



The Energy Community

LEGAL FRAMEWORK

2023 | EDITION 5.0

VOLUME I: **FUNDAMENTS**

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VOLUME I: FUNDAMENTS

VOLUME II: ELECTRICITY

VOLUME III: OIL AND GAS

VOLUME IV: RENEWABLE ENERGY AND CLIMATE

VOLUME V: ENERGY EFFICIENCY

VOLUME VI: ENVIRONMENT

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I. PART

TREATY ESTABLISHING THE ENERGY COMMUNITY

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TREATY ESTABLISHING THE ENERGY COMMUNITY

The Parties, being:

The European Community on the one hand,

And

The following Contracting Parties on the other hand:

- The Republic of Albania, the Republic of Bulgaria, Bosnia and Herzegovina, the Republic of Croatia, the former Yugoslav Republic of Macedonia, the Republic of Montenegro, Romania, the Republic of Serbia (hereafter referred to as the Adhering Parties),

and

- The United Nations Interim Administration Mission in Kosovo pursuant to the United Nations Security Council Resolution 1244,

Consolidating on the Athens Process and the 2002 and 2003 Athens Memoranda of Understanding,

Noting that the Republic of Bulgaria, Romania and the Republic of Croatia are Candidate Countries for accession to the European Union, and that the former Yugoslav Republic of Macedonia has also applied for membership,

Noting that the European Council in Copenhagen in December 2002 confirmed the European perspective of the Republic of Albania, Bosnia and Herzegovina, and Serbia and Montenegro, as potential candidates for accession of the European Union, and underlined the determination to support their efforts to move closer to the European Union,

Recalling that the European Council in Thessaloniki in June 2003 endorsed “The Thessaloniki Agenda for the Western Balkans: moving towards European integration”, which aims to further strengthen the privileged relations between the European Union and the Western Balkans and in which the European Union encouraged the countries of the region to adopt a legally binding South-East Europe energy market agreement, Recalling the Euro-Mediterranean Partnership Process and the European Neighbourhood Policy,

Recalling the contribution of the Stability Pact for South East Europe that has as its core the need to strengthen co-operation amongst the states and nations of South East Europe and to foster the conditions for peace, stability and economic growth,

Resolved to establish among the Parties an integrated market in natural gas and electricity, based on common interest and solidarity,

Considering that this integrated market may involve at a later stage other energy products and carriers, such as liquefied natural gas, petrol, hydrogen, or other essential network infrastructures,

Determined to create a stable regulatory and market framework capable of attracting investment in gas networks, power generation and transmission networks, so that all Parties have access to the stable and continuous gas and electricity supply that is essential for economic development and social stability,

Determined to create a single regulatory space for trade in gas and electricity that is necessary to match the geographic extent of the concerned product markets,

Recognising that the territories of the Republic of Austria, of the Hellenic Republic, of the Republic of Hungary, of the Italian Republic, and of the Republic of Slovenia are naturally integrated or directly affected by the functioning of the gas and electricity markets of the Contracting Parties,

Determined to promote high levels of gas and electricity provision to all citizens based on public service obligations, and to achieve economic and social progress and a high level of employment as well as a balanced and sustainable development through the creation of an area without internal frontiers for gas and electricity,

Desiring to enhance the security of supply of the single regulatory space by providing the stable regulatory framework necessary for the region in which connections to Caspian, North African and Middle East gas reserves can be developed and indigenous reserves of natural gas, coal and hydropower can be exploited,

Committed to improving the environmental situation in relation to gas and electricity, related energy efficiency and renewable energy sources,

Determined to develop gas and electricity market competition on a broader scale and exploit economies of scale,

Considering that, to achieve these aims, a broad ranging and integrated market regulatory structure needs to be put in place supported by strong institutions and effective supervision, and with the adequate involvement of the private sector,

Considering that in order to reduce stress on the state level gas and electricity systems and contribute to resolving local gas and electricity shortages, specific rules should be put in place to facilitate gas and electricity trade; and that such rules are needed to create a single regulatory space for the geographic extent of the concerned product markets,

Have decided to create an Energy Community.

TITLE I – PRINCIPLES

Article 1

1. By this Treaty, the Parties establish among themselves an Energy Community.
2. Member States of the European Community may become Participants in the Energy Community pursuant to Article 95 of this Treaty.

Article 2

1. The task of the Energy Community shall be to organise the relations between the Parties and create a legal and economic framework in relation to Network Energy, as defined in paragraph 2, in order to:
 - (a) create a stable regulatory and market framework capable of attracting investment in gas networks, power generation, and transmission and distribution networks, so that all Parties have access to the stable and continuous energy supply that is essential for economic development and social stability,
 - (b) create a single regulatory space for trade in Network Energy that is necessary to match the geographic

extent of the concerned product markets,

(c) enhance the security of supply of the single regulatory space by providing a stable investment climate in which connections to Caspian, North African and Middle East gas reserves can be developed, and indigenous sources of energy such as natural gas, coal and hydropower can be exploited,

improve the environmental situation in relation to Network Energy and related energy efficiency, foster the use of renewable energy, and set out the conditions for energy trade in the single regulatory space,

(d) develop Network Energy market competition on a broader geographic scale and exploit economies of scale.

2. Network Energy' shall include the electricity and gas sectors falling within the scope of the European Union Directives 2003/54/EC and 2003/55/EC¹, as well as hydrogen and carbon dioxide sectors.²

Article 3

For the purposes of Article 2, the activities of the Energy Community shall include:

the implementation by the Contracting Parties of the *acquis communautaire* on energy, environment, competition and renewables, as described in Title II below, adapted to both the institutional framework of the Energy Community and the specific situation of each of the Contracting Parties (hereinafter referred to as "the extension of the *acquis communautaire*"), as further described in Title II;

the setting up of a specific regulatory framework permitting the efficient operation of Network Energy markets across the territories of the Contracting Parties and part of the territory of the European Community, and including the creation of a single mechanism for the cross-border transmission and/or transportation of Network Energy, and the supervision of unilateral safeguard measures (hereinafter referred to as "the mechanism for operation of Network Energy markets"), as further described in Title III;

the creation for the Parties of a market in Network Energy without internal frontiers, including the coordination of mutual assistance in case of serious disturbance to the energy networks or external disruptions, and which may include the achievement of a common external energy trade policy (hereinafter referred to as "the creation of a single energy market"), as further described in Title IV.

Article 4

The Commission of the European Communities (hereinafter referred to as "the European Commission") shall act as co-ordinator of the three activities described in Article 3.

1 Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity, Official Journal of the European Union L 176, 15 July 2003, p. 37-56; and Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas, Official Journal of the European Union L 176, 15 July 2003, p. 57-78.'

2 According to Article 1 of Decision 2008/03/MC-EnC of 1 December 2008 concerning the implementation to the oil sector of certain provisions of the Treaty and the creation of an Energy Community Oil Forum,

"1. The Treaty is extended to oil under the conditions set by this Article.

2. 'Network Energy' as mentioned in Article 2 paragraph 2 of the Treaty shall be understood as to include the oil sector, i.e. supply, trade, processing and transmission of crude oil and petroleum products falling within the scope of the Directive 2006/67/EC and the related pipelines, storage, refineries and import/export facilities <...>

4. Paragraphs 1 and 2 of this Article do not apply to Articles 21 to 23 and to Articles 43 to 46 of the Treaty."

Article 5

The Energy Community shall follow the *acquis communautaire* described in Title II, adapted to both the institutional framework of this Treaty and the specific situation of each of the Contracting Parties, with a view to ensuring high levels of investment security and optimal investments.

Article 6

The Parties shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of this Treaty. The Parties shall facilitate the achievement of the Energy Community's tasks. The Parties shall abstain from any measure which could jeopardise the attainment of the objectives of this Treaty.

Article 7

Any discrimination within the scope of this Treaty shall be prohibited.

Article 8

Nothing in this Treaty shall affect the rights of a Party to determine the conditions for exploiting its energy resources, its choice between different energy sources and the general structure of its energy supply.

TITLE II – THE EXTENSION OF THE ACQUIS COMMUNAUTAIRE**CHAPTER I
GEOGRAPHIC SCOPE****Article 9**

The provisions of and the Measures taken under this Title shall apply to the territories of the Adhering Parties, and to the territory under the jurisdiction of the United Nations Interim Administration Mission in Kosovo.

**CHAPTER II
THE ACQUIS ON ENERGY**

Article 10

Each Contracting Party shall implement the *acquis communautaire* on energy in compliance with the timetable for the implementation of those measures set out in Annex I.

Article 11

The "*acquis communautaire* on energy", for the purpose of this Treaty, shall mean the acts listed in Annex I of this Treaty.³

CHAPTER III THE ACQUIS ON ENVIRONMENT

Article 12

Each Contracting Party shall implement the *acquis communautaire* on environment in compliance with the timetable for the implementation of those measures set out in Annex II.

Article 13

The Parties recognise the importance of the Kyoto Protocol. Each Contracting Party shall endeavour to accede to it.

Article 14

The Parties recognise the importance of the rules set out in Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control. Each Contracting Party shall endeavour to implement that Directive.

Article 15

After the entry into force of this Treaty, the construction and operation of new generating plants shall comply with the *acquis communautaire* on environment.

³ Amended by Ministerial Council Decisions 2023/02/MC-EnC, 2023/03/MC-EnC, 2022/02/MC-EnC, 2022/05/MC-EnC, 2021/13/MC-EnC, 2021/14/MC-EnC and 2021/15/MC-EnC, including Article 1 of Ministerial Council Decision 2011/02/MC-EnC.

Article 16

The “*acquis communautaire* on environment”, for the purpose of this Treaty, shall mean

- (i) Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment as amended by Directive 2014/52/EU,⁴
- (ii) Directive (EU) 2016/802 of the European Parliament and of the Council of 11 May 2016 relating to a reduction in the sulphur content of certain liquid fuels and Commission Implementing Decision (EU) 2015/253 of 16 February 2015 laying down the rules concerning the sampling and reporting under Council Directive 1999/32/EC as regards the sulphur content of marine fuels,⁵
- (iii) Directive 2001/80/EC of the European Parliament and of the Council of 23 October 2001 on the limitation of emissions of certain pollutants into the air from large combustion plants,⁶
- (iv) Article 4(2) of Directive 79/409/EEC of the Council of 2 April 1979 on the conservation of wild birds,
- (v) Chapter III, Annex V, and Article 72(3)-(4) of Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control),⁷
- (vi) Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage, as amended by Directive 2006/21/EC, Directive 2009/31/EC and Directive 2013/30/EU⁸, and,
- (vii) Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment.⁹

Article 17

The provisions of and the Measures taken under this Chapter shall only apply to Network Energy.

4 Amended by the Ministerial Council Decision 2016/12/MC-EnC of 14 October 2016 on amending the Treaty establishing the Energy Community and adapting and implementing Directive (EU) 2016/802 and Commission Implementing Decision (EU) 2015/253.

5 Amended by the Ministerial Council Decision 2016/15/MC-EnC of 14 October 2016 on amending the Treaty establishing the Energy Community and adapting and implementing Directive (EU) 2016/802 and Commission Implementing Decision (EU) 2015/253.

6 Amended by the Ministerial Council Decision 2013/05/MC-EnC of 24 October 2013 on the implementation of Directive 2001/80/EC of 23 October 2001 on the limitation of emissions of certain pollutants into the air from large combustion plants and Decision 2015/07/MC-EnC on amending 2013/05/MC on implementation of Directive 2001/80/EC on limitation of certain emissions.

7 Amended by the Ministerial Council Decision 2013/06/MC-EnC of 24 October 2013 on the implementation of Chapter III Annex V, and Article 72(3)-(4) of Directive 2010/75/EU of 24 November 2010 on industrial emissions (integrated pollution prevention and control) and amending Article 16 and Annex II of the Energy Community Treaty.

8 Amended by the Ministerial Council Decision 2016/14/MC-EnC of 14 October 2016 on amending the Treaty establishing the Energy Community and adapting and implementing Directive 2004/35/EC.

9 Amended by the Ministerial Council Decision 2016/13/MC-EnC of 14 October 2016 on amending the Treaty establishing the Energy Community and adapting and implementing Directive 2001/42/EC.

CHAPTER IV THE ACQUIS ON COMPETITION

Article 18

1. The following shall be incompatible with the proper functioning of the Treaty, insofar as they may affect trade of Network Energy between the Contracting Parties:

- (a) all agreements between undertakings, decisions by associations of undertakings and concerted practices which have as their object or effect the prevention, restriction or distortion of competition,
- (b) abuse by one or more undertakings of a dominant position in the market between the Contracting Parties as a whole or in a substantial part thereof,
- (c) any public aid which distorts or threatens to distort competition by favouring certain undertakings or certain energy resources.

2. Any practices contrary to this Article shall be assessed on the basis of criteria arising from the application of the rules of Articles 81, 82 and 87 of the Treaty establishing the European Community (attached in Annex III).

Article 19

With regard to public undertakings and undertakings to which special or exclusive rights have been granted, each Contracting Party shall ensure that as from 6 months following the date of entry force of this Treaty, the principles of the Treaty establishing the European Community, in particular Article 86 (1) and (2) thereof (attached in Annex III), are upheld.

CHAPTER V THE ACQUIS FOR RENEWABLES

Article 20¹⁰

Each Contracting Party shall implement Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources.

¹⁰ Amended by Ministerial Council Decision 2021/13/MC-EnC of 30 November 2021 amending Article 20 and Annex I to the Treaty establishing the Energy Community and incorporating Directive (EU) 2018/2001, Directive (EU) 2018/2002, Regulation (EU) 2018/1999, Delegated Regulation (EU) 2020/1044, and Implementing Regulation (EU) 2020/1208 in the Energy Community acquis communautaire.

CHAPTER VI

COMPLIANCE WITH GENERALLY APPLICABLE STANDARDS OF THE EUROPEAN COMMUNITY

Article 21

Within one year of the date of entry into force of this Treaty, the Secretariat shall draw up a list of the Generally Applicable Standards of the European Community, to be submitted to the Ministerial Council for adoption.

Article 22

The Contracting Parties shall, within one year of the adoption of the list, adopt development plans to bring their Network Energy sectors into line with these Generally Applicable Standards of the European Community.

Article 23

“Generally Applicable Standards of the European Community” shall refer to any technical system standard that is applied within the European Community, and is necessary for operating network systems safely and efficiently, including aspects of transmission, cross-border connections, modulation and general technical system security standards issued where applicable via the European Committee for Standardization (CEN), the European Committee for Electrotechnical Standardization (CENELEC) and similar normation bodies or as issued by the Union for the Co-ordination of Transmission of Electricity (UCTE) and the European Association for the Streamlining of Energy Exchanges (Easeegas) for common rule setting and business practices.

CHAPTER VII

THE ADAPTATION AND EVOLUTION OF THE ACQUIS

Article 24

For the implementation of this Title, the Energy Community shall adopt Measures adapting the *acquis communautaire* described in this Title, taking into account both the institutional framework of this Treaty and the specific situation of each of the Contracting Parties.

Article 25

The Energy Community may take Measures to implement amendments to the *acquis communautaire* described in this Title, in line with the evolution of European Community law.

TITLE III – MECHANISM FOR OPERATION OF NETWORK ENERGY MARKETS

CHAPTER I GEOGRAPHIC SCOPE

Article 26

The provisions of and the Measures taken under this Title shall apply to the territories of the Adhering Parties, to the territory under the jurisdiction of the United Nations Interim Administration Mission in Kosovo, and to the territories of the European Community referred to in Article 27.

Article 27

As regard the European Community, the provisions of and the Measures taken under this Title shall apply to the territories of the Hellenic Republic, of Hungary, of the Republic of Bulgaria, of the Republic of Croatia, of the Republic of Italy, of the Republic of Poland, of the Republic of Romania and of the Republic of Slovakia.¹¹ Upon accession to the European Union of an Adhering Party, the provisions of and the Measures taken under this Title shall, without any further formalities, also apply to the territory of that new Member State.

CHAPTER II MECHANISM FOR LONG-DISTANCE TRANSPORTATION OF NETWORK ENERGY

Article 28

The Energy Community shall take additional Measures establishing a single mechanism for the cross-border transmission and/or transportation of Network Energy.

CHAPTER III SECURITY OF SUPPLY

¹¹ Amended by Ministerial Council Decision 2015/09/MC-EnC on the implementation of Regulation (EU) 347/2013 on guidelines for trans-European energy infrastructure.

Article 29

The Parties shall, within one year of the date of entry into force of this Treaty, adopt security of supply statements describing in particular diversity of supply, technological security, and geographic origin of imported fuels. The statements shall be communicated to the Secretariat, and shall be available to any Party to this Treaty. They shall be updated every two years. The Secretariat shall give guidance and assistance with respect to such statements.

Article 30

Article 29 does not imply a necessity to change energy policies or purchasing practices.

**CHAPTER IV
PROVISION OF ENERGY TO CITIZENS****Article 31**

The Energy Community shall promote high levels of provision of Network Energy to all its citizens within the limits of the public service obligations contained in the relevant *acquis communautaire* on energy.

Article 32

For this purpose, the Energy Community may take Measures to:

- (a) allow for the universal provision of electricity;
- (b) foster effective demand management policies;
- (c) ensure fair competition.

Article 33

The Energy Community may also make Recommendations to support effective reform of the Network Energy sectors of the Parties, including *inter alia* to increase the level of payment for energy by all customers, and to foster the affordability of Network Energy prices to consumers.

**CHAPTER V
HARMONISATION**

Article 34

The Energy Community may take Measures concerning compatibility of market designs for the operation of Network Energy markets, as well as mutual recognition of licenses and Measures fostering free establishment of Network Energy companies.

CHAPTER VI RENEWABLE ENERGY SOURCES AND ENERGY EFFICIENCY

Article 35

The Energy Community may adopt Measures to foster development in the areas of renewable energy sources and energy efficiency, taking account of their advantages for security of supply, environment protection, social cohesion and regional development.

