process of this preparation.

18. The drafts of Procedural Acts with the relevant materials shall be distributed at least 30 days before the meeting at which they will be discussed.

VII. DISCLOSURE OF DOCUMENTS

1. The draft agenda and the relevant materials shall be distributed to all the members of the PHLG, to the Participants and to the Observers. Material of interest to them will also be distributed to the representatives of any other institutions, which are invited to take part in the relevant meeting. Any of the Presidency and the Vice-Presidency may request that the draft agenda and the relevant materials are distributed to other institutions.

2. Unless otherwise decided, the finalized documents of the meetings (agenda, conclusions) shall be made public via the website of the Secretariat.

VIII. FINAL PROVISIONS

1. All acts of the PHLG shall be signed by the Presidency.
2. The Rules have been adopted by the PHLG on the ground of Article 55 of the Treaty.
3. If application of these Rules to a specific situation is unclear or ambiguous, the Presidency in consultation and agreement with the Vice-Presidency shall interpret the Rules to resolve the situation.
4. At the latest one year from the entry of these Rules into force, based on the practical experience with their application, the Secretariat may propose eventual amendments to these Rules it deems useful or necessary. Where a Party wishes to propose such amendment, it is encouraged to consult it first with the Secretariat.
5. In accordance with Article 55 of the Treaty, any amendments to these Rules shall be adopted by a Procedural Act.

The Rules become effective on 15 October 2015, which is the day of their adoption by the PHLG.

