

PROCEDURAL ACT OF THE PERMANENT HIGH LEVEL GROUP

01/2020 PHLG-EnC amending Procedural Act No 01/2011 PHLG-EnC of the Permanent High Level Group of the Energy Community laying down the rules governing the arbitration procedure in staff matters under Article 14 of the Staff Regulations

THE PERMANENT HIGH LEVEL GROUP OF THE ENERGY COMMUNITY,

Having regard to the Treaty establishing the Energy Community, and in particular Article 53(e) thereof,

Having regard to the Staff Regulations of the Energy Community, and in particular Article 14 thereof,

Having regard to Procedural Act No 01/2011 PHLG-EnC of the Permanent High Level Group of 23 March 2011 laying down the rules governing the arbitration procedure in staff matters under Article 14 of the Staff Regulations,

Having regard to the proposal from the European Commission on behalf of the European Union,

Having discussed this Procedural Act at its meeting of 7 October 2020,

Whereas the arbitration procedure in staff matters is subject to Procedural Act No 01/2011 PHLG-EnC of the Permanent High Level Group of 23 March 2011,

Whereas the experience gained with the implementation of the said Procedural Act since 23 March 2011 shows a need for amendments,

Whereas the current procedural rules need to be improved in order to safeguard the principle of fair trial and contribute to a productive working environment within the Secretariat of the Energy Community,

Whereas the said Procedural Act should be amended in order to enable the Commission and the other Contracting Parties to appoint permanent representatives to the Arbitration Committee which would stand ready to address arbitration requests at short notice, enable the Arbitration Committee to take up its functions if some representatives have not been appointed on time, empower the Arbitration Committee to refuse to endorse a settlement if that settlement results in financial consequences for the budget of the Energy Community that are manifestly incompatible with the principle of sound financial management, and enable the Arbitration Committee to address recommendations to the Secretariat and inform the Ministerial Council accordingly in case an arbitration proceeding points to the existence of structural deficiencies in the Secretariat,

HAS ADOPTED THIS PROCEDURAL ACT:

Sole Article

Procedural Act No 01/2011 PHLG-EnC of the Permanent High Level Group of the Energy Community of 23 March 2011 laying down the rules governing the arbitration procedure in staff matters under Article 14 of the Staff Regulations is replaced by the text set out in the Annex to this Procedural Act.

Done by written procedure on 29 December 2020

For the Permanent High Level Group

The President

ANNEX

PROCEDURAL ACT

No 01/2011 PHLG-EnC of the Permanent High Level Group of the Energy Community of 23 March 2011 laying down the rules governing the arbitration procedure in staff matters under Article 14 of the Staff Regulations

The Permanent High Level Group of the Energy Community,

Having regard to the Treaty establishing the Energy Community ("the Treaty"), and in particular Article 53(e) thereof,

Having regard to the Staff Regulations of the Energy Community, as adopted by the Ministerial Council on 17 December 2007 and amended by Procedural Act PA/2009/04/MC-EnC of 18 December 2009, and in particular Article 14 thereof,

Having regard to the proposal from the Secretariat,

HAS ADOPTED THIS PROCEDURAL ACT:

Article 1 ***Definitions***

(1) The definitions provided for in Article 2.1 of the Staff Regulations apply.

(2) For the purpose of these Rules, the following definitions apply instead or in addition to those in Article 2.1 of the Staff Regulations:

- "Employer": The Energy Community, represented by the Director of the Energy Community Secretariat or, where the Director is the initiator of the case, the Deputy appointed by the Director
- "Employee": A person who has concluded an Employment Agreement as a staff member of the Secretariat or who has been appointed as its Director.
- "Party" either the Employer or the Employee, which are together the "Parties"
- "Registrar": the person designated in application of Article 3
- "Award" is the position of the Arbitration Committee on a dispute between the Employer and an Employee concerning the Staff Regulations.

Article 2

Purpose

These rules govern the arbitration procedure provided for in Article 14 of the Staff Regulations, which aim at solving disputes between the employer and the employee concerning the Staff Regulations and contributing to a productive working environment in the Energy Community Secretariat.