CHAPTER VII SAFEGUARD MEASURES

Article 36

In the event of a sudden crisis on the Network Energy market in the territory of an Adhering Party, the territory under the jurisdiction of the United Nations Interim Administration Mission in Kosovo, or a territory of the European Community referred to in Article 27, where the physical safety or security of persons, or Network Energy apparatus or installations or system integrity is threatened in this territory, the concerned Party may temporarily take necessary safeguard measures.

Article 37

Such safeguard measures shall cause the least possible disturbance in the functioning of the Network Energy market of the Parties, and not be wider in scope than is strictly necessary to remedy the sudden difficulties which have arisen. They shall not distort competition or adversely affect trade in a manner which is at variance with the common interest.

Article 38

The Party concerned shall without delay notify these safeguard measures to the Secretariat, which shall immediately inform the other Parties.

Article 39

The Energy Community may decide that the safeguard measures taken by the Party concerned do not comply with the provisions of this Chapter, and request that Party to put an end to, or modify, those safeguard measures.

TITLE IV – THE CREATION OF A SINGLE ENERGY MARKET**CHAPTER I
GEOGRAPHIC SCOPE****Article 40**

The provisions of and the Measures taken under this Title shall apply to the territories to which the Treaty establishing the European Community applies under the conditions laid down in that Treaty, to the territories of the Adhering Parties and to the territory under the jurisdiction of the United Nations Interim Mission in Kosovo.

**CHAPTER II
INTERNAL ENERGY MARKET****Article 41**

1. Customs duties and quantitative restrictions on the import and export of Network Energy and all measures having equivalent effect, shall be prohibited between the Parties. This prohibition shall also apply to customs duties of a fiscal nature.
2. Paragraph 1 shall not preclude quantitative restrictions or measures having equivalent effect, justified on grounds of public policy or public security; the protection of health and life of humans, animals or plants, or the protection of industrial and commercial property. Such restrictions or measures shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between the Parties.

Article 42

1. The Energy Community may take Measures with the aim of creating a single market without internal frontiers for Network Energy.
2. Paragraph 1 shall not apply to fiscal measures, to those relating to the free movement of persons nor to those relating to the rights and interests of employed persons.

CHAPTER III EXTERNAL ENERGY TRADE POLICY

Article 43

The Energy Community may take Measures necessary for the regulation of imports and exports of Network Energy to and from third countries with a view to ensuring equivalent access to and from third country markets in respect of basic environmental standards or to ensure the safe operation of the internal energy market.

CHAPTER IV MUTUAL ASSISTANCE IN THE EVENT OF DISRUPTION

Article 44

In the event of disruption of Network Energy supply affecting a Party and involving another Party or a third country, the Parties shall seek an expeditious resolution in accordance with the provisions of this Chapter.

Article 45

Upon request of the Party directly affected by the disruption, the Ministerial Council shall meet. The Ministerial Council may take the necessary Measures in response to the disruption.

Article 46

Within one year of the date of entry into force of this Treaty, the Ministerial Council shall adopt a Procedural Act for the operation of the mutual assistance obligation under this Chapter, which may include the conferral of powers to take interim Measures to the Permanent High Level Group.

TITLE V – INSTITUTIONS OF THE ENERGY COMMUNITY

CHAPTER I THE MINISTERIAL COUNCIL

Article 47

The Ministerial Council shall ensure that the objectives set out in this Treaty are attained. It shall:

- (a) provide general policy guidelines;

(b) take Measures;

(c) adopt Procedural Acts, which may include the conferral, under precise conditions, of specific tasks, powers and obligations to carry out the policy of the Energy Community on the Permanent High Level Group, the Regulatory Board or the Secretariat.

Article 48

The Ministerial Council shall consist of one representative of each Contracting Party and two representatives of the European Community. One non-voting representative of each Participant may participate in its meetings.

Article 49

The Ministerial Council shall adopt its internal rules of procedure by Procedural Act.

Article 50¹²

The Presidency shall be held in turn by each Contracting Party for a term of one year in the order decided by a Procedural Act of the Ministerial Council. The Presidency shall convene the Ministerial Council in a place decided upon by the Presidency. The Ministerial Council shall meet at least once every year. The meetings shall be prepared by the Secretariat.

Article 51

The Presidency shall chair the Ministerial Council and be assisted by one representative of the European Community and one representative of the incoming Presidency as Vice-Presidents. The Presidency and the Vice-Presidents shall prepare the draft Agenda.

Article 52

The Ministerial Council shall submit an annual report on the activities of the Energy Community to the European Parliament and to the Parliaments of the Adhering Parties and of the Participants.

CHAPTER II THE PERMANENT HIGH LEVEL GROUP

¹² Amended by Ministerial Council Decision 2009/02/MC-EnC of 18 December 2009 amending the Treaty establishing the Energy Community with regard to the frequency of Ministerial Council meetings.

Article 53

The Permanent High Level Group shall:

- (a) prepare the work of the Ministerial Council;
- (b) give assent to technical assistance requests made by international donor organisations, international financial institutions and bilateral donors;
- (c) report to the Ministerial Council on progress made toward achievement of the objectives of this Treaty;
- (d) take Measures, if so empowered by the Ministerial Council;
- (e) adopt Procedural Acts, not involving the conferral of tasks, powers or obligations on other institutions of the Energy Community;
- (f) discuss the development of the *acquis communautaire* described in Title II on the basis of a report that the European Commission shall submit on a regular basis.

Article 54

The Permanent High Level Group shall consist of one representative of each Contracting Party and two representatives of the European Community. One non-voting representative of each Participant may participate in its meetings.

Article 55

The Permanent High Level Group shall adopt its internal rules of procedure as a Procedural Act.

Article 56

The Presidency shall convene the Permanent High Level Group at a place to be determined by the Presidency. The meetings shall be prepared by the Secretariat.

Article 57

The Presidency shall chair the Permanent High Level Group and be assisted by one representative of the European Community and one representative of the incoming Presidency as Vice-Presidents. The Presidency and the Vice-Presidents shall prepare the draft Agenda.

CHAPTER III THE REGULATORY BOARD

Article 58

The Regulatory Board shall:

- (a) advise the Ministerial Council or the Permanent High Level Group on the details of statutory, technical and regulatory rules;
- (b) issue Recommendations on cross-border disputes involving two or more Regulators, upon request of any of them;
- (c) take Measures, if so empowered by the Ministerial Council;
- (d) adopt Procedural Acts.

Article 59¹³

The Regulatory Board shall be composed of one representative of the energy regulator of each Contracting Party, pursuant to the relevant parts of the *acquis communautaire* on energy. The European Union shall be represented by the European Commission, assisted by one regulator of each Participant, and one representative of the Agency for the Cooperation of Energy Regulators.

Article 60

The Regulatory Board shall adopt its internal rules of procedure by Procedural Act.

Article 61

The Regulatory Board shall elect a President for a term determined by the Regulatory Board. The European Commission shall act as Vice-President. The President and the Vice-President shall prepare the draft Agenda.

Article 62

The Regulatory Board shall meet in Athens.

CHAPTER IV THE FORA

¹³ Amended by Ministerial Council Decision 2011/02/MC-EnC of 6 October 2011 on the implementation of Directive 2009/72/EC, Directive 2009/73/EC, Regulation (EC) 714/2009 and Regulation (EC) 715/2009 and amending Articles 11 and 59 of the Energy Community Treaty.

Article 63

Two Fora, composed of representatives of all interested stakeholders, including industry, regulators, industry representative groups and consumers, shall advise the EnergyCommunity.¹⁴

Article 64

The Fora shall be chaired by a representative of the European Community.

Article 65

The conclusions of the Fora shall be adopted by consensus. They shall be forwarded to the Permanent High Level Group.

Article 66

The Electricity Forum shall meet in Athens. The Gas Forum shall meet at a place to be determined by a Procedural Act of the Ministerial Council.¹⁵

CHAPTER V THE SECRETARIAT

Article 67

The Secretariat shall:

- (a) provide administrative support to the Ministerial Council, the Permanent High Level Group, the Regulatory Board and the Fora;
- (b) review the proper implementation by the Parties of their obligations under this Treaty, and submit yearly progress reports to the Ministerial Council;
- (c) review and assist in the coordination by the European Commission of the donors' activity in the territories

¹⁴ Pursuant to Decision 2008/03/MC-EnC of 18 December 2008 concerning the implementation to the oil sector of certain provisions of the Treaty and the creation of an Energy Community Oil Forum, the Ministerial Council established the Oil Forum.

¹⁵ According to Procedural Act 2023/01/MC-EnC of 14 December 2023 on the seat of the Gas Forum of the Energy Community, "the Energy Community Gas Forum shall be held in Ukraine as soon as conditions will allow. The conditions shall be assessed by the Energy Community Secretariat in cooperation with Ukraine, the Presidency and the Vice-Presidency in due time before the envisaged date of the respective meeting of the Gas Forum. Until conditions allow for the Gas Forum to take place in Ukraine, it shall take place in Vienna, Austria."

According to Article 2 of the Procedural Act 2023/01/MC-EnC, "the Energy Community Secretariat shall undertake the necessary steps for the practical set-up of the Gas Forum in cooperation with the competent Ukrainian authorities and in consultation with the Presidency and the Vice-Presidency. Article 3 of the Procedural Act requires that "The host will ensure that representatives of all Contracting Parties can attend the meetings."According to Article 2 of the Decision 2008/03/MC-EnC of 18 December 2008 Oil Forum shall meet in Belgrade, Serbia.

of the Adhering Parties and the territory under the jurisdiction of the United Nations Interim Administration Mission in Kosovo, and provide administrative support to the donors;

(d) carry out other tasks conferred on it under this Treaty or by a Procedural Act of the Ministerial Council, excluding the power to take Measures; and

(e) adopt Procedural Acts.

Article 68

The Secretariat shall comprise a Director and such staff as the Energy Community may require.

Article 69

The Director of the Secretariat shall be appointed by a Procedural Act of the Ministerial Council. The Ministerial Council shall lay down, by Procedural Act, rules for the recruitment, working conditions and geographic equilibrium of the Secretariat's staff. The Director shall select and appoint the staff.

Article 70

In the performance of their duties the Director and the staff shall not seek or receive instructions from any Party to this Treaty. They shall act impartially and promote the interests of the Energy Community.

Article 71

The Director of the Secretariat or a nominated alternate shall assist at the Ministerial Council, the Permanent High Level Group, the Regulatory Board and the Fora.

Article 72

The seat of the Secretariat shall be in Vienna.

CHAPTER VI BUDGET

Article 73

Each Party shall contribute to the budget of the Energy Community as set out in Annex IV. The level of contributions may be reviewed every five years, on request of any Party, by a Procedural Act of the Ministerial Council.

Article 74

The Ministerial Council shall adopt the budget of the Energy Community by Procedural Act every two years. The budget shall cover the operational expenses of the Energy Community necessary for the functioning of its institutions. The expenditure of each institution shall be set out in a different part of the budget. The Ministerial Council shall adopt a Procedural Act specifying the procedure for the implementation of the budget, and for presenting and auditing accounts and inspection.

Article 75

The Director of the Secretariat shall implement the budget in accordance with the Procedural Act adopted pursuant to Article 74, and shall report annually to the Ministerial Council on the execution of the budget. The Ministerial Council may decide by Procedural Act, if appropriate, to entrust independent auditors with verifying the proper execution of the budget.

TITLE VI – DECISION MAKING PROCESS

CHAPTER I GENERAL PROVISIONS

Article 76

Measures may take the form of a Decision or a Recommendation. A Decision is legally binding in its entirety upon those to whom it is addressed. A Recommendation has no binding force. Parties shall use their best endeavours to carry out Recommendations.

Article 77

Save as provided in Article 80, each Party shall have one vote.

Article 78

The Ministerial Council, the Permanent High Level Group or the Regulatory Board may act only if two third of the Parties are represented. Abstentions in a vote from Parties present shall not count as votes cast.

CHAPTER II MEASURES UNDER TITLE II

Article 79

The Ministerial Council, the Permanent High Level Group or the Regulatory Board shall take Measures under Title II on a proposal from the European Commission. The European Commission may alter or withdraw its proposal at any time during the procedure leading to adoption of the Measures.

Article 80

Each Contracting Party shall have one vote.

Article 81

The Ministerial Council, the Permanent High Level Group or the Regulatory Board shall act by a majority of the votes cast.

**CHAPTER III
MEASURES UNDER TITLE III****Article 82**

The Ministerial Council, the Permanent High Level Group or the Regulatory Board shall take Measures under Title III on a proposal from a Party or the Secretariat.

Article 83

The Ministerial Council, the Permanent High Level Group or the Regulatory Board shall act by a twothird majority of the votes cast, including a positive vote of the European Community.

**CHAPTER IV
MEASURES UNDER TITLE IV****Article 84**

The Ministerial Council, the Permanent High Level Group or the Regulatory Board shall take Measures under Title IV on a proposal from a Party.

Article 85

The Ministerial Council, the Permanent High Level Group or the Regulatory Board shall take Measures by unanimity.

CHAPTER V PROCEDURAL ACTS

Article 86

A Procedural Act shall regulate organizational, budgetary and transparency issues of the Energy Community, including the delegation of power from the Ministerial Council to the Permanent High Level Group, the Regulatory Board or the Secretariat, and shall have binding force on the institutions of the Energy Community, and, if the Procedural Act so provides, on the Parties.

Article 87

Save as provided in Article 88, Procedural Acts shall be adopted in compliance with the Decision Making Process set out in Chapter III of this Title.

Article 88

The Procedural Act appointing the Director of the Secretariat provided for in Article 69 shall be adopted by simple majority on a proposal from the European Commission. The Procedural Acts on budgetary matters provided for in Articles 73 and 74 shall be adopted by unanimity on a proposal from the European Commission. The Procedural Acts conferring powers on the Regulatory Board provided for in Article 47(c) shall be taken by unanimity on a proposal from a Party or the Secretariat.

TITLE VII – IMPLEMENTATION OF DECISIONS AND DISPUTE SETTLEMENT

Article 89

The Parties shall implement Decisions addressed to them in their domestic legal system within the period specified in the Decision.

Article 90

1. Failure by a Party to comply with a Treaty obligation or to implement a Decision addressed to it within the required period may be brought to the attention of the Ministerial Council by a reasoned request of any Party, the Secretariat or the Regulatory Board. Private bodies may approach the Secretariat with complaints.

2. The Party concerned may make observations in response to the request or complaint.

Article 91

1. The Ministerial Council may determine the existence of a breach by a Party of its obligations. The Ministerial Council shall decide:

- (a) by a simple majority, if the breach relates to Title II;
- (b) by a two-third majority, if the breach relates to Title III;
- (c) by unanimity, if the breach relates to Title IV.

2. The Ministerial Council may subsequently decide by simple majority to revoke any decisions adopted under this Article.

Article 92

1. At the request of a Party, the Secretariat or the Regulatory Board, the Ministerial Council, acting by unanimity, may determine the existence of a serious and persistent breach by a Party of its obligations under this Treaty and may suspend certain of the rights deriving from application of this Treaty to the Party concerned, including the suspension of voting rights and exclusion from meetings or mechanisms provided for in this Treaty.

2. The Ministerial Council may subsequently decide by simple majority to revoke any decisions taken under this Article.

Article 93

When adopting the decisions referred to in Articles 91 and 92, the Ministerial Council shall act without taking into account the vote of the representative of the Party concerned.

TITLE VIII – INTERPRETATION

Article 94

The institutions shall interpret any 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 of the European Communities. Where no interpretation from those Courts is available, the Ministerial Council shall give guidance in interpreting this Treaty. It may delegate that task to the Permanent High Level Group. Such guidance shall not prejudice any interpretation of the *acquis communautaire* by the Court of Justice or the Court of First Instance at a later stage.

TITLE IX – PARTICIPANTS AND OBSERVERS

Article 95

Upon a request to the Ministerial Council, any Member State of the European Community may be represented in the Ministerial Council, the Permanent High Level Group and the Regulatory Board under the conditions laid down in Articles 48, 54 and 59 as a Participant, and shall be permitted to participate in the discussions of the Ministerial Council, the Permanent High Level Group, the Regulatory Board and the Fora.

Article 96

1. Upon a reasoned request of a neighbouring third country, the Ministerial Council may, by unanimity, accept that country as an Observer. Upon a request presented to the Ministerial Council within six months of the date of entry into force of this Treaty, Moldova shall be accepted as an Observer.
2. Observers may attend the meetings of the Ministerial Council, the Permanent High Level Group, the Regulatory Board and the Fora, without participating in the discussions.

TITLE X – DURATION

Article 97

This Treaty is concluded for a period of 10 years from the date of entry into force¹⁶. The Ministerial Council, acting by unanimity, may decide to extend its duration. If no such decision is taken, the Treaty may continue to apply between those Parties who voted in favour of extension, provided that their number amounted to at least two thirds of the Parties to the Energy Community.

Article 98

Any party may withdraw from this Treaty by giving six months notice, addressed to the Secretariat.

Article 99

Upon accession to the European Community of an Adhering Party, that party shall become a Participant as provided for in Article 95.

¹⁶ According to Ministerial Council Decision 01/2023/MC-EnC on extending the duration of the Energy Community Treaty, the duration of the Treaty is extended for a period of 10 years.

TITLE XI – REVISION AND ACCESSION

Article 100

The Ministerial Council may, by unanimity of its Members:

- (i) amend the provisions of Title I to VII;
- (ii) decide to implement other parts of the acquis communautaire related to Network Energy;
- (iii) extend this Treaty to other energy products and carriers or other essential network infrastructures;
- (iv) agree on the accession to the Energy Community of a new Party.

TITLE XII – FINAL AND TRANSITIONAL PROVISIONS

Article 101

Without prejudice to Articles 102 and 103, the rights and obligations arising from agreements concluded by a Contracting Party before the signature of this Treaty shall not be affected by the provisions of this Treaty. To the extent that such agreements are not compatible with this Treaty, the Contracting Party concerned shall take all appropriate measures to eliminate the incompatibilities established, no later than one year after the date of entry into force of this Treaty.

Article 102

All obligations under this Treaty are without prejudice to existing legal obligations of the Parties under the Treaty establishing the World Trade Organisation.

Article 103

Any obligations under an agreement between the European Community and its Member States on the one hand, and a Contracting Party on the other hand shall not be affected by this Treaty. Any commitment taken in the context of negotiations for accession to the European Union shall not be affected by this Treaty.

Article 104

Until the adoption of the Procedural Act referred to in Article 50, the 2003 Athens Memorandum of Understanding¹⁷ shall define the order for holding the Presidency.¹⁸

¹⁷ Memorandum of Understanding on the Regional Energy Market in South East Europe and its Integration into the European Community Internal Energy Market, signed in Athens on 8 December 2003.

¹⁸ According to Annex point III(1) of Procedural Act 2006/01/MC-EnC of 17 November 2006 on adoption of Internal Rules of Procedures of Ministerial Council of Energy Community, the Presidency of the Council shall be held in turn by each Contracting Party in alphabetical order, following the names of the Parties as indicated in the Treaty.

Article 105

This Treaty shall be approved by the Parties in accordance with their internal procedures.

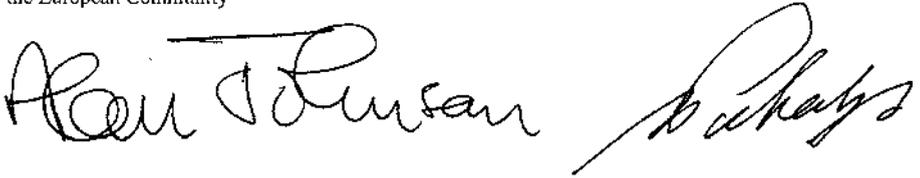
This Treaty shall enter into force on the first day of the month following the date on which the European Community and six Contracting Parties have notified the completion of the procedures necessary for this purpose.

Notification shall be sent to the Secretary-General of the Council of the European Union who shall be the depositary for this Treaty.

In witness thereof the duly authorised representatives have signed this Treaty.

Done at Athens, on the twenty-fifth day of October in the year two thousand and five.

For the European Community

A handwritten signature in black ink, appearing to read "Jean-Pierre Lecoq".

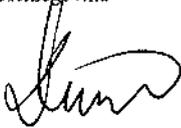
For the Republic of Albania

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For the Republic of Bulgaria

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For Bosnia and Herzegovina

A handwritten signature in black ink, appearing to read "L. L. L.".

For the Republic of Croatia

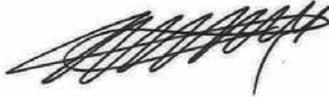
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For the former Yugoslav Republic of Macedonia

For the Republic of Montenegro

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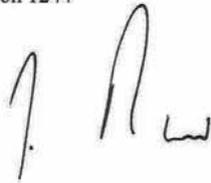
For Romania

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For the Republic of Serbia

A handwritten signature in black ink, appearing to be 'Pop M. Mijuskovic', written in a cursive style.

For the United Nations Interim Administration Mission in Kosovo pursuant to the United Nations Security Council Resolution 1244

A handwritten signature in black ink, appearing to be 'J. Row', written in a cursive style.



Republic of Macedonia
– Office of the Deputy Prime Minister –
Minčo Jordanov

Athens, 25 October 2005

Your Excellency,

Hereby I declare that the text of the Treaty establishing the Energy Community is acceptable for the Government of the Republic of Macedonia.

With this letter, the Government of the Republic of Macedonia considers itself as signatory of the Treaty establishing the Energy Community.

However, I declare that the Republic of Macedonia does not accept the denomination used for my country in the above-mentioned documents having in view that the constitutional name of my country is the Republic of Macedonia.

Please accept, Your Excellency, the assurances of my highest consideration.

Minčo Jordanov

THE EUROPEAN COMMUNITY

Brussels



**COUNCIL OF
THE EUROPEAN UNION
The Presidency**

Athens, 25 October 2005

Mr. Minco Jordanov,
Vice-President of the Government
of the former Yugoslav Republic of Macedonia.

Sir,

The European Community takes note of your letter of today's date and confirms that your letter and this reply shall together take the place of the signature of the Treaty establishing the Energy Community by the former Yugoslav Republic of Macedonia. However, this cannot be construed as acceptance or recognition by the European Community, in whatever form or content of a denomination other than "former Yugoslav Republic of Macedonia".

Please accept, Sir, the assurance of my highest consideration.

On behalf of
the European Community

UNITED NATIONS
United Nations Interim
Administration Mission in
Kosovo



NATIONS UNIES
Mission d'Administration
Intérimaire des Nations Unies
au Kosovo

DECLARATION

I, Søren Jessen-Petersen, Special Representative of the Secretary General and Head of the United Nations Interim Administration Mission in Kosovo (UNMIK),

HEREBY DECLARE that the United Nations Interim Administration Mission in Kosovo (UNMIK) is signing the Treaty establishing the Energy Community on 25 October 2005, subject to the following terms:

- (i) The United Nations Interim Administration Mission in Kosovo (UNMIK) established by Security Council resolution 1244 (1999) of 10 June 1999 signs the Treaty on behalf of Kosovo;
- (ii) The Treaty is valid in respect of Kosovo for the duration of UNMIK administration under resolution 1244 (1999), and its continued validity beyond that would depend on the future administration of Kosovo; and
- (iii) The conclusion of the Treaty on the part of UNMIK is without prejudice to the future status of Kosovo.

Furthermore, the Treaty does not engage the responsibility of the United Nations, nor does it create for the Organization any legal, financial or other obligations.

I request that this Declaration be duly recorded and form part of the official records of the Treaty.

IN WITNESS WHEREOF, I have hereto set my hand and seal.



Done at Pristina on 21 October 2005.

A handwritten signature in black ink, appearing to read "Søren Jessen-Petersen".

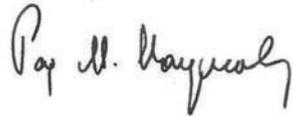
Søren Jessen-Petersen
Special Representative of the Secretary General

STATEMENT

Of the Serbian Delegation at the Ceremony of the signing of the Treaty establishing the Energy Community

"The Government of the Republic of Serbia would like to state that the signing of the Treaty establishing the Energy Community on behalf of the Special Representative of the Secretary General United Nations Interim Administration Mission in Kosovo shall in no way prejudice the final status of Kosovo and Metohija. The Government of the Republic of Serbia recalls the UN Security Council Resolution 1244 reaffirming the commitment of all Member States to the sovereignty and territorial integrity of the Serbia and Montenegro."

Athens, October 25, 2005



ANNEX I

LIST OF ACTS INCLUDED IN THE “ACQUIS COMMUNAUTAIRE ON ENERGY”

- (1) Directive (EU) 2019/944 of 5 June 2019 on common rules for the internal market for electricity, as adopted by Ministerial Council Decision 2021/13/MC-EnC of 30 November 2021.
- (2) Regulation (EU) 2019/943 of 5 June 2019 on the internal market for electricity”, as adopted by Ministerial Council Decision 2022/03/MC-EnC of 15 December 2022.
- (3) Regulation (EU) 2019/941 of 5 June 2019 on risk-preparedness in the electricity sector, as adopted by Ministerial Council Decision 2021/13/MC-EnC of 30 November 2021.
- (4) Regulation (EU) 2017/1938 of 25 October 2017 concerning measures to safeguard the security of gas supply and repealing Regulation (EU) 994/2010, as adopted by Ministerial Council Decision 2021/15/MC-EnC of 30 November 2021.
- (5) Regulation (EU) 2022/869 of 30 May 2022 on guidelines for trans-European energy infrastructure, amending Regulations (EC) No 715/2009, (EU) 2019/942 and (EU) 2019/943 and Directives 2009/73/EC and (EU) 2019/944, and repealing Regulation (EU) No 347/2013, as adopted by Ministerial Council Decision 2023/02/MC-EnC of 14 December 2023.
- (6) Directive (EU) 2018/2001 of 11 December 2018 on the promotion of the use of energy from renewable sources, as adopted by Ministerial Council Decision 2021/13/MC-EnC of 30 November 2021.
- (7) Directive (EU) 2018/2002 of 11 December 2018 amending Directive 2012/27/EU on energy efficiency, as adopted by Ministerial Council Decision 2021/13/MC-EnC of 30 November 2021.
- (8) Regulation (EU) 2018/1999 of 11 December 2018 on the Governance of the Energy Union and Climate Action, amending Regulations (EC) 663/2009 and (EC) 715/2009, Directives 94/22/EC, 98/70/EC, 2009/31/EC, 2009/73/EC, 2010/31/EU, 2012/27/EU and 2013/30/EU, Council Directives 2009/119/EC and (EU) 2015/652 and repealing Regulation (EU) 525/2013, as adopted by Ministerial Council Decision 2021/13/MC-EnC of 30 November 2021.
- (9) Commission Delegated Regulation (EU) 2020/1044 of 8 May 2020 supplementing Regulation (EU) 2018/1999 with regard to values for global warming potentials and the inventory guidelines and with regard to the Union inventory system and repealing Commission Delegated Regulation (EU) 666/2014, as adopted by Ministerial Council Decision 2021/13/MC-EnC of 30 November 2021.
- (10) Commission Implementing Regulation (EU) 2020/1208 of 7 August 2020 on structure, format, submission processes and review of information reported by Member States pursuant to Regulation (EU) 2018/1999 and repealing Commission Implementing Regulation (EU) 749/2014, as adopted by Ministerial Council Decision 2021/13/MC-EnC of 30 November 2021.
- (11) Regulation (EU) 2019/942 of 5 June 2019 establishing a European Union Agency for the Cooperation of Energy Regulators, as adopted by Ministerial Council Decision 2022/03/MC-EnC of 15 December 2022.
- (12) Commission Implementing Regulation (EU) 2018/2066 of 19 December 2018 on the monitoring and reporting of greenhouse gas emissions pursuant to Directive 2003/87/EC and amending Commission Regulation (EU) 601/2012 as adopted by Ministerial Council Decision 2022/05/MC-EnC of 15 December 2022.
- (13) Commission Implementing Regulation (EU) 2018/2067 of 19 December 2018 on the verification of data and on the accreditation of verifiers pursuant to Directive 2003/87/EC as adopted by Ministerial Council

Decision 2022/05/MC-EnC of 15 December 2022.

(14) Directive 2003/87/EC of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC as adopted by Ministerial Council Decision 2022/05/MC-EnC of 15 December 2022.

ANNEX II

TIMETABLE FOR THE IMPLEMENTATION OF THE ACQUIS ON ENVIRONMENT

1. Each Contracting Party shall implement Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment by 14 October 2016. Each Contracting Party shall implement Directive 2014/52/EU by 1 January 2019, with the exception of the provisions referring to Directives not covered by Article 16 of this Treaty.
2. Each Contracting Party shall implement Council Directive 1999/32/EC of 26 April 1999 relating to a reduction in the sulphur content of certain liquid fuels and amending Directive 93/12/EEC by 31 December 2011.
 - 2a. Each Contracting Party shall implement Directive (EU) 2016/802 of the European Parliament and of the Council of 11 May 2016 relating to a reduction in the sulphur content of certain liquid fuels and Commission Implementing Decision (EU) 2015/253 of 16 February 2015 laying down the rules concerning the sampling and reporting under Council Directive 1999/32/EC as regards the sulphur content of marine fuels by 30 June 2018.
3. Each Contracting Party shall implement Directive 2001/80/EC of the European Parliament and of the Council of 23 October 2001 on the limitation of emissions of certain pollutants into the air from large combustion plants by 31 December 2017.
4. Each Contracting Party shall implement Article 4(2) of Directive 79/409/EEC of the Council of 2 April 1979 on the conservation of wild birds on the entry into force of this Treaty.
5. Each Contracting Party shall implement Chapter III, Annex V, and Article 72(3)-(4) of Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) from 1 January 2018 for new plants. For existing plants, Contracting Parties shall implement those provisions by 1 January 2028 at the latest. Prior to that date, they shall endeavour to implement the provisions of Chapter III and Annex V within the shortest possible timeframe, in particular in the cases of retrofitting existing plants. Ukraine shall implement those provisions by 1 January 2029 at the latest for SO₂ and dust and by 1 January 2034 at the latest for NO_x¹⁹
6. Each Contracting Party shall implement Directive 2004/35/EU of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage, as amended by Directive 2006/21/EC, Directive 2009/31/EC and Directive 2013/30/EU by 1 January 2021.
7. Each Contracting Party shall transpose Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment by 1 January 2018 and implement those provisions by 31 March 2018.

¹⁹ Amended by the Ministerial Council Decision 2015/07/MC-EnC on amending Decision 2013/05/MC-EnC of 24 October 2013 on the implementation of Directive 2001/80/EC on the limitation of emissions of certain pollutants into the air from large combustion plants and on amending Annex II of the Energy Community Treaty.

ANNEX III

EC COMPETITION RULES

Article 81 of the EC Treaty

1. The following shall be prohibited as incompatible with the common market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market, and in particular those which:

- (a) directly or indirectly fix purchase or selling prices or any other trading conditions;
- (b) limit or control production, markets, technical development, or investment;
- (c) share markets or sources of supply;
- (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

2. Any agreements or decisions prohibited pursuant to this article shall be automatically void.

3. The provisions of paragraph 1 may, however, be declared inapplicable in the case of:

- any agreement or category of agreements between undertakings,
- any decision or category of decisions by associations of undertakings,
- any concerted practice or category of concerted practices,

which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:

- (a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;
- (b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

Article 82 of the EC Treaty

Any abuse by one or more undertakings of a dominant position within the common market or in a substantial part of it shall be prohibited as incompatible with the common market in so far as it may affect trade between Member States.

Such abuse may, in particular, consist in:

- (a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
- (b) limiting production, markets or technical development to the prejudice of consumers;

(c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;

(d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

Article 86(1) and (2) of the EC Treaty

1. In the case of public undertakings and undertakings to which Member States grant special or exclusive rights, Member States shall neither enact nor maintain in force any measure contrary to the rules contained in this Treaty, in particular to those rules provided for in Article 12 and Articles 81 to 89.

2. Undertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly shall be subject to the rules contained in this Treaty, in particular to the rules on competition, in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. The development of trade must not be affected to such an extent as would be contrary to the interests of the Community.

Article 87 of the EC Treaty

1. Save as otherwise provided in this Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the common market.

2. The following shall be compatible with the common market:

(a) aid having a social character, granted to individual consumers, provided that such aid is granted without discrimination related to the origin of the products concerned;

(b) aid to make good the damage caused by natural disasters or exceptional occurrences;

(c) aid granted to the economy of certain areas of the Federal Republic of Germany affected by the division of Germany, in so far as such aid is required in order to compensate for the economic disadvantages caused by that division.

3. The following may be considered to be compatible with the common market:

(a) aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment;

(b) aid to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State;

(c) aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest;

(d) aid to promote culture and heritage conservation where such aid does not affect trading conditions and competition in the Community to an extent that is contrary to the common interest;

(e) such other categories of aid as may be specified by decision of the Council acting by a qualified majority on a proposal from the Commission.

PROTOCOL
CONCERNING THE ACCESSION OF THE REPUBLIC OF MOLDOVA TO THE
TREATY ESTABLISHING THE ENERGY COMMUNITY

The Energy Community, in accordance with the Treaty establishing the Energy Community (herein- after - the Treaty) on the one hand,

and the Republic of Moldova on the other hand,

Taking note of the outcome of negotiations on the Republic of Moldova's accession to the Energy Community,

Having regard to the Decision of the Ministerial Council of the Energy Community of 18 December 2009 approving the accession of the Republic of Moldova to the Energy Community on the conditions set out herein (Decision 2009/03/MC-EnC),

AGREED ON THE FOLLOWING:

Article 1

The Republic of Moldova accedes to the Energy Community as a Contracting Party under the terms and conditions set out in the Decision of the Ministerial Council of the Energy Community of 18 December 2009 on the accession of the Republic of Moldova to the Energy Community (Decision 2009/03/MC-EnC), as laid down in this Protocol.

Unless specified otherwise in this Protocol, by date of accession, the Republic of Moldova is entitled to all rights granted to Contracting Parties and is subject to all obligations imposed on Contracting Parties by the Treaty and by all Decisions and Procedural Acts adopted in application of the Treaty since its entry into force.

Article 2

1. For the purpose of compliance with Title II of the Treaty establishing the Energy Community and its related Annexes, the timetable for implementation by the Republic of Moldova of the *acquis communautaire* is defined as follows

| | |
|--|---------------------|
| Directive 2003/55/EC concerning common rules for the internal market in natural gas | By 31 December 2009 |
| Regulation 1775/2005 on conditions for access to the natural gas transmission networks | By 31 December 2010 |
| Directive 2004/67/EC concerning measures to safeguard security of natural gas supply | By 31 December 2010 |

| | |
|--|---------------------|
| Directive 2003/54/EC concerning common rules for the internal market in electricity | By 31 December 2009 |
| Regulation 1228/2003 on conditions for access to the network for cross-border exchanges in electricity | By 31 December 2010 |
| Commission Decision 2006/770/EC amending the Annex to Regulation No 1228/2003 on conditions for access to the network for cross-border exchanges in electricity | By 31 December 2010 |
| Directive 2005/89/EC concerning measures to safeguard security of electricity supply and infrastructure investment | By 31 December 2010 |
| Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment, as amended by Directive 97/11/EC and Directive 2003/35/EC | By 31 December 2010 |
| Directive 1999/32/EC relating to a reduction in the sulphur content of certain liquid fuels | By 31 December 2014 |
| Directive 2001/80/EC on the limitation of emissions of certain pollutants into the air from large combustion plants | By 31 December 2017 |
| Directive 79/409/EC, Article 4(2), on the conservation of wild birds | By 31 December 2010 |
| Plan for the implementation of Directive 2001/77/EEC on the promotion of electricity produced from renewable energy sources in the internal electricity market | By 31 December 2010 |
| Plan for the implementation of Directive 2003/30/EC on the promotion of the use of biofuels or other renewable fuels for transport | By 31 December 2010 |

2. The Republic of Moldova must ensure that the eligible customers within the meaning of EC Directives 2003/54/EC and 2003/55/EC are:

- From 1 January 2013, all non-household customers; and
- From 1 January 2015, all customers.