Article 3

Arbitration Committee Registrar

- (1) The Legal Counsel of the Energy Community Secretariat shall assist the Arbitration Committee in the procedures, by performing the function of registrar (the "Registrar")
- (2) Should the Legal Counsel be a party to the case, or in case of conflict of interest, this function will be performed by the most senior member of the Secretariat's Legal Department.
- (3) Article 7 applies analogously. An objected Registrar shall continue to exercise the functions of Registrar pending the decision on the objection.

Article 4

Arbitration request

- (1) In case of dispute between the employer and the employee concerning the Staff Regulations, either party may seize the Arbitration Committee, by a motivated request in writing.
- (2) The arbitration request shall be addressed to the Registrar by registered mail or, when technically possible, via secured/encrypted e-mail to a dedicated functional mailbox of the Registrar.
- (3) The arbitration request shall state, as a minimum:
 - (a) the name and address of the initiator;
 - (b) the designation of the party against whom the request is made;
 - (c) a description of the claim;
 - (d) the relief or remedy sought by the initiator including an explanation for the relief or remedy sought and indication of any pecuniary amount, if sought.
 - (e) any documents offered in support.
- (4) All evidence must be submitted together with the arbitration request. The later submission will not be admissible unless its late submission is duly explained and itself supported by evidence.
- (5) An arbitration request must be filed not later than three months following the event or following the termination of a series of or consecutive events that gave rise to the dispute in question.
- (6) The arbitration request may be withdrawn by the initiating party at any time by registered letter addressed to the Registrar. Within five days, the Registrar shall inform thereof the other party and the members of the Arbitration Committee or, had this not been appointed yet, to the representatives referred to in Article 5 of these rules.

Article 5
Notification of the arbitration request

Within seven days from the date of receipt of the request, the Registrar shall send a copy of the request - as registered at the Energy Community Register - to the following addressees:

- the member of the European Commission representing the Vice-Presidency at the PHLG;
- the PHLG member representing the Contracting Party holding the Presidency of the Energy Community at the date of the notification of the arbitration request;
- the PHLG member representing the Contracting Party that will hold the Presidency of the Energy Community for the following term;
- the other party concerned.

Article 6
Appointment of the Arbitration Committee

(1) Within twenty one days from the date of the notification referred to in Article 4, each of the Contracting Parties holding the current and forthcoming Presidencies, as well as the European Commission, shall appoint a member of the Arbitration Committee and one substitute member and shall notify the contact details of the appointed persons to the Registrar unless they have appointed a permanent member and a permanent substitute member of the Arbitration Committee that become responsible for the arbitration request in accordance with paragraph (1a).

(1a) The European Commission and any Contracting Party may appoint a permanent member and a permanent substitute member of the Arbitration Committee for a period of up to four years. Permanent members and permanent substitute member appointed by the Commission or by a Contracting Party holding the current or forthcoming Presidencies become responsible for an arbitration request from the date of the notification referred to in Article 5, at which point in time the Commission or the Contracting Party that appointed them shall notify the contact details of the appointed persons to the Registrar. The mandate of permanent members and substitute members of the Arbitration Committee whose contact details have been notified to the Registrar shall not terminate before the termination of proceedings in accordance with Article 19.

(1b) Within fourteen days from the date of the notification referred to in Article 5, the Arbitration Committee may start exercising its functions provided that at least one member and one substitute member have been appointed in accordance with paragraphs (1) or (1a).

(1c) Pending the appointment of all three members of the arbitration committee, the following rules shall apply:

- (i) In case one member and one substitute member of the Arbitration Committee have been appointed, the Arbitration Committee shall be composed of this member and this substitute member and shall decide by unanimity.
- (ii) In case two members of the Arbitration Committee have been appointed, the Arbitration Committee shall be composed of these two members and shall decide by unanimity.
- (iii) The Arbitration Committee cannot decide on awards pursuant to Article 18 and on objections raised against members of the Arbitration Committee in accordance with Article 7.

(1d) Within fourteen days after the appointment of all three members of the Arbitration committee, the arbitration committee may decide to amend or revoke procedural decisions adopted in accordance with Article 6(1)(c).

(1e) The members of the Arbitrations Committee shall have a law degree recognized by a Contracting Party or a Member State of the European Union and be able to communicate in English.

(2) Within seven days from appointment, members and substitute members shall disclose any circumstances likely to give rise reasonable doubts as to his or her impartiality or independence. The duty of disclosure remains for the whole duration of the mandate of the Arbitration Committee.