3. In Article 19 of the Treaty, the reference "as from six months following the date of entry into force of this Treaty" shall be understood as meaning "as from six months following the date of accession of the Republic of Moldova". In Article 22 of the Treaty, the reference "within one year of the adoption of the list" shall be understood as meaning "within one year of the date of accession of the Republic of Moldova". In Article 29 of the Treaty, the reference "within one year of the date of entry into force of this Treaty" shall be understood as meaning "within one year of the date of accession of the Republic of Moldova".

4. Article 15 of the Treaty shall apply to the Republic of Moldova as from one year following the date of accession of the Republic of Moldova.

Article 3

1. The contribution of the Republic of Moldova and of the other Parties to the budget of the Energy Community shall be set out in a Procedural Act to be adopted pursuant to Article 73 of the Treaty. The methodology to be applied shall be based on a pro-rata calculated in relation to GDP and Total Primary Energy Supply.
2. The first contribution of the Republic of Moldova shall be due for the first full budgetary year following accession.

Article 4

1. After adoption by the Ministerial Council of the Energy Community of its Decision on the Republic of Moldova's accession to the Energy Community, the Republic of Moldova shall initiate its internal procedures required for entry into force of its accession to the Energy Community.
2. The accession to the Energy Community shall enter into force on the first day of the second month following the month of completion of the procedures provided in the first paragraph of this article.

Done at Vienna, this seventeenth day of March in the year two thousand and ten. For the Energy Community For the Republic of Moldova

PROTOCOL
CONCERNING THE ACCESSION OF UKRAINE
TO THE TREATY ESTABLISHING THE ENERGY COMMUNITY

The Energy Community, in accordance with the Treaty establishing the Energy Community (herein- after - the Treaty) on the one hand, And Ukraine on the other hand,

Taking note of the outcome of negotiations on Ukraine's accession to the Energy Community Treaty,

Having regard to the Decision of the Ministerial Council of the Energy Community of 18 December 2009 approving the accession of Ukraine to the Energy Community Treaty on the conditions set out herein (Decision 2009/04/MC-EnC),

AGREED ON THE FOLLOWING:

Article 1

Ukraine accedes to the Treaty establishing the Energy Community as a Contracting Party under the terms and conditions set out in the Decision of the Ministerial Council of the Energy Community of 18 December 2009 on the accession of Ukraine to the Energy Community Treaty (Decision 2009/04/MC-EnC), as laid down in this Protocol.

Unless specified otherwise in this Protocol, by date of accession, Ukraine is entitled to all rights granted to Contracting Parties and is subject to all obligations imposed on Contracting Parties by the Treaty and by all Decisions and Procedural Acts adopted in application of the Treaty since its entry into force.

Article 2

1. For the purposes of compliance with Title II of the Treaty establishing the Energy Community and its related Annexes, the timetable for implementation of the *acquis communautaire* is defined as follows:

| | |
|--|---------------------|
| Directive 2003/55/EC concerning common rules for the internal market in natural gas | By 1st January 2012 |
| Regulation 1775/2005 on conditions for access to the natural gas transmission networks | By 1st January 2012 |
| Directive 2004/67/EC concerning measures to safeguard security of natural gas supply | By 1st January 2012 |
| Directive 2003/54/EC concerning common rules for the internal market in electricity | By 1st January 2012 |

| | |
|---|---------------------|
| Regulation 1228/2003 on conditions for access to the network for cross-border exchanges in electricity | By 1st January 2012 |
| Commission Decision 2006/770/EC amending the Annex to Regulation 1228/2003 on conditions for access to the network for cross-border exchanges in electricity | By 1st January 2012 |
| Directive 2005/89/EC concerning measures to safeguard security of electricity supply and infrastructure investment | By 1st January 2012 |
| Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment, as amended by Directive 97/11/EC and Directive 2003/35/EC. | By 1st January 2013 |
| Directive 1999/32/EC relating to a reduction in the sulphur content of certain liquid fuels | By 1st January 2012 |
| Directive 2001/80/EC on the limitation of emissions of certain pollutants into the air from large combustion plants | By 1st January 2018 |
| Directive 79/409/EC, Article 4(2), on the conservation of wild birds | By 1st January 2015 |
| Plan for the implementation of Directive 2001/77/EEC on the promotion of electricity produced from renewable energy sources in the internal electricity market | By 1st January 2011 |
| Plan for the implementation of Directive 2003/30/EC on the promotion of the use of biofuels or other renewable fuels for transport | By 1st January 2011 |

2. Ukraine must ensure that the eligible customers within the meaning of EC Directives 2003/154/EC and 2003/55/EC are:

- From 1 January 2012, all non-household customers; and
- From 1 January 2015, all customers.

3. In Article 19 of the Treaty, the reference “as from six months following the date of entry into force of this Treaty” shall be understood as meaning “as from six months following the date of accession of Ukraine”.

In Article 22 of the Treaty, the reference “within one year of the adoption of the list” shall be understood as meaning “within one year of the date of accession of Ukraine”. In Article 29 of the Treaty, the reference “within one year of the date of entry into force of this Treaty” shall be understood as meaning “within one year of the date of accession of Ukraine”.

4. Article 15 of the Treaty shall apply to Ukraine as from two years following the date of accession of Ukraine.

Article 3

1. The contribution of Ukraine and of the other Parties to the budget of the Energy Community shall be set out in a Procedural Act to be adopted pursuant to Article 73 of the Treaty. The methodology to be applied shall be based on a pro-rata calculated in relation to GDP and Total Primary Energy Supply.
2. The first contribution of Ukraine shall be due for the first full budgetary year following accession.

Article 4

1. After adoption by the Ministerial Council of the Energy Community of its Decision on Ukraine's accession to the Energy Community, Ukraine shall initiate its internal procedures required for entry into force of its accession to the Energy Community.
2. The accession to the Energy Community shall enter into force on the first day of the second month following the month of completion of the procedures provided in the first paragraph of this article.

Done at Skopje, this twenty fourth day of September in the year two thousand and ten. For the Energy Community For Ukraine

PROTOCOL
CONCERNING THE ACCESSION OF GEORGIA
TO THE TREATY ESTABLISHING THE ENERGY COMMUNITY

The Energy Community, in accordance with the Treaty establishing the Energy Community (herein - after - the Treaty), on the one hand, and Georgia, on the other hand,

Taking note of the outcome of negotiations on Georgia's accession to the Energy Community,

Having regard to the Decision of the Ministerial Council of the Energy Community of 14th October 2016 approving the accession of Georgia to the Energy Community (Decision 2016/18/MC-EnC),

Considering that Georgia is not directly interconnected to the energy network of any Contracting Party or any Member State of the European Union and that specific solutions needs to be found as regards key gas transmission infrastructures mainly used for the shipment of gas through Georgia,

Considering that Georgia became an observer to the Energy Community in 2007, after the negotiation of the conditions ruling these gas transmission infrastructures,

AGREED ON THE FOLLOWING:

Article 1

1. Georgia hereby accedes to the Treaty establishing the Energy Community as a Contracting Party under the terms and conditions set out in the present Protocol.
2. Unless specified otherwise in this Protocol, by date of accession, Georgia is entitled to all rights granted to Contracting Parties and is subject to all obligations imposed on Contracting Parties by the Treaty and by all Decisions and Procedural Acts adopted in application of the Treaty since its entry into force.

Article 2

1. For the purpose of compliance with Title II of the Treaty establishing the Energy Community and its related Annexes, the timetable for implementation of the *acquis communautaire* is defined as follows:

| | |
|--|---------------------|
| Directive 2009/73/EC concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC | By 31 December 2020 |
| Regulation (EC) No 715/2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005 | By 31 December 2020 |
| Directive 2004/67/EC concerning measures to safeguard security of natural gas supply | By 31 December 2020 |

| | |
|--|---|
| Directive 2009/72/EC concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC | By 31 December 2018 |
| Regulation (EC) No 714/2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No 1228/2003 | By 31 December 2018 |
| Directive 2005/89/EC concerning measures to safeguard security of electricity supply and infrastructure investment | By 31 December 2019 |
| Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment, as amended by Directive 97/11/EC and Directive 2003/35/EC | Without prejudice to commitments under EU-Georgia Association Agreement the entire Directive should be fully implemented by 1 September 2017. |
| Directive 1999/32/EC relating to a reduction in the sulphur content of certain liquid fuels | Without prejudice to commitments under EU-Georgia Association Agreement the entire Directive should be fully implemented by 1 September 2021. |
| Directive 2001/80/EC on the limitation of emissions of certain pollutants into the air from large combustion plants | By 31 December 2018 |
| Chapter III, Annex V and Article 72(3)-(4) of Directive 2010/75/EU on industrial emissions (integrated pollution prevention and control) – for new plants | By 1 September 2018 |
| Chapter III, Annex V and Article 72(3)-(4) of Directive 2010/75/EU on industrial emissions (integrated pollution prevention and control) – for existing plants | By 1 September 2026 |
| Directive 79/409/EC, Article 4(2), on the conservation of wild birds | By 1 September 2019 |
| Directive 2009/28/EC on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC | By 31 December 2018 |
| Directive 2012/27/EU on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC. | By 31 December 2018 |
| Directive 2010/30/EU on the indication by labelling and standard product information of the consumption of energy and other resources by energy-related products (recast) | By 31 December 2018 |
| Directive 2010/31/EU on the energy performance of buildings (recast) | By 30 June 2019 |
| Directive 2009/119/EC imposing an obligation on Member States to maintain minimum stocks of crude oil and/or petroleum products | By 1 January 2023 |

| | |
|--|---------------------|
| Directive 2008/92/EC concerning a Community procedure to improve the transparency of gas and electricity prices charged to industrial end-users (recast) | By 31 December 2017 |
| Regulation (EC) No 1099/2008 on energy statistics | By 31 December 2017 |

2. Georgia must ensure that the eligible customers within the meaning of EC Directives 2009/72/EC and 2009/73/EC are:

- From 31 December 2018, all non-household customers; and
- From 31 December 2019, all customers.

3. In Article 19 of the Treaty, the reference “as from 6 months following the date of entry into force of this Treaty” shall be understood as meaning “as from one year following the date of accession of Georgia”. In Article 22 of the Treaty, the reference “within one year of the adoption of the list” shall be understood as meaning “within one year of the date of accession of Georgia”. In Article 29 of the Treaty, the reference “within one year of the date of entry into force of this Treaty” shall be understood as meaning “within one year of the date of accession of Georgia”.

4. Article 15 of the Treaty shall apply to Georgia as from one year following the date of accession of Georgia.

5. The South Caucasus Pipeline²⁰ and the North South Gas Pipeline²¹ are exempted from the implementation of Directive 2009/73/EC and Regulation (EC) No 715/2009 until 31 August 2026, the date of expiration of the Energy Community Treaty.

6. The present protocol of accession shall not affect the Intergovernmental Agreement between Georgia and the Azerbaijan Republic relating to the transit, transportation and sale of natural gas in and beyond the territories of Georgia and the Azerbaijan Republic through the South Caucasus Pipeline System.

7. As regards implementation of the provisions of Article 2(5) and 2(6) of this Protocol it is confirmed that Georgia is exempted from the application of the Treaty in relation to legal and/or regulatory regime and/or terms and conditions of cross-border transmission (transit) of natural gas, as well as to the terms and conditions of the existing agreements concluded to implement the Intergovernmental Agreement between Georgia and the Azerbaijan Republic relating to the transit, transportation and sale of natural gas in and beyond the territories of Georgia and the Azerbaijan Republic through the South Caucasus Pipeline System.

8. Should the Energy Community Treaty be extended beyond the date referred to in point 5, the provisions under points 5 and 6 of the present article shall be reviewed.

Article 3

The contribution of Georgia and of the other Parties to the budget of the Energy Community shall be set out in a Procedural Act to be adopted pursuant to Article 73 of the Treaty. The methodology to be applied shall be based on a pro-rata calculated in relation to GDP and Total Primary Energy Supply.

²⁰ The South Caucasus Pipeline means SCP Project within the meaning ascribed to this term in the Intergovernmental Agreement between Georgia and the Azerbaijan Republic.

²¹ The North-South Gas Pipeline is a part of the Georgian Main Gas Pipelines System consisting of 1200/1000 mm diameter gas pipeline sections (as may be renewed, repaired, modified, refurbished, reconstructed and/or replaced) primarily assigned for transportation of natural gas from Russian Federation to the Republic of Armenia.

The first contribution of Georgia shall be due for the first full budgetary year following accession.

Article 4

After adoption by the Ministerial Council of the Energy Community of its Decision on Georgia's accession to the Treaty establishing the Energy Community, Georgia shall initiate its internal procedures required for entry into force of its accession to the Energy Community.

The accession to the Energy Community shall enter into force on the first day of the second month following the month of completion of the procedures provided in the first paragraph of this article. Notification thereof shall be sent to the Secretary General of the Council of the European Union, who shall be the depositary for this Protocol.

Done in Sarajevo, 14th October 2016 For the Energy Community For Georgia

ANNEX

COMMON UNDERSTANDING CONCERNING THE IMPLEMENTATION OF THE PROTOCOL

1. As regards the provisions included in the *acquis communautaire* listed under articles 2(1) and 2(2) of the protocol concerning energy cross-border exchanges with a Contracting Party or a Member State of the European Union, it shall be taken into account that Georgia is not directly interconnected to the energy network of any Contracting Party or Member State of the European Union. Georgia will start applying these rules and principles with respect to any Contracting Party or Member State of the European Union whenever it is physically interconnected to the energy network of any Contracting Party or Member State of the European Union. Rules and principles governing trade with countries which are not a Contracting Party of the Energy Community or a Member State of the European Union remains a national competence.
2. Any application of the provisions of the Chapter IV in Title II the Treaty (the *acquis* on competition) shall take into account that Georgia is currently an isolated market not having direct interconnections to the energy network of any Party. Georgia will promote and apply these provisions insofar as trade between the Contracting Parties may be affected.
3. For the implementation of Directive 2009/72/EC concerning common rules for the internal market in electricity, to be completed by 31 December 2018 and Directive 2005/89/EC concerning measures to safeguard security of electricity supply and infrastructure investment, to be completed by 31 December 2019, it is understood that a subsequent period of one year will be necessary for testing and adjusting the relevant implementing provisions and market instruments.
4. For the setting and level of electricity distribution tariffs, it is understood that Georgia may continue to observe its commitments with investors resulting from contracts concluded before the signature of this Protocol. It will engage in discussions with the Secretariat aimed at eliminating potential incompatibilities with the Treaty, no later than Article 2(1) and 2(2) become applicable.
5. Within the scope of Directive 2009/28/EC on the promotion of the use of energy from renewable sources, the applicability and, if appropriate, the calculation of the 2020 renewable energy target for Georgia will be established after the completion of the study appositely carried out under the responsibility of the Energy Community Secretariat.
6. With regard to Directives 2001/80/EC, 2012/27/EU, 2009/28/EC, 2010/30/EU, and 2010/31/EU, a number of specific deadlines differing from the overall Directives deadlines have been adapted by the Ministerial Council Decisions 2015/08/MC-EnC, 2013/05/MC-EnC, 2012/04/MC-EnC, 2014/02/MC-EnC and 2010/02/MC-EnC. In these specific cases, Georgia shall be granted the same adapted timeframe for implementation following the logic of the adaptations made for the existing Contracting Parties plus an additional period of 12 months. Within one month after signature of this Protocol, the Secretariat shall compile the deadlines applicable to Georgia under these Directives in a table for clarification.

II. PART

MEASURES BY ENERGY COMMUNITY INSTITUTIONS

RULES of 15 December 2022 on regional market integration

Procedural Act 2022/PA/01/MC-EnC of 15 December 2022 on Regional Market Integration

THE MINISTERIAL COUNCIL OF THE ENERGY COMMUNITY,

Having regard to the Treaty Establishing the Energy Community (the Treaty), and in particular Articles 47, 86 and 87 thereof,

Whereas;

- (a) Integrated energy markets comprising Contracting Parties and the territories of the European Union referred to in Article 27 of the Treaty can support affordability, decarbonization and security of supply;
- (b) The integration of regional energy markets requires a level playing field to be created by same rights and obligations among energy sector stakeholders from Contracting Parties and Member States alike;
- (c) Integration of regional energy markets further requires the involvement of a regulatory body independent of energy sector stakeholders, and competent to advise, support, monitor and take autonomous decisions in situations concerning trade and infrastructure across the borders between Contracting Parties and Member States, and hence complement the role of the Regulatory Board in situations concerning the borders between Contracting Parties only;
- (d) The European Union, by virtue of Regulation (EU) 2019/942¹, has created an Agency for the Cooperation of Energy Regulators (ACER) which has the resources and expertise to discharge such tasks;
- (e) The Treaty constitutes an agreement as referred to in Article 43 of Regulation (EU) 2019/942, and thus empowers the Agency for the Cooperation of Energy Regulators to exercise its tasks with regard to Contracting Parties;
- (f) To ensure coherence and consistency in the regional energy market, the ENTSO for Electricity will have to assume a similar role as in the European Union;
- (g) The creation of a level playing field also requires cross-border cooperation among enforcement authorities in ensuring that Contracting Parties apply European competition and State aid rules in the same manner as the institutions of the European Union and its Member States;

¹ Regulation (EU) 2019/942 of the European Parliament and of the Council of 5 June 2019 establishing a European Union Agency for the Cooperation of Energy Regulators; OJL 158, 14.6.2019, p. 22-53

Having regard to the proposal made by the European Union,
HAS ADOPTED THIS PROCEDURAL ACT:

Article 1

Reciprocity among Energy Sector Stakeholders

(1) For the purpose of the present Procedural Act, regulatory and other designated authorities, transmission and distribution system operators, nominated electricity market operators, regional coordination centres are defined as energy sector stakeholders.

(2) Where a Decision adopted by the Ministerial Council under both Title II and Title III of the Treaty obliges energy sector stakeholders to perform tasks and activities involving other energy sector stakeholders, the energy sector stakeholders of both Contracting Parties and Member States of the European Union covering the territories referred to in Article 27 of the Treaty shall perform such tasks and activities, unless the Decision provides otherwise.

(3) Where a Decision adopted by the Ministerial Council under both Title II and Title III of the Treaty provides that energy sector stakeholders from Contracting Parties apply terms, conditions and methodologies already adopted in accordance with procedures of European Union law, the relevant energy sector stakeholders from the European Union, in particular transmission system operators and nominated electricity market operators shall treat the energy sector stakeholders from Contracting Parties in the same manner as energy sector stakeholders from the European Union.

Article 2

Powers of the Agency for the Cooperation of Energy Regulators (ACER)

(1) Where a Decision adopted by the Ministerial Council under both Title II (with the exception of Articles 18 and 19) and Title III of the Treaty refers to the present Article, ACER shall:

- (a) provide opinions and recommendations to energy sector stakeholders of both Contracting Parties and Member States of the European Union covering the territories referred to in Article 27 of the Treaty, as well as to the Secretariat and the European Commission;
- (b) adopt individual decisions binding on energy sector stakeholders of both Contracting Parties and Member States of the European Union covering the territories referred to in Article 27 of the Treaty;
- (c) carry out any other tasks assigned to it by the Decision in question.

(2) Before adopting a decision in the circumstances referred to in point b), ACER shall consult the Regulatory Board at least three weeks in advance, unless the Decision in question provides for a different consultation period. For the purpose of this consultation, ACER and the Regulatory Board shall set up a joint working group. In case the Regulatory Board cannot reach an opinion, it shall forward a summary of its deliberations to the Agency immediately.

(3) For the purpose of this Procedural Act, ACER shall act independently, objectively, and in the interest of the Energy Community as a whole.

(4) Decisions adopted by ACER pursuant to this Article shall be open to appeals pursuant to Article 28 of Regulation (EU) 2019/942 and the remedies available under European Union law. Non-compliance with a final decision by the Agency shall be considered a failure by the Party concerned to implement a Decision addressed to it within the meaning of Article 1 of Procedural Act No 2008/01/MC-EnC.

Article 3

Cooperation with the ENTSO for Electricity

(1) Where a Decision adopted by the Ministerial Council under both Title II (with the exception of Articles 18 and 19) and Title III of the Treaty refers to the present Article, the ENTSO for Electricity shall carry out the tasks stipulated by the Decision in question.

The ENTSO for Electricity shall publish data and information of transmission system operators from Contracting Parties on its website and include them on its platforms and data environments in the same manner as transmission system operators from the European Union.

(2) For the purpose of carrying out the tasks referred to in paragraphs 1 and 2, energy sector stakeholders as well as the Secretariat, the Regulatory Board, and the European Commission shall cooperate with the ENTSO for Electricity. In particular, they shall submit all required information and data to the ENTSO for Electricity within a time period as required by the Decision in question, or as determined by the ENTSO for Electricity.

Article 4

Cooperation among competition authorities

(1) To ensure that the prohibitions enshrined in Articles 18 and 19 of the Treaty are enforced by the national enforcement authorities of the Contracting Parties and the Ministerial Council effectively and in consistency with the practice and case law related to Articles 101, 102, 106 and 107 of the Treaty on the Functioning of the European Union, a Joint Committee shall be established which shall be composed of representatives of the European Commission, the Secretariat and the national competition and State aid enforcement authorities of the Contracting Parties.

(2) The Joint Committee shall serve as a forum for cooperation, for the exchange of information and knowledge and for mutual consultation.

(3) The Advisory Committee may ask the Joint Committee for an opinion on requests brought to the attention of the Ministerial Council pursuant to Article 90(1) or Article 92 of the Treaty, which concern the prohibitions laid down in Article 18 or 19 of the Treaty. The opinions of the Joint Committee will be adopted by a simple majority vote and will have to be taken into account by the Advisory Committee when adopting an opinion pursuant to Article 32 of the Procedural Act No 2008/01/MC-EnC, as amended, on rules of procedures for dispute settlement under the Treaty.

(4) The Joint Committee shall be co-chaired by the European Commission and the Secretariat. They will circulate an agenda at least 10 working days in advance of a meeting of the Joint Committee. Any member of the Joint Committee can suggest a topic for the agenda.

(5) This Article is without prejudice to the powers of the Secretariat or the European Commission under

the Treaty, or under the Treaty on the Functioning of the European Union.

Article 5

Entry into force and review

(1) This Procedural Act shall enter into force upon its adoption and is addressed to the Parties and institutions of the Treaty.

(2) The Permanent High Level Group shall review this Procedural Act on the basis of a report by the Secretariat, by 1 June 2025.

Done in Vienna, on 15 December 2022

RECOMMENDATION OF THE MINISTERIAL COUNCIL OF THE ENERGY COMMUNITY of 3 January 2018 on preparing for the implementation of Directive 98/70/EC relating to the quality of petrol and diesel fuels

The Ministerial Council of the Energy Community

Having regard to the Treaty establishing the Energy Community (“the Treaty”), and in particular Articles 2, 25, 76 and 79 thereof,

Having regard to the proposal from the European Commission¹

Whereas:

(1) Article 2 of the Treaty defines the improvement of the environmental situation related to Network Energy in the Contracting Parties as one of its key objectives;

(2) In accordance with Article 1(2) of Ministerial Council Decision 2008/03/MC-EnC, “Network Energy” as mentioned in Article 2(2) of the Treaty shall be understood as to include the oil sector, i.e. the supply, trade, processing and transmission of crude oil and petroleum products falling within the scope of Directive 2006/67/EC and the related pipelines, storage, refineries and import/export facilities;

(3) Petrol and diesel fuels covered by the scope of Directive 98/70/EC are significant contributors to emissions into the air and therefore there are strong links between related regulation and the environmental objective enshrined in Article 2 of the Treaty;

(4) For their full and legally binding incorporation in the Energy Community, provisions contained in Directive 98/70/EC would need to be adapted in accordance with Article 24 of the Treaty;

(5) The framework for regional cooperation established by the Energy Community and the assistance offered by its institutions and bodies can be essential in preparing the successful implementation of Directive 98/70/EC;

(6) The Environmental Task Force, at its meetings of 8 June 2017 and 25 October 2017, discussed and endorsed the present Recommendation;

(7) The Permanent High Level Group, at its meeting of 30 June 2017, discussed and endorsed the present Recommendation,

HEREBY RECOMMENDS:

Article 1

1. Contracting Parties should prepare the legal and institutional preconditions for the implementation of the core elements of Directive 98/70/EC in their jurisdictions.
2. The Secretariat should assist the Contracting Parties' efforts in this respect. It should report to the Ministerial Council on the progress annually.

Article 2

1. In the framework of the Environmental Task Force, the Contracting Parties, the Secretariat and the European Commission should identify the provisions of Directive 98/70/EC suitable for incorporation in the Energy Community, the necessary adaptations as well as appropriate deadlines.
2. The European Commission should regularly inform the Contracting Parties and the Secretariat on possible amendments to Directive 98/70/EC.

Article 3

Subject to a proposal by the European Commission, the Ministerial Council will decide on the adoption of a decision incorporating suitable provisions of Directive 98/70/EC.

Article 4

This Recommendation enters into effect upon its adoption by the Ministerial Council.

Article 5

This Recommendation is addressed to the Contracting Parties and institutions of the Treaty.

Done by written procedure on 3 January 2018

RULES OF PROCEDURE of 16 October 2015 of the Ministerial Council of the Energy Community

Procedural Act 2006/01/MC-EnC of 17 November 2006 on adoption of internal Rules of Procedures of Ministerial Council of Energy Community as amended by Procedural Acts 2013/01/MC-EnC of 24 October 2013 and 2015/02/MC-EnC of 15 October 2015 amending Procedural Act of the Ministerial Council 2006/01/MC-EnC of 17 November 2006

I. GENERAL

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

II. MEMBERS, PARTICIPANTS, OBSERVERS

1. The Council shall consist of representatives of the Parties to the Treaty. Each Party to the Treaty, with the exception of the European Community, shall have one representative at the Council; the European Community shall have two representatives determined pursuant to its internal decision. Parties should in principle be represented in the Council at ministerial level or equivalent.
2. In accordance with Article 95 of the Treaty, one non-voting representative of each Participant may participate in the Council meetings.
3. In accordance with Article 96 of the Treaty, Observers may attend the meetings of the Council.
4. The Presidency and the Vice-Presidency may agree to invite representatives of other institutions to attend a relevant meeting on an ad hoc basis.
5. Where the Presidency and the Vice-Presidency agreed to invite other bodies, 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 Presidency of the Council shall be held in turn by each Contracting Party¹ in alphabetical order, following the names of the Parties as indicated in the Treaty, starting with the former Yugoslav Republic of Macedonia.
2. The Presidency shall chair the Ministerial Council. It will be assisted by one representative of the European Community and one representative of the incoming Presidency as Vice-Presidency.

¹ A Contracting Party is any Party, for which the Treaty is into force, excluding the European Community.

3. Should the Presidency be not in a position to perform its duties for a particular meeting, the latter will be chaired by the Vice-President who represents the European Community.

IV. PREPARATION OF THE MEETINGS

1. The Council shall meet at least once per year. In urgent circumstances, agreed between the Presidency and the Vice-Presidents, the Presidency may convene the Council also outside the regular meetings.

2. The place of Council meetings shall be decided upon by the Presidency after consultations with the Vice-Presidency and the Energy Community Secretariat (the Secretariat). Normally, this decision shall be made at least two months prior to the relevant meeting.

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 paragraphs 1 to 3 together with the agenda.

5. 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. The identified Measures shall be included in the draft agenda of the next Ministerial Council as "A" items. The draft Agenda shall specify the Title and Chapter of the Treaty under which the draft Measure identified as an "A" item will be presented for voting in the Ministerial Council. This does not exclude the possibility for any Party to have statements included in the conclusions.

6. The Secretariat is responsible for the preparation of the meetings. It will inform the Presidency and the Vice-Presidency periodically and upon request about the preparation process and follow their requests and guidance in this relation.

7. Should this be found necessary, the Presidency and the Vice-Presidency may propose that a particular committee/commission is established. The decision of the Council shall take the form of a Procedural Act and include concrete list of participants as well as the scope of work, which should be performed, together with relevant deadlines.

V. MEETINGS OF THE COUNCIL – PROCEDURAL RULES

1. The meetings of the Council shall not be public unless the Council decides otherwise.

2. Any member of the Council or any other attendee of the meeting may be accompanied by officials who assist them. The names and functions of those officials shall be notified in advance to the Secretariat. As a principle, these officials 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.

3. The Council may take decisions only if two thirds of the Parties are represented. Abstentions in a vote

from the Parties present shall not count as votes cast.

4. As provided in Article 80 of the Treaty, each Party shall have one vote.
5. The Agenda for the meeting shall be approved at its beginning. In urgent circumstances, new items may be included also during the meeting subject to the agreement of the President and Vice-Presidency.
6. Re-opening discussion on Measures included in the draft agenda of the next Ministerial Council as "A" items requires simple majority.
7. The Participants may participate in the discussions but they do not take part in voting.
8. The observers may make statements upon permission or invited by the Presidency. The Observers do not have voting rights.
9. Conclusions of each meeting shall be drawn up with the assistance of the Secretariat. These shall be signed by the Presidency and distributed to the members and the attendees. In case it is not possible to finalize the conclusions by the end of the relevant meeting, the Presidency shall assure that they are drafted and distributed within 7 days after its end². Further, any member of the Council might request corrections within 7 days upon receipt of the draft. The Presidency shall arrange that the final version is distributed within 7 days upon the expiry of the deadline for comments.
10. Any vote shall be explicitly described in the Conclusions.
11. 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.

VI. ACTS OF THE COUNCIL – PROCEDURAL ASPECTS

1. To ensure that the objectives set out in the Treaty are attained, the Council provides general policy guidelines, takes Measures and adopt Procedural Acts.

1. General Policy Guidelines

2. The Council shall provide general policy guidelines, when requested or upon its own initiative.
3. The general policy guidelines shall reflect the political consensus of the Parties on strategic issues of mutual interest in line with the Treaty objectives.
4. The issue or amendment of general policy guidelines may be requested by any member of the Council. The request shall be in writing and shall contain sufficient information explaining the necessity of adoption of the proposed guidelines by the Council.
5. The written request shall be submitted by the requesting member of the Council to the Presidency with copy to the Vice-Presidency. The Presidency notifies all members of the Council within seven days after the request has been received.
6. The Presidency, in consultation with the Vice-Presidency, shall organize the preparation of a draft position of the Council, which shall be presented for discussion at the next Council meeting. The draft position shall

² All days are calendar days.

be sent to the Members of the Council at least 30 days before the meeting.

7. General policy guidelines might be adopted ad hoc on the ground of consensus of all members of the Council.

2. Measures

8. Unless otherwise specified in these rules or in a separate decision of the Council, the adoption of Measures (Decisions and Recommendations) shall follow the same procedure.

9. Any proposal for a Measure from the European Commission, from the relevant Party or from the Secretariat shall be made in writing at least 60 days before the meeting of the Council at which it shall be discussed.

10. The proposal shall be sent to the Presidency with copy to all the members of the Council and to the Secretariat. It shall be accompanied by relevant explanatory notes. Where necessary, position of the Regulatory Board shall be requested by the Party or the institution, which makes the relevant proposal for a Measure.

11. During the meeting of the Council at which the proposal for a Measure shall be discussed, the Presidency shall identify the required quorum in accordance with the Treaty. The Presidency shall do so prior to the discussion of the proposal. The quorum availability will be respectively reflected in a protocol.

12. 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.

13. 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 also shall take account of a position of the Regulatory Board.

14. 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 initiative or upon request of any party may request a position of the Regulatory Board.

3. Procedural Acts

15. The Council adopts Procedural Acts in cases envisaged in the Treaty and in accordance with the required majority. During the meeting of the Council at which the proposal for a Procedural Act shall be discussed, the Presidency shall identify the required quorum in accordance with the Treaty. The Presidency shall do so prior to the discussion of the proposal. The quorum availability will be respectively reflected in a protocol.

16. Unless otherwise envisaged by the Treaty, any member of the Council may propose adoption of a Procedural Act.

17. The preparation of draft Procedural Acts is coordinated by the Presidency in consultation with the Vice-Presidency. 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. Draft Procedural Acts, related to organizational, budgetary and transparency issues, shall be distributed at least 30 days before the meeting at which they will be discussed.

19. Procedural Act related to the appointment of the Director of the Secretariat, provided for in Article 69 of the Treaty, shall be proposed by the European Commission. The draft shall be distributed at least 30 days before the meeting at which it will be discussed.

20. Procedural Act on budgetary matters, provided for in Article 73 and 74 of the Treaty, shall be proposed by the European Commission at least 30 days before the meeting at which it will be discussed.

21. Procedural Act conferring powers on the Regulatory Board, provided for in Article 47(c) of the Treaty, may be proposed by any member of the Council or by the Secretariat, at least 30 days before the meeting at which the relevant proposal shall be discussed. In case the opinion of the Regulatory Board is requested through the Presidency, it shall be part of explanatory documents to be submitted with the proposal for that act.

4. Work Programme

22. The Council shall adopt a work programme for the next two years. A proposal for the work programme is prepared by the Secretariat and sent to the Council Members upon agreement by the President and Vice-President.

5. Rules For Decision-Making by Correspondence

23. The Council may, in the intervals between the meetings of the Council, 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-Presidency, whether the matter warrants the taking of the decision by correspondence.

24. 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.

25. Presidency, after consultation and in agreement with the Vice-Presidency, 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 who has not replied in writing (including telefacsimile) within the given time limit is regarded as abstaining from the vote.

26. 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.

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

VII. RULINGS ON DISPUTE SETTLEMENT AND IMPLEMENTATION OF DECISIONS

1. Any Party to the Treaty, the Secretariat or the Regulatory Board may bring to the Council's attention circumstances which suggest that a Party failed to comply with a Treaty obligation or failed to implement a Decision addressed to it within the required period.
2. A Party's, Secretariat's or Regulatory Board's communication to the ministerial Council pursuant to the preceding paragraph shall take the form of a reasoned request. The request shall therefore be based on concrete factual findings and backed up by sufficient analysis. The request also shall contain a proposal for a Council's decision.
3. The request shall be made at least 30 days before the meeting of the Council.
4. The notification shall be sent to the Presidency and the Vice-Presidency. Prior to including the item on the Council's agenda, the Presidency, in consultation with the Vice-Presidency, may request additional information from the Party or the institution which has made the notification.
5. The Presidency shall inform the Party, which is subject to the claim, within 7 days after receiving it, by sending the relevant materials, and ask it to present its views in writing.
6. During the meeting of the Council at which the request or other issue under Title VII of the Treaty is discussed, the Presidency shall identify the required quorum in accordance with the Treaty. The Presidency shall do so prior to the discussion of the proposal. The quorum availability will be respectively reflected in a protocol.