(3) The Registrar shall communicate the identities and CV of the appointed members to both parties.

Article 7 **Objection to a member of the Arbitration Committee**

(1) One or both parties may object to one or several members of the Arbitration Committee only if circumstances exist that give rise reasonable objective doubts as to his impartiality or independence.

(2) A party who intends to object to a member of the Arbitration Committee shall, within twenty-one days after the date of the communication foreseen in Article 6(3) or after becoming aware of any circumstance referred to in paragraph 1 of the present Article, send a written statement of the reasons for the objection to the Arbitration Committee. Unless the objected member withdraws from his office or the other party agrees to the objection, the Arbitration Committee shall decide on the objection by majority of its members, whereby the objected member will be replaced by his / her substitute. In case a member withdraws, it shall be replaced by its substitute member.

Article 8 **Arbitration Committee competence, powers and voting rules in procedural matters**

(1) A plea contesting jurisdiction of the Arbitration Committee shall be raised not later than at the submission of the response. A plea that the Arbitration Committee is exceeding the scope of its authority shall be raised as soon as possible, but in any event not later than 21 days after the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings. This is without prejudice to Article 6(1)(d).

(2) The power conferred upon the Arbitration Committee includes the power to determine the admissibility, relevance, materiality and weight of any evidence.

(3) Without prejudice to Article 6(1c), the Arbitration Committee shall take decisions under Articles 8 and 10 to 15 by majority of its members.

(4) All decisions of the Arbitration Committee shall be made in writing, including in electronic form, and state the reasons upon which there are based.

Article 9
Equal treatment of parties

- (1) The parties shall be treated with equality and impartiality by the Arbitration Committee.
- (2) Contacts between the Arbitration Committee and the parties shall be limited to written exchanges, which shall be added to the file.
- (3) Each party shall be given a full opportunity of presenting its case.

Article 10
Place of arbitration

- (1) The place of arbitration is established in Vienna. Meetings in Vienna shall normally take place at the premises of the Energy Community Secretariat.
- (2) Notwithstanding paragraph 1 of this Article, the Arbitration Committee may meet at any place it considers appropriate for consultation among its members, for hearing witnesses or the parties, or for inspection of documents.

Article 11
Language

- (1) The language to be used in the proceedings shall be English. This shall apply to any written statement by a party, any hearing and any award, procedural decision or other communication by the Arbitration Committee.
- (2) The Arbitration Committee may ask the parties to provide - at the parties' own expenses – a translation into English of those documents presented as evidence whose original is written in another language.

Article 12
Timetable

- (1) As soon as practicable after its constitution and after inviting the parties to express their views, the Arbitration Committee shall establish the provisional timetable of the proceedings. The Arbitration Committee may, at any time, after inviting the parties to express their views, extend or abridge any period of time prescribed unless set by these Rules.
- (2) The Arbitration Committee shall act in all steps of the proceeding in accordance with the principle of urgency.

Article 13

Response

(1) Within a period of sixty days from the date of the communication referred to in Article 5, the respondent shall respond, stating, as a minimum:

- (a) the name and address of the respondent;
- (b) the evidence and arguments relied on in response to the arbitration request;
- (c) the nature of any evidence offered by it, where appropriate.

(2) All evidence must be submitted together with the Response. The later submission will not be admissible unless its late submission is duly explained and itself supported by evidence.

(3) The response shall be addressed to the Registrar by registered mail. Within five days from the date of receipt of the response the Registrar shall send a copy of the response - as registered at the Energy Community Register - to the members of the Arbitration Committee and the other party concerned.

Article 14

Hearing and written proceedings

(1) The Arbitration Committee may decide to hold an oral hearing for the presentation of evidence or for oral argument, or to conduct the proceedings on the basis of documents and other materials only.

(2) The parties shall be given sufficient advance notice, and in any event at least 21 days of any hearing and of any meeting of the Arbitration Committee for the purposes of inspection of documents.

(3) All statements, documents or other information supplied to the Arbitration Committee by one party shall be communicated by the Registrar to the other party. Also any expert report or other document or evidence on which the Arbitration Committee may rely in making its decision shall be communicated to the parties.