VIII. INTERPRETATION OF THE TREATY

1. The Council may give guidance to the interpretation of the Treaty upon request by any Party or any of the institutions established by the Treaty.
2. The request for interpretation shall be submitted to the Presidency and copied to the Vice- Presidency.
3. The Presidency shall ask the European Commission and the Secretariat for a reasoned opinion regarding the interpretative issue specified in the request.
4. Unless otherwise decided, any guidance on interpretation of the Treaty, given by the Council, shall be immediately enforceable and is binding on the Parties and the institutions under the Treaty.

IX. DISCLOSURE OF DOCUMENTS

1. The draft agenda and the relevant materials shall be distributed to all the members of the Council, 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, etc.) shall be made public via the website of the Secretariat.

X. FINAL PROVISIONS

1. The Participants, Observers and other attendees are expected to follow any requirements for confidentiality, which are valid to the Parties. Such requirements are reflected in the conclusions of the relevant meeting.

2. All acts of the Ministerial Council shall be signed by the Presidency.

3. The Rules have been adopted by the Council on the ground of Article 49 of the Treaty. In accordance with that provision, any amendments to these Rules shall be adopted by a Procedural Act.

4. 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.

5. The Council meetings shall be conducted in a businesslike manner.

6. 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. The Rules become effective on 16 October 2015, which is the day of their adoption by the Energy Community Ministerial Council.

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.

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.

¹ See Article 4 of the Treaty, page 13.

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.

RULES OF PROCEDURE of 24 April 2019 of the Energy Community Regulatory Board

Procedural Act 2007/01/ECRB-EnC of 1 March 2007 on adoption of internal Rules of Procedure of the Energy Community Regulatory Board as amended by Procedural Acts 2009/01/ECRB-EnC of 25 February 2009, 2011/01/ECRB-EnC of 15 December 2011, 2012/01/ECRB-EnC of 28 March 2012, 2013/02/ECRB-EnC of 11 December 2013, 2015/01/ECRB-EnC of 8 April 2015, 2017/01/ECRB-EnC of 21 December 2017 and 2019/01/ECRB-EnC of 24 April 2019 on the amendment of the internal Rules of Procedure of the Energy Community Regulatory Board.

Article 1

Purpose

1.1 The Rules regulate the organization of the Energy Community Regulatory Board and establish the procedures of its meetings.

1.2 The Energy Community Regulatory Board (hereinafter: "ECRB" or "Board") shall discharge the tasks entrusted to it by Article 58 of the Energy Community Treaty.

1.3 The ECRB, upon request of the Ministerial Council, the PHLG and the European Commission, or on its own initiative and in accordance with the objectives of the Energy Community Treaty, shall undertake the function of advising on statutory, technical and regulatory rules in the region to the Energy Community Treaty Institutions.

1.4 The ECRB shall provide advice to the Ministerial Council and the PHLG with regard to monitoring and assessing the operation of the regional energy networks and network energy market and issue recommendations to the Parties when so entrusted by the Treaty or the Ministerial Council.

1.5 The ECRB shall facilitate consultation, co-operation and co-ordination amongst regulatory authorities towards a consistent application of the *acquis communautaire*. The ECRB makes recommendations and reports with respect to the functioning of the energy markets.

1.6 The ECRB may decide, in accordance with the procedure laid down in 4.7 hereunder, to issue a request to the Ministerial Council pursuant to the provisions of Articles 90 and 92 of the Treaty.

Article 2

Members

2.1 In accordance with Article 59 of the Treaty, the ECRB is composed of one representative of the energy regulator of each Contracting Party and a representative of the European Commission representing the European Union (hereinafter: "Members" of the ECRB). The representative of the Regulatory Authority of the Contracting Parties shall be at the level of Head of the Energy Regulatory Authority or his nominated representative.

2.2 The European Commission is assisted by one regulator of each Energy Community Participant country

(hereinafter: "Participants" of the ECRB) and one representative of the Agency for the Cooperation of Energy Regulators (hereinafter: "ACER"). The representative of the Regulatory Authority of the Participants shall be at the level of the Head of the Energy Regulatory Authority or his nominated representative. The representative of ACER shall be at the level of the Director or his nominated representative.

2.3 Members of the ECRB shall abide by a Code of Ethics, which shall be adopted by the ECRB as a Procedural Act. The Code of Ethics shall set forth the criteria by which a representative to the ECRB, including the President of the ECRB may be removed or recalled.

2.4 The Members of the ECRB shall act in good faith and resolve to adhere to these Internal Rules of procedure.

Article 3

President and Vice President

Duties

3.1 The President of the ECRB carries out the tasks entrusted to her/him by the provisions below. The President shall fulfill a unifying role and ensure by his/her authority that all Members and Participants work with a common purpose towards the discharge of the tasks entrusted to the ECRB under the Treaty.

3.2 The President shall not represent his/her Institution but this task shall be undertaken by a suitable representative of the Contracting Party Regulatory Authority and this representative will exercise the Contracting Party Regulatory Authority vote.

3.3 In addition to exercising the powers conferred upon him/her elsewhere in these rules, the President, after consulting the Vice-President, shall declare the opening and closing of each ECRB meeting, shall direct the discussion, shall ensure the observance of these Rules, shall accord the right to speak and announce decisions. The President may also call a speaker to order if his or her remarks are not relevant to the subject under discussion.

3.4 The European Commission shall act as Vice-President. The Vice-President shall also fulfill a unifying role and ensure, by his/her authority that all the Members and Participants work with a common purpose towards the discharge of the tasks entrusted to the ECRB under the Treaty.

3.5 The Vice-President assists the President in accordance with the provisions set out below. In the event of absence, impediment or incapacity of the President, the Vice-President is empowered to replace and exercise the responsibilities of the President.

Election

3.6 The President is elected by the ECRB members by secret ballot and by a two third majority of the votes cast, provided presence of at minimum two thirds of its Members

3.7 The nomination procedure shall be initiated by a Vice Presidency's written call for applications addressed to the ECRB member, entailing a nomination period of at least two weeks.

3.7.1 The Head and / or Commissioners of Contracting Parties Regulatory Authorities are eligible for the ECRB Presidency.

3.7.2 In case no nominees from the Contracting Parties Regulatory Authorities' candidate or are proposed, the Vice-Presidency shall open a second application round entailing a nomination period of at least two weeks. In this case, also the Head and / or Commissioners of Energy Community Participant countries are eligible for the ECRB Presidency.

3.7.3 In case an ECRB President cannot be elected based on 3.7.1 and 3.7.2, the term of the existing President can be prolonged for up to six month. In this case the Vice Presidency shall initiate another nomination procedure in line with 3.7.

3.8 Any candidature or any proposal for candidature shall be put forward to the Vice President of the ECRB.

3.9 The Vice President brings the candidacies to the attention of the members of the ECRB.

3.10 The President's term of office is two years and may be terminated upon decision of the ECRB or resignation. A President of the ECRB may not assume the Presidency more than two terms consecutively.

3.11 In the event of resignation, incapacity or recall of the President during his or her term of office, a new President shall be appointed in accordance with the above mentioned procedure, as soon as possible.

3.12 A decision of the ECRB as referred to in 3.10 requires presence of at minimum two thirds of its Members and two third majority of the votes cast. The decision of the ECRB must be duly justified and published.

Article 4

Decision making process

4.1 The Board acts within the mandate set forth in Article 58 of the Energy Community Treaty and takes Measures if so empowered by the Ministerial Council.

4.2 Each Member shall have one vote. Abstentions to voting from Members present shall not count as votes cast.

4.3 The Board may act in accordance with the provisions of Articles 4.4, 4.5 and 4.6 only if two thirds of Members are present.

4.4 Under Title II of the Energy Community Treaty, the Board shall act on a proposal from the European Commission, and each Contracting party shall have one vote.

4.4.1 The European Commission may alter or withdraw its proposal at any time during the procedure leading to its adoption.

4.4.2 The Board shall act by a majority of the votes cast.

4.5 Under Title III of the Energy Community Treaty the Board shall act on a proposal from a Party or the Secretariat. The Parties and the Secretariat are encouraged to consult their proposal with the European Commission four weeks before the meeting upon which the proposal shall be presented. The Board shall act by a two third majority of the votes cast, including a positive vote of the European Union.

4.6 Under Title IV of the Energy Community Treaty the Board shall act on a proposal from a Party. The Party or Parties interested in putting forward a proposal are encouraged to consult with the European Commission three weeks before the proposal is tabled to the Board for consideration. The Board shall act with unanimity.

4.7 The ECRB may decide by unanimity excluding any Party concerned, to issue the request pursuant to paragraph 4.1.

4.8 Proposals are submitted to the President and the Vice President of the ECRB.

4.9 The vote(s) against a proposal for a Measure that was adopted by the Board shall be, upon request by the outvoted Member, recorded in the minutes and the conclusions of ECRB, together with the proposal as adopted, according to Article 58 of the Energy Community Treaty.

4.10 The outcome of any votes has to be recorded in the minutes of the ECRB meetings.

4.11 The communication of opinions of Members and Participants is possible by electronic correspondence in case of urgent matters but excluding Measures. The President may seek agreement to a position or opinion by electronic procedure. In such cases, the President shall ensure that each Member is aware that an agreement or opinion is sought by electronic procedure and shall set out a clear deadline for comments.

Article 5

Meetings

5.1 If a Contracting Party, Participant or Observer has established one regulator for gas and one regulator for electricity, presence shall be determined taking into account the agenda.

5.2 The ECRB Section shall establish a register of Members and Participants and shall record attendance at all official meetings.

5.3 Notwithstanding Article 71 of the Treaty, the Energy Community Secretariat shall be represented by the Head of the ECRB Section of the Secretariat unless excused by the President.

5.4 The Observers' regulatory authorities may attend ECRB meetings without participating in the discussions and without voting rights, in accordance with the Energy Community Treaty, Title IX, Article 96. The President in agreement with the Vice-President may invite an Observer to make a statement. The President in agreement with the Vice President may also decide that Observers be absent for specific points of the agenda due to confidentiality concerns. This will be specified as far as possible when the agenda is circulated.

5.5 The ECRB will be convened in principle four times a year and, extraordinarily when appropriate.

5.6 At its last meeting of a calendar year, the ECRB decides the dates of its meetings in the next calendar year. These are published on the Energy Community website.

5.7 The ECRB meetings shall be convened by either the President or the Vice President.

5.8 An extraordinary meeting of the ECRB may be convened by the President or Vice-President. An extraordinary meeting shall also be called at the request of at least of one fifth of the Members, within one month of the receipt of the request by the ECRB Section.

5.9 Upon endorsement of the draft agenda by the President and Vice-President, the ECRB Section circulates the proposed agenda to those entitled to attend the respective meeting of the ECRB. The draft agenda shall indicate the subjects to be considered clearly.

5.10 The agenda shall be circulated to those entitled to attend the respective meeting of the ECRB at least two weeks ahead of the meeting. In case of urgency the President may deviate from this rule.

5.11 All meeting related documents shall be made available in the Energy Community website's ECRB

members' area at least two weeks ahead of the meeting. In case of urgency the President may deviate from this rule. In any case, documents related to agenda items scheduled for ECRB approval shall be submitted to the ECRB 10 (ten) days before the ECRB the latest.

5.12 With the President's permission, Members may be accompanied by experts.

Article 6

Organization of work

6.1 The ECRB shall adopt an annual work program in accordance with the procedure laid down in Article 11.2. The work program shall be published on the Energy Community web site.

6.2 At the beginning of every calendar year, the ECRB shall adopt an annual report of summarizing its activities over the preceding year, prepared by the ECRB Section.

6.3 Both documents referred to in 6.1 and 6.2 will be transmitted to the Ministerial Council.

Article 7

Working Groups

Organisation

7.1 The ECRB may set up working groups composed of Members, Participants and ACER and chaired by a Member, a Participant, or ACER, and mandates them to study specific subjects. The mandate may provide that the composition of the working groups will be flexible in order to involve other relevant authorities when necessary. The mandate shall be time limited and shall further specify in which way the working group will report back to the Board and how it will be assisted by the ECRB Section. The Members, Participants and ACER representatives involved in the working groups shall nominate their representatives and notify the Chair in a timely fashion prior to the start of the relevant working group.

7.2 The decision to establish a group and its terms of reference is taken by simple majority of the votes cast, including a positive vote of the Vice-President.

7.3 Unless decided otherwise by the ECRB for a specific working group, Observers' representatives shall be allowed to participate in the working groups and be invited by the chairmen of the working groups.

Chairwomen / -men

7.4 Meetings of the Working Groups shall be convened by their Chairs. In addition to exercising the powers conferred upon him/her elsewhere in these rules, the Chair shall declare the opening and closing of each Working Group meeting, shall direct the discussion, shall ensure the observance of these Rules, shall accord the right to speak and announce decisions. The Chair may also call a speaker to order if his or her remarks are not relevant to the subject under discussion.

7.5 The Working Group Chairs are elected by the ECRB for a period of two years, which may be extended. Proposals for candidature shall be put forward to the President and Vice President of the ECRB including proof of support by the Head of the candidate's authority. The nomination procedure shall be initiated by

a President's and Vice President's written call for applications addressed to the ECRB member, entailing a nomination period of at least two weeks. The President brings the candidacies to the attention of the members of the ECRB in agreement with the Vice President.

7.6 The Working Group Chairs' term can be terminated upon a decision of the ECRB pursuant to Article 7.7. In the case of resignation of the Chairperson during its term, a new Chairperson will be appointed under the same terms for a period of up to two years, which may be extended.

7.7 The election of Working Group Chairs by the ECRB requires the presence of two thirds of Members and simple majority of the votes cast.

7.7.1 If in the first voting round out of more than two candidates none reaches a simple majority of votes, a run-off ballot shall be executed between the two candidates who obtained the highest number of votes. In case the percentage of votes of one of those two applicants equals to the percentage a third candidate received in the first voting round, the latter shall also participate in the run-off ballot.

7.7.2 The procedure laid down in item 7.7.1 shall be repeated until any of the candidates reaches a simple majority of votes.

7.7.3 Candidates are entitled to withdraw their application at any stage of the voting procedure.

7.7.4 The rules laid down in item 7.7.1 shall not prevent ECRB to unanimously decide on the successful candidate in case the procedure pursuant to item 7.7.1 does not succeed to allocate a simple majority of votes to any of the applicants.

Deputy Chairwomen / -men

7.9 Each Working Group shall designate a deputy to the Chair. In the event of absence, impediment or incapacity of the Working Group Chair, the Deputy Chair shall be empowered to replace and exercise the responsibilities of the Working Group Chair. The Deputy Chair shall coordinate with the relevant Working Group Chair before executing her/his tasks.

7.10 The Deputy Chair is appointed by the Working Group members.

7.11 The term of the Deputy Chair is limited to the term of the relevant Working Group Chair and may be extended.

7.12 Articles 7.6 and 7.7 apply to the Working Group Deputy Chairs.

7.13 Working Groups can refrain from designating a Deputy Chair in case co- Working Group Chairpersons are appointed.

Article 8

Communications and Exchange of Information

8.1 Every Member, ACER representative, Participant and Observer shall appoint a communications officer. His/her task will consist of facilitating the relevant information exchange between his/her organisation and the other Members and the ECRB Section. This information is related to the work carried out by the ECRB or its working groups.

8.2 Members and Participants shall endeavour to keep the other national and regional energy regulators of

their States informed about activities of the ECRB and, where necessary, make all appropriate arrangements to be in a position to speak as the competent energy regulator in the event that other national or regional regulators have an interest in the matter discussed.

Article 9

Conclusions and Minutes

9.1 Conclusions that record decisions taken shall be adopted at the following meeting by consensus.

9.2 The minutes of each meeting shall be drawn up by the ECRB Section. Opinions may be recorded in the minutes, when requested. The draft minutes shall ideally be sent to Members, Participants and ACER representatives within 15 working days after the meeting and shall be submitted to the next meeting of the ECRB or the working group for approval. Any comments on meetings' draft conclusions shall be submitted by the (ECRB or the relevant working group) members prior to the next meeting in writing to the ECRB President and Vice President, respectively the Chairman in case of working groups, and the ECRB Section.

9.3 The minutes shall include

- The scope of the agenda item (for discussion/information/approval);
- The related document(s);
- A brief reference to the core discussion points raised by members;
- The decision(s) taken and action points following including responsibilities and the timeline for completion;
- A summary table of the main conclusion(s).

The final minutes shall normally not exceed a maximum number of 5 (five) pages excluding annexes. External annexes, such as presentations, may be separately attached to the minutes.

9.4 The minutes of the ECRB and its working groups shall be treated confidentially and not be published. A summary table of the main conclusion(s) of the Board meetings shall be published on the Energy Community website.

9.5 The agenda of the ECRB meeting and its working groups established by ECRB shall not be considered confidential unless a specific decision is made and shall be published on the Energy Community web- site as soon as possible after a meeting.

9.6 Where the European Commission or a Contracting Party informs the ECRB that the advice requested or the question raised is of a confidential nature, Members, Participants, ACER representatives, Observers and any other person involved shall not disclose that information unless allowed by the Party raising the issue. The President may decide in such cases that only Members, Participants and ACER representatives may be present at meetings.

9.7 The ECRB can adopt its rules on confidentiality.

Article 10

Public Consultation and Transparency

10.1 The ECRB will use appropriate processes to consult consumers, market participants, system operators, market operators and interested parties which may include, *inter alia*: public hearings and roundtables, industry and the Energy Community Fora, the European Fora (including the European Electricity Regulatory Forum - “Florence Forum”, the European Gas Regulatory Forum - “Madrid Forum” and the European Citizen Forum - “London Forum”) and written and internet consultations.

10.2 The ECRB may publish on the ECRB web site consultative documents, statements of agreed principles, press releases, consultation procedures, summaries of responses to consultations and other documents which assist interested parties to understand the work of the ECRB. Comments shall be invited either individually or jointly to be addressed to the ECRB in written form, preferably by email. Comments received in response to consultation documents shall be published on the ECRB web site, unless a respondent explicitly requests that their submission is not made available to others on confidentiality grounds.

10.3 The ECRB may decide to meet interested parties to discuss matters of common interests. As appropriate, the President or the Vice-President may represent the ECRB at such a meeting or Members may be nominated to do so. The President or the Vice-President, where appropriate, will communicate the official position of the ECRB. The President may, on his own initiative, describe the work or explain the views of the ECRB to the press or other interested parties, in response to enquiries or otherwise in cases of urgency. Where a Member refers in public to the views or position of the ECRB it must do so in an accurate manner.

10.4 Presentations made on behalf of the ECRB at public events (conferences, workshops et al) shall only present formally approved and publically available positions of the ECRB in ECRB documents, conclusions or similar.

Article 11

ECRB Section of the Secretariat

11.1 There shall be specific staff of the Energy Community Secretariat devoted to the support of the ECRB (“ECRB Section”). The ECRB Section shall report to the Energy Community Secretariat Director with regard to management and employment issues. The Head of the ECRB Section shall direct the staff as to their substantive activities, in line with the ECRB work program.

1.2 The ECRB Section shall prepare the minutes of the meetings, assist the ECRB and the working groups in their functions and execute all other functions assigned to it by the Board, *inter alia*:

- Drawing up the ECRB annual work program for consideration and adoption by the ECRB upon agreement by the President and Vice-President;
- Preparing and presenting to the ECRB for adoption an annual review of the progress achieved;
- Preparing the agenda for the ECRB meetings to be submitted for agreement to the President and Vice President;

11.3 The ECRB Section acts as coordinator for consultations required to take forward the work of the ECRB or its working groups and assist the President and Vice-President in their public relations activities and representation functions.

11.4 The permanent or seconded staff of the ECRB Section is appointed by the Energy Community Secretariat Director pursuant to paragraph 22 of the procedural act of the Energy Community Ministerial Council on the Rules of Recruitment and working conditions of the staff of the Secretariat of the Energy Community. Specifically, the staff of the ECRB Section will operate as much time as needed in Athens in order to ensure the smooth and effective operation of the meetings of the Regulatory Board, which take place in Athens according to the Treaty establishing the Energy Community (Article 62).

Article 12

Accountability and links

12.1 The ECRB shall submit an Annual Report to the Ministerial Council.

12.2 The ECRB may participate or designate its representative in other European or international committees or groups when that is necessary for the work of ECRB.

Article 13

Publication and modification of the Rules of Procedure

13.1 The Regulatory Board Internal Rules of Procedures shall be made available on the ECRB website.

13.2 When necessary the ECRB shall agree on interpretation of the Rules of Procedure. These decisions require two thirds majority of Members voting, including a positive vote of the European Union.

13.3 Based on practical experience with these Rules, the President or Vice-President or any Member of the ECRB may propose to the Board any useful and necessary amendments to these Rules. In accordance with Article 60 of the Treaty, any amendments to these Rules are adopted by a Procedural Act of the ECRB, which shall act by two-third majority of the votes cast, including a positive vote of the European Union.

Article 14

Transitional and final provisions

14.1 These Internal Rules for Procedure come into force immediately upon adoption.

14.2 To the extent possible, the work agreed and done with the Council of European Energy Regulators South East Europe Working Group shall be continued by the Energy Community Regulatory Board.

14.3 Rules of procedures on the implementation of the tasks in Article 58(b) of the Treaty shall be adopted by the ECRB.

RULES OF PROCEDURE of 29 November 2018 of Energy Community Parliamentary Plenum

I. Participation

Members of National Parliaments of the Contracting Parties

1. Participants in the Parliamentary Plenum meetings shall be members of their national parliaments.
2. Participants in the Parliamentary Plenum meetings shall be appointed by their national parliaments or its respective body. National parliaments may appoint two representatives. Participants should be appointed so as to ensure a fair representation of the political parties in their parliaments. Preferably one participant should be from the governing political spectrum and one from the opposition.
3. National parliaments may also appoint two alternative participants, who may take the place of a participant who is unable to attend a meeting when the Secretariat has been duly informed.
4. A participant standing for re-election to a national parliament will be considered a member of that parliament until the election is decided and may continue to be a participant in the Parliamentary Plenum meetings until his or her successor has been designated, provided he or she is still a member of the national parliament.

Members of European Parliament

5. The European Parliament may send an equal number of representatives as representatives from the Energy Community Contracting Parties.

II. Chair and Vice-Chairs

1. The chairmanship of the Parliamentary Plenum meetings shall be rotating and shall be held by the member of the National Parliament of the Contracting Party holding the Presidency of the Energy Community Ministerial Council.
2. Out of the two participants in the Parliamentary Plenum meetings of the Contracting Party holding the Presidency,
 - a) The Chair of the Parliamentary Plenum meetings shall be the Chairperson of the principle Committee in charge of energy issues in his or her National Parliament.
 - b) In case neither of the two appointed participants of the Parliamentary Plenum meetings is a Committee Chairperson, then the most senior participant, in terms of mandates served in national parliament, will be Chairperson.
 - c) In case of disagreement, the Chair shall be decided by draw.
3. The Chair calls for, proposes an agenda and chairs the meetings of the Parliamentary Plenum; ensures observance of the Rules of Procedure; ascertains whether a quorum exists, puts questions to vote and announces the results of votes. The chairperson of the Parliamentary Plenum meetings is invited before the Energy Community Ministerial Council.
4. The chairperson shall continue to act as Chair until a new chairperson of the Parliamentary Plenum

meetings has taken up his or her duties.

5. The Parliamentary Plenum meetings may have three Vice- Chairs, one from the incoming and one from the outgoing Presidency of the Energy Community Ministerial Council and one from the European Parliament. Vice-Chairs may take over the responsibilities of the Chair if requested by him or her or in the chairperson's absence.

6. The same procedure will apply for appointment of the Vice-Chairs from the national parliaments of the Contracting Parties as for the Chair of the Parliamentary Plenum meetings. The European Parliament will designate the Vice-Chair according to its own arrangements.

III. Meetings

1. The Parliamentary Plenum meetings shall be organized up to two times a year. The dates, duration and location of the meetings and the draft agenda will be established by the Chair in consultation with the Energy Community Secretariat. The meeting details shall be communicated by the Energy Community Secretariat at least two months prior to the meeting.

2. Reports and resolutions expressing the views and opinions of the participants in the Parliamentary Plenum meetings can only be adopted when at least 11 participants from 6 parliaments are present. The quorum will be determined by the Chair.

3. The meetings of the Parliamentary Plenum are public, unless the participants in the Parliamentary Plenum meetings decide otherwise.

4. The official language of the Parliamentary Plenum meetings is English.

5. Any participant wishing to use a language other than English shall be responsible for arranging translation and simultaneous interpretation from and into English.

6. The meetings of the Parliamentary Plenum shall be administered by the Energy Community Secretariat. Among its duties, the Energy Community Secretariat will write minutes of the meeting, recording attendance and reports and resolutions reached. Upon completion, the minutes will be sent to all participants and subsequently published, subject to point 3 of this Section.

IV. Questions

1. The participants in the Parliamentary Plenum meetings may pose questions to the institutions of the Energy Community, including the Ministerial Council.

2. When a representative of the Contracting Party holding the Presidency of the Energy Community is invited to attend the meetings of the Parliamentary Plenum, there will be a time limited question and answer session the length of which is to be determined by the Chair.

3. Any participant in the Parliamentary Plenum meetings may submit, through the Energy Community Secretariat, one written question a year in total to the institutions of the Energy Community.

V. Resolutions and Reports

1. The participants in the Parliamentary Plenum meetings may adopt reports or resolutions expressing their views and opinions on all matters falling within the scope of the Energy Community Treaty, with the exception of dispute settlement under Articles 90-93 of the Treaty.
2. The participants in the Parliamentary Plenum meetings may elect, by the majority of votes cast, a Rapporteur, who shall be responsible for the preparation of a draft report and its presentation to the participants in the Parliamentary Plenum meetings. A Co-Rapporteur from another parliamentary body may be appointed.
3. The Rapporteur shall make available his or her report at least one month before the Parliamentary Plenum meeting where the report will be put to vote.
4. The theme of the reports should be decided by the Chair in consultation with the Vice-Chairs and the Energy Community Secretariat. Participants may submit proposals for consideration by the Chair.
5. Any participant in the Parliamentary Plenum meetings may table a motion for a resolution providing he or she has the support of two representatives of at least two other parliaments. The participant shall make available his or her resolution at least one month before the meeting where the report will be put to vote.
6. Each participant in the Parliamentary Plenum meeting shall have one vote. A simple majority of the votes cast is required to adopt a report and a resolution.
7. The reports and resolutions adopted in the Parliamentary Plenum meetings shall be transmitted to the Ministerial Council and the parliaments via the Energy Community Secretariat.

VI. Costs

1. The travel expenses of representatives and officially designated alternative representatives of Contracting Party parliaments, in total a maximum of two representatives per Contracting Party, shall be borne by the Energy Community Budget in line with the applicable travel reimbursement rules. This provision does not apply to members of the host Parliament and to members of the European Parliament.
2. Other expenses related to the meetings or other activities of the Parliamentary Plenum meetings will be met by the host Parliament.
3. The costs for interpretation and translation shall be borne by the participant requesting such interpretation and translation in accordance with Section III/5 above.

VII. Amendments to the Rules of Procedure

1. Without prejudice to the rights of proposal under the Treaty establishing the Energy Community, participants in the Parliamentary Plenum meetings may make suggestions for revision of the Rules of Procedures. They may be assisted by the Energy Community Secretariat that may present drafts for such suggestions.
2. Suggestions for a revision shall be put for voting on the agenda of the first Parliamentary Plenum meeting following the presentation of the proposal.

3. Adoption of the suggestions requires a quorum of two thirds of the participants and respective parliaments present. Each participant has one vote.

Done at Skopje, on 29 November 2018

RULES of 19 January 2022 on the establishment of the Energy Community Secretariat's centre for alleviating energy poverty

Procedural Act 2022/1/ECS of 19 January 2022 on the Establishment of the Energy Community Secretariat's Centre for Alleviating Energy Poverty

THE ENERGY COMMUNITY SECRETARIAT,

Having regard to the Treaty establishing the Energy Community, and in particular Article 67(e) thereof;

Having regard to the present *acquis communautaire* which strongly emphasizes the need for, and provides a framework for the protection vulnerable and energy poor consumers (in particular Directive (EU) 2019/944 of 5 June 2019 on common rules for the internal market for electricity and Regulation (EU) 2018/1999 on the Governance of the Energy Union and Climate Action);

Building on the Energy Community Secretariat's initiative for a just and inclusive energy transition process, of which addressing energy poverty is an essential part;

Taking into account that the energy poverty rates in the Energy Community Contracting Parties are among the highest in Europe, as confirmed by the *Study on Addressing Energy Poverty in the Energy Community Contracting Parties* of December 2021;

Given that the energy poverty in the region has recently been exacerbated further by the COVID-19 pandemic, which led to increased unemployment, reduced household incomes and rising energy demand, as well as by the rapid increase in energy prices leading to high inflation rates and influencing post- COVID recovery and decarbonization paths;

Noting that policies and measures implemented by the Energy Community Contracting Parties to reduce energy poverty mainly refer to short- term income support measures that may provide immediate relief to vulnerable consumers, but do not remove the root causes of energy poverty;

Considering that the majority of the Energy Community Contracting Parties lacks mechanisms and tools for assessing the number of households in energy poverty needed for establishing ambitious, efficient and robust policies for tackling the problem;

Intending to establish a forum for discussion and cooperation of all energy sector stakeholders with a view to eliminating energy poverty;

ADOPTS THE FOLLOWING PROCEDURAL ACT:

Article 1

Establishment of the Energy Community Secretariat's Centre for alleviating energy poverty

1. Centre for alleviating energy poverty is hereby established within the Energy Community Secretariat (hereinafter "the Centre").
2. The purpose of the Centre shall be to collect data and information related to the causes and impact of energy poverty in the Energy Community Contracting Parties, promote the development of appropriate policies and measures for reducing energy poverty, and to provide a platform for discussion of all related issues among the relevant energy sector stakeholders in the Energy Community.
3. The activities performed by the Centre shall include:
 - a. Continuous monitoring of energy poverty levels, as well as policies and measures implemented to address energy poverty in the Energy Community Contracting Parties;
 - b. Providing assessment and recommendations for strategies, policies, measures and plans to tackle energy poverty;
 - c. Preparing guidance on the definition and application of the provisions in the *acquis communautaire* related to energy poverty;
 - d. Support the improvement of statistics related to and assessment of energy poverty levels in the Energy Community Contracting Parties;
 - e. Creating a platform for cooperation of national, regional and local authorities of the Contracting Parties with other institutions and organizations across Europe and broader on the issues related to energy poverty;
 - f. Organizing meetings and workshops to exchange views and best practices for reducing and preventing energy poverty;
 - g. Liaising and cooperating with the European Union's Energy Poverty Advisory Hub;
 - h. Providing input to the Energy Community Just Transition Forum and other relevant Energy Community fora, initiatives and working groups, task forces, as appropriate.

Article 2

Management of the Centre

1. The Director of the Energy Community Secretariat shall appoint a staff member of the Secretariat to coordinate the activities of the Center.
2. The Centre shall be supported by all Secretariat's units and experts, in accordance with their expertise and as required by specific activities of the Centre.

Article 3
Entry into force

This Procedural Act shall enter into force upon adoption.

Done in Vienna, 19 January 2022

RULES of 25 October 2018 on the establishment of the Energy Community Secretariat's dispute resolution and negotiation centre

Procedural Act 2018/05/ECS of 25 October 2018 on the establishment of the Energy Community Secretariat's Dispute Resolution and Negotiation Centre

THE ENERGY COMMUNITY SECRETARIAT,

Having regard to the Treaty establishing the Energy Community, and in particular Article 67(e) thereof;

Given that the challenges of energy reform in many countries entail disputes between various actors in that process, and that such disputes involve in particular the states, their public authorities, market participants, civil society and investors;

Considering that the Energy Community's objective of creating stable regulatory and market frameworks capable of attracting investment requires structures suitable for rational, neutral, quick, efficient and sustainable resolution of such disputes;

Taking into account experience showing that most jurisdictions lack such structures and that the prevailing international mechanisms, be it investor-state arbitration or commercial arbitration, are expensive, sometimes politicized, time-consuming and often too adversarial to resolve energy disputes in a sustainable and cost-effective manner, and in particular they do not suit the needs of consumers and the interests of small and medium enterprises, and therefore may not be the appropriate forum to resolve energy disputes in general and smaller-scale disputes in particular;

Convinced that institutional negotiation and mediation can play an important role not only in the resolution of commercial and investments disputes, but also in the framework of dispute settlement under the Treaty, in particular during the preliminary procedure established under the Dispute Settlement Rules of Procedure which aims at resolving disputes at an early stage before they reach the Ministerial Council;

Noting that alternative dispute settlement methods such as mediation and conciliation are gaining importance as alternatives to litigation and arbitration, especially due to their focus on preserving the relationship between the parties, their flexible approach and their minimal costs;

Building on the expertise gained by the Secretariat not only in the understanding of energy markets in transition, but also in negotiating and mediating mutually beneficial solutions in several high-profile investor-state disputes to date;

Considering that in order to avoid energy disputes in the first place, the capacity of national authorities to negotiate agreements as diverse as international agreements, finance agreements, project agreements, supply agreements, investment contracts etc. needs to be improved;

Intending to establish a forum for dispute resolution and negotiation, as well as to offer dispute resolution and negotiation facilitation services for the benefits of national authorities, market participants, civil society and investors;

ADOPTS THE FOLLOWING PROCEDURAL ACT:

Title I

Scope of application and definitions

Article 1

Establishment of the Energy Community Secretariat's Dispute Resolution and Negotiation Centre

1. A Dispute Resolution and Negotiation Centre is hereby established within the Energy Community Secretariat (hereinafter "the Centre").
2. The purpose of the Centre shall be to promote and provide facilities for the resolution of disputes within the Energy Community between states and national authorities on the one hand, and private parties on the other; commercial disputes between private parties; disputes between states and national authorities; or disputes between the Parties to the Energy Community Treaty and the Secretariat.
3. The Centre shall offer facilities for the settlement of disputes in the following constellations:
 - a. Facilitation of negotiations or mediation between private parties, between private parties and states and/or their national authorities, and between states and/or their national authorities ("third-party disputes");
 - b. Facilitation of negotiations or mediation in the context of Article 19(2) of Procedural Act 2015/04/MC-EnC of 16 October 2015 on amending Procedural Act of the Ministerial Council 2008/01/MC-EnC of 27 June 2008 on Rules of Procedure for Dispute Settlement under the Treaty (hereinafter "the Dispute Settlement Procedures"), ("facilitated negotiations/mediation during the dispute settlement procedure");
 - c. Assisting negotiations by Parties, Participants or Observers to the Treaty and/or their authorities and public companies with other states and international organizations, their authorities, public companies or private parties ("negotiation support").
4. Article 1(3) does not exclude any other form of dispute settlement which may, in the future, be offered by the Centre, such as, but not limited to, arbitration of disputes between private parties, between private parties and states and/or national authorities, and between states and/or national authorities of other states.
5. Upon a reasoned request by a Party or Observer to the Treaty to the Chair of the Centre, a certain dispute class or classes of disputes may be excluded from the range of activities covered by paragraphs 3 and 4, to the extent any support to their resolution by the Centre is prohibited under national or international law.