(4) Either party may not amend or supplement its request or response during the course of the proceedings, unless the Arbitration Committee considers it appropriate to allow such amendment having regard to the justification for the delay in making it.

Article 15

Default of a party

(1) Should the respondent fail to communicate his response in accordance with Article 13 the Arbitration Committee shall continue the proceedings without treating such failure in itself as an admission of the initiator's allegations

(2) Should any party fail to appear at a hearing or to produce documentary evidence, the Arbitration Committee may continue the proceedings and make the award on the evidence before it.

Article 16

Rules applicable to the substance of the dispute

(1) The Arbitration Committee shall decide the dispute in accordance with the rules applicable to the staff of the Energy Community, as adopted by the Energy Community institutions and bodies.

(2) The Arbitration Committee may moreover be guided by general principles of equal and fair treatment as expressed in European Union law.

Article 17 Settlement

(1) The purpose of the Arbitration Committee procedure is to settle disputes between employer and employee concerning the Staff Regulations. If, during the proceedings, the parties settle the dispute, the Arbitration Committee shall terminate the proceedings and record the settlement in the form of an arbitral award on agreed terms, unless it decides, by majority of its appointed members, that the settlement results in financial consequences for the budget of the Energy Community that are manifestly incompatible with the principle of sound financial management. The voting rule is without prejudice to Article 6(1c).

(2) Where no settlement between the Parties on the dispute can be reached or where the Arbitration Committee refuses to record a settlement, the Arbitration Committee shall terminate the proceedings by award pursuant to Article 18. The award is without prejudice to the procedure under Article 15 of the Staff Regulations.

Article 18 Arbitration Committee award

(1) The Arbitration Committee shall decide by unanimity of its members, as laid down in Article 14 of the Staff Regulations.

(2) Where no unanimity can be reached, the Arbitration Committee shall declare so and terminate the proceedings.

(3) The award shall be signed by the three members.

(4) The award shall also contain a position on the costs of the procedure. Article 21 applies.

(5) The Registrar shall deliver to each party a copy signed by all three members of the Arbitration Committee.

Article 19 Termination of proceedings

(1) The proceedings are terminated by the award of the Arbitration Committee or by termination in accordance with paragraph 2 of this Article.

(2) The Arbitration Committee shall declare the termination of the proceedings when:

(a) the initiator withdraws his claim;

(b) the parties settle the dispute or otherwise agree on the termination of the proceedings;

(c) the Arbitration Committee cannot reach an agreement on an award;

(d) the Arbitration Committee finds that the continuation of the proceedings has for any other reason become impossible.

(2a) In case the proceedings reveal structural or serious deficiencies in the Energy Community Secretariat's working environment, the Arbitration Committee may address recommendations to the Secretariat and inform the Ministerial Council accordingly. Without prejudice to Article 6(1c), such recommendations shall be adopted by majority of the members of the Arbitration Committee. They shall take account of the Employee's right to the protection of personal data.

(3) The mandate of the members of the Arbitration Committee appointed pursuant to Article 6(1) terminates with the termination of the proceedings.

Article 20 ***Time limits***

(1) Any period of time referred to in these Rules for the taking of any procedural step corresponds to calendar days and shall be calculated as follows:

(a) where a period expressed in days is to be calculated from the moment at which an event occurs or an action takes place, the day during which that event occurs or that action takes place shall not be counted as falling within the period in question;

(b) periods shall include official holidays, Sundays and Saturdays.

(2) If the period would otherwise end on a Saturday, Sunday or an official holiday in Austria, Belgium or one of the Contracting Parties having appointed the members of the Arbitration Committee, it shall be extended until the end of the first following working day.

Article 21 ***Costs of the procedure***

(1) The members of the Arbitration Committee shall not receive any compensation for this activity.

(2) The costs of travelling for the members appointed by the Contracting Parties shall be paid under the Reimbursement Rules of the Energy Community.

(3) Where the unsuccessful party is the Employer, it may be requested to pay the travel costs of the successful employee.

Article 22 ***Entry into force***

This Procedural Act shall enter into force upon adoption.

Article 23 ***Availability of these rules***

The Director of the Energy Community Secretariat shall make this Procedural Act available to the Parties to the Energy Community within seven days of its adoption.

Done in Vienna on XXX
For the Permanent High Level Group