Article 2

Definitions

For the purposes of this Procedural Act,

1. "Arbitration" means the settlement of a dispute by an arbitrator or an arbitration tribunal based on an

arbitration agreement between the disputing parties and on procedural arbitration rules to be adopted by the Chair of the Centre;

2. "Dispute" means a conflict between two or more parties related to the production, transportation, distribution, sale and purchase, or consumption of energy (including the associated products, services, capital etc.), as well as consumer protection and environmental issues in the field of energy, arising out of an agreement, an investment, obligations under national or international law etc., regardless of whether they are already subject to litigation or arbitration or other kinds of dispute settlement mechanisms;

3. "Disputing party" means a state, a natural person, a private or a public entity, an association etc. subject to a dispute;

4. "Facilitated negotiations" means the service offered by the Centre to lead and support the process of negotiation of a dispute under terms and conditions agreed with the disputing parties in a Memorandum of Understanding (Article 8), with a view to reach a settlement of their dispute. The purpose of the facilitation is to reach a settlement mutually acceptable by and agreeable to the disputing parties;

5. "Mediation" means a form of facilitation which includes a more active involvement by the mediator, including by making concrete proposals for the settlement of a dispute by the mediator;

6. "Party", "Participant" and "Observer" have the meaning accorded to these terms by the Treaty establishing the Energy Community;

7. "Third party" means a natural person or a legal entity which is not a disputing party under Articles 1(3) (a) and 1(3)(b) of the present act, but which has a connection or has been involved in the facts giving rise to the respective dispute.

Article 3

Management of the Centre

1. The Centre shall be functionally attached to the Legal Unit. It shall be chaired by the Head of the Legal Unit who will also serve as Chair. A staff member of the Legal Unit shall perform the function of registrar.

2. The Centre shall be supported by a group of five distinguished individuals with experience in the areas covered by the Centre. Members of this group shall serve without remuneration.

3. The Centre shall not aim for or make any profit.

4. The Centre shall not charge for the use of its facilities and services. This is without prejudice to fees for mediators, arbitrators, experts, interpreters and translators, and any other persons which are not employees of the Secretariat and whose contribution is required during the facilitated negotiations or mediation. Any such costs can only be incurred as long as envisaged by this Procedural Act and the procedural rules adopted under Article 4.

Article 4

Procedural Rules

1. Upon consultation with the group established according to Article 3(2), the Centre shall develop pro-

cedural rules for the activities performed by the Centre in accordance with Article 1(3) and 1(4) of this Procedural Act.

2. The Centre shall also develop templates for a Memorandum of Understanding, settlement agreement, expert determination, standard mediation and arbitration clauses, as well as a code of conduct for facilitators and mediators, on the one hand, and disputing parties, on the other.

3. Such rules shall be adopted by the Chair of the Centre and published on the website of the Centre.

Title II

Facilitated Negotiations or Mediation of Third-Party Disputes (Article 1(3)(a))

Article 5

Request for Facilitated Negotiations or Mediation

1. Any disputing party wishing to submit a dispute to the Centre for facilitated negotiations, mediation or any other type of dispute settlement, may address a request to that effect to the Centre. The request can also be sent by the disputing parties jointly.

2. The request shall contain the following information:

a. the name and address of the disputing parties;

b. a short summary of the dispute, including claims made by either party and any relief sought and damages claimed;

c. a short summary of the course of any pending proceedings, in case the dispute is already subject to litigation, arbitration, or any other form of dispute settlement;

d. any other documents deemed necessary for the purpose of the negotiation.

3. The registrar shall register the request. In case the request was submitted by one disputing party, a copy of the request will be sent upon registration to the other disputing party/parties.

Article 6

Post-award Facilitation

1. Disputing parties may also request, and arbitration institutions or tribunals may decide, to involve the Centre in the facilitation of elements of disputes not or not entirely resolved by an arbitral award. Parties to a dispute may also request the Centre to assist them with the implementation of an arbitral award, including with regard to the technical, economic or legal aspects of such implementation.

2. The request for post-award facilitation under Article 6 shall also contain a copy of the award.

3. Post-award facilitation is not meant to be an appeal against a final arbitral award. It will not re-judge a dispute, but it will offer the support of a facilitator for those elements of the dispute, arising after the award had been issued. Post-award facilitation will be without prejudice to any appeal, annulment or any recourse against an arbitral award provided by the applicable legal framework.

Article 7

Appointment of a Facilitator/Mediator

1. Depending on the nature and scope of the dispute, the facilitator/mediator shall be selected by agreement of the disputing parties and the Centre from the experienced staff of the Secretariat or from the Energy Community's Panel of Mediators established according to Article 27 of the present Procedural Act.
2. The registrar of the Centre shall send a list of three potential facilitators/mediators, taking into account their qualifications and experience, as well as the particularities of the dispute. If no agreement is reached by the disputing parties, the Chair of the Centre shall appoint the facilitator/mediator.
3. The facilitator/mediator may be supported by other staff of the Secretariat. In such case, all the duties of the facilitator/mediator (including the duty of confidentiality) shall extend to the supporting staff of the Secretariat.
4. Before commencement of the negotiations, the facilitator/mediator shall disclose any circumstances likely to give rise to justifiable doubts as to his or her impartiality of independence. This obligation remains throughout the facilitated negotiations or mediation.
 - a. The 2014 IBA Guidelines on Conflicts of Interest in International Arbitration will serve as guidance as to what circumstances require disclosure. In any case, Red List and Orange List circumstances shall at all times be disclosed.
 - b. When in doubt whether a circumstance should be disclosed or not, disclosure should always prevail. Following disclosure, the disputing parties may request the Centre to appoint another facilitator/mediator.

Article 8

Memorandum of Understanding

1. Following the appointment of the facilitator/mediator, the Centre shall provide the facilitator/mediator with a draft Memorandum of Understanding to be signed by all disputing parties consenting to the facilitation/mediation of the dispute, the facilitator/mediator and the chair of the Centre.
2. Signing a Memorandum of Understanding is not compulsory, and it is within the discretion of the facilitator/mediator to decide whether the Memorandum of Understanding may be used in the proceedings. At all times, the facilitator/mediator shall give priority to the swift resolution of the dispute, and a Memorandum of Understanding shall not be signed if this would delay the proceedings.
3. For the cases when a Memorandum of Understanding will be concluded, the Centre shall develop and publish a model Memorandum of Understanding. The Memorandum of Understanding shall include provisions regarding the place of negotiations/mediation, the proposed timeframe, confidentiality, effect on pending legal disputes, role and powers of the facilitator/mediator, a draft schedule of the proceedings etc.
4. The disputing parties, the facilitator/mediator and the Chair of the Centre may amend the Memorandum of Understanding, for example by extending the timeframe by mutual consent at any stage of the procedure. Any amendment of the Memorandum of Understanding shall be made in writing.

Article 9

Conduct of the Facilitated Negotiations/Mediation

1. The facilitated negotiations/mediation will be conducted in accordance with the procedural rules adopted as per Article 4 of this Procedural Act. The rules shall not prevent the disputing parties, together with the facilitator/mediator, to agree on an alternative manner in which the negotiations shall be conducted.
2. In all cases, the facilitator/mediator will pay particular consideration to the circumstances of the case, the positions and interests of the disputing parties, to the applicable legal framework and will aim for a swift resolution of the dispute.
3. The facilitator/mediator may also, upon request of the disputing parties or out of own initiative, arrange bilateral meetings with disputing parties separately.
4. All information exchanged during the facilitated negotiations/mediation between the disputing parties and the facilitator/mediator shall remain confidential. The information exchanged during a bilateral meeting shall not be disclosed to the other disputing party/parties, unless the disputing party/parties engaged in the respective meeting expressly agree/s to the disclosure.
5. Unless expressly agreed by the disputing parties, all correspondence and information exchanged during the facilitated negotiations/mediation shall be without prejudice to any litigation or arbitration proceedings on the same subject-matter.
6. Unless the disputing parties and the Centre agree to a longer period, negotiations shall take place within a period of three months. In all cases, the purpose of the facilitated negotiations or mediation is to reach a settlement as soon as possible in order to minimize the costs and adverse effects of a dispute.
7. Unless the disputing parties and the facilitator/mediator agree otherwise, the place of the facilitated negotiations/mediation shall be at the premises of the Energy Community Secretariat in Vienna. Facilitated negotiations/mediation may also take place by videoconference or other means of telecommunication if the disputing parties and the facilitator/mediator so agree.
8. The disputing parties may also, upon written notification to the facilitator/mediator and to the Centre, expand the scope of the facilitated negotiations/mediation in order to cover related disputes or disputes which arose after the commencement of the facilitated negotiations/mediation, or extend the three-months deadline.
9. The facilitator/mediator does not have the authority to impose upon the disputing parties a solution to their dispute.

Article 10

Expert Determination

1. At any time during the facilitated negotiations/mediation, the disputing parties jointly may refer the dispute or a part of it to an expert to make a determination on one or more technical points disputed by the parties. The expert will be part of the Secretariat's staff, or an expert from the Secretariat's Roster of Experts. The determination will be binding for the disputing parties and for the facilitator/mediator. The expert determination report shall be made in writing, it shall include a description of the issue referred

for determination, state the reasons on which the finding of the expert is based, and it shall be signed and dated.

2. If the determination is made by an expert from the Secretariat's staff, it will be free of charge. If an expert from the Roster of Experts will be engaged, the expert's costs will be equally divided between the disputing parties. A cost overview will be provided, free of charge, before commencing the expert determination.

Article 11

Termination and Outcome of the Facilitated Negotiation/Mediation

1. The facilitated negotiations/mediation are considered terminated in one of the following circumstances: when a settlement agreement is reached by the disputing parties; when one of the disputing parties, or all the disputing parties jointly, submits a note to the facilitator/mediator, the Centre and the Secretariat, that the facilitated negotiations/mediation are terminated; and upon expiry of the deadline as per Article 9(6) or any other deadline agreed upon, and no extension has been agreed as per Article 9(8) above..

2. Unless the disputing parties agree otherwise, the objective of facilitated negotiations/mediation is to settle a dispute by agreement of the disputing parties. The facilitator/mediator's consent is not a prerequisite for the agreement.

3. At all times, the facilitator/mediator shall work towards compliance of the outcome with Energy Community law during the facilitated negotiations/mediation.

4. Upon request of one or both disputing parties, the Centre will confirm the transparency and correctness/fairness of the negotiations.

Article 12

Follow-up measures

The disputing parties may engage the Secretariat in follow-up measures such as the implementation of any settlement agreement upon consent of the Chair of the Centre.

Title III

Facilitated Negotiations/Mediation during the Dispute Settlement Procedure (Article 1(3)(b))

Article 13

Compliance with Energy Community Law

1. The following rules are meant to implement Article 19(2) of the Dispute Settlement Procedure and facilitate the swift closure of dispute settlement cases during the preliminary procedure established therein.

2. Their application may not compromise the full implementation, applicability and primacy of Energy

Community law in the Party concerned, nor affect any other national or international procedures in which compliance with Energy Community law is relevant.

Article 14

Facilitated Negotiations before Opening a Dispute Settlement Procedure

1. Before the Secretariat opens a dispute settlement procedure against a Party to the Treaty in a case of non-compliance, the Centre shall review whether the case is suitable for a settlement. A case is suitable for a settlement in particular where compliance can be reached within a commonly agreed timeframe, and/or where the Party concerned can reach compliance with the assistance of the Secretariat. The suitability assessment shall be included in the case file.
2. If the case is considered suitable for a negotiated settlement, the Opening Letter sent in accordance with Article 13 of the Consolidated Rules of Procedure for Dispute Settlement under the Treaty shall include an invitation to the Party concerned to request negotiations using the facilities of the Centre and propose a procedural calendar for facilitated negotiations.

Article 15

Mediation after the Reasoned Opinion

1. If the facilitated negotiations carried out in accordance with Article 14 of the present Procedural Act do not lead to a settlement of the case, or if no such negotiations take place and a Reasoned Opinion is issued by the Secretariat, the Centre may offer to the Party concerned, or the Party concerned may request that the dispute be mediated by a neutral third-party mediator.
2. Such mediation shall be agreed upon in writing between the Secretariat, the Party concerned and the mediator within the deadline for reply set in the Reasoned Opinion. The agreement shall specify the scope and timeframe of the mediation as well as the role of the mediator in line with the Procedural Rules to be adopted under Article 4.
3. Unless the agreement between the Secretariat and the Party concerned provide otherwise, the costs of mediation (including the fee of the mediator if applicable, as well as reasonable travel and accommodation costs) shall be shared equally between the disputing parties.
4. The mediator shall actively help find a solution to the dispute settlement case in the broadest possible manner and not limited by the subject-matter of the case. This may include commitments to assistance by the Secretariat, commitments to future regulatory and legislative changes by the Party, and commitments made by the complainant where applicable. The solution may also include commitments for support by third parties such as international organizations, donors or domestic parties.
5. Solutions agreed upon by the Secretariat and the Party concerned in the course of the mediation shall be reflected in an agreement or memorandum which gives credible assurances of the solution being implemented.
6. The mere signature of an agreement or memorandum shall not give any expectations that the case shall be closed by the Secretariat, unless specifically mentioned in the respective agreement or memorandum.

Article 16**Place of Negotiations and Mediation**

1. Negotiations under Title III shall be preferably held at the Centre's premises in Vienna or, if more appropriate, in the Party concerned or at any another place.
2. The costs associated with the participation in the negotiations cannot be reimbursed by the Secretariat.

Article 17**Representation of the Centre**

1. The Centre shall be represented by the Head of Legal Unit or the Senior Energy Lawyer and the rapporteur in the case concerned. The Party concerned shall decide about its representatives.
2. The Centre may request other public or private parties to be present if deemed beneficial for the settlement of the dispute.

Article 18**The Role of the Complainant**

In cases initiated upon complaint, the Centre shall also invite the complainant to be present in negotiations and mediations under Title III, unless the Party concerned objects based on legitimate reasons of overriding interest.

Article 19**Publication**

Regular updates on the status of the facilitated negotiations/mediation shall be published on the webpage of the Centre.

Title IV**Negotiation Support Provided to Parties, Participants or Observers to the Treaty (Article 1(3)(c))****Article 20****The Network of Negotiators**

1. The Centre shall establish a network of negotiators involving energy negotiators representing the governments of Parties, Participants or Observers to the Treaty.

2. The Centre shall organize regular exchanges of experience and best practices (including model clauses), trainings and disseminate relevant information to the network.
3. The members of the network shall be invited to exchange information between them and the Centre with regard to the negotiations for public or private law contracts and agreements as well as non-binding instruments in areas such investments, project financing, supply or transit agreements, international relations etc in the energy sector.

Article 21

Requesting Negotiation Support

1. When a Party, Participant or Observer intends to enter into negotiations for an agreement or non-binding instrument of the kind described in Article 20(3) above, it may inform the Centre and may request advice and support in the negotiations.
2. The request shall be in writing and specify whether the support should be provided by the Centre and/or other members of the network.
3. Unless excluded by the Party, Participant or Observer, the Centre and/or members of the network may participate in the negotiations.
4. Any expenses associated with negotiation support shall be borne by the Party, Participant or Observer requesting the support.

Title V

Final Provisions

Article 22

Compliance and Impact Assessment

1. At any point before the closure of facilitated negotiations or mediation, the Party, Participant or Observer concerned may notify to the Secretariat the draft agreement or non-binding instrument and request an assessment of compliance with Energy Community law and/or its impact on the Energy Community Single Market, the environment and security of supply in the Energy Community.
2. The Secretariat shall provide its assessment within four weeks following the request.

Article 23

Confidentiality

1. The Centre, the staff of the Secretariat, the mediators from the Panel of Mediators and the members of the Network of Negotiators shall respect the confidentiality of all information exchanged under this Procedural Act.

2. If so requested by any of the disputing parties, all the participants to facilitated negotiations/mediation shall sign non-disclosure agreements.
3. The general obligation of confidentiality shall apply without prejudice to the publication, on the Centre's website, of general information regarding the subject-matter of the case, the name of the disputing parties and of the facilitator/mediator, as well as the status of the proceedings.

Article 24

Third parties

At the invitation of the Centre or of the facilitator/mediator, third parties may participate in any meetings or to submit written positions regarding the subject-matter of the dispute. They may also be involved actively in the facilitated negotiations/mediation.

Article 25

Costs

1. The services of the Centre shall be free of charge.
2. If the facilitator/mediator is part of the staff of the Secretariat or the Centre, his/her services shall also be free of charge.
3. With regard to facilitators/mediators from the Panel of Mediators and of the Network of Negotiators, their fees (if the case) and reasonable costs for transport and accommodation shall be agreed upon between the disputing parties and the facilitator/mediator and shall be borne equally between the disputing parties.
4. The fees of the facilitators/mediators), as well as any costs incurred by disputing parties, their agents, counsel, advocates as well as witnesses and experts shall not be recoverable.

Article 26

Legal aid

1. The Centre shall analyze the possibility for the establishment of a legal aid fund for Parties concerned by dispute settlement procedures under Article 90 of the Treaty and for any disputing parties within the meaning of the present Procedural Act. Such legal aid fund shall be established upon decision of the Head of the Legal Unit of the Secretariat.
2. The Head of the Legal Unit of the Secretariat shall also adopt rules of procedure for the legal aid fund.

Article 27

The Energy Community Panel of Mediators

1. The Centre shall establish a Panel of Mediators of high moral character and recognized competence in the fields of energy negotiations from which the Secretariat and the Party concerned may choose a person by consensus.
2. The Panel shall include experienced mediators, members of the Network of Negotiators (see Article 20 above), representatives of companies and investors and civil society organizations in a well-balanced manner. The composition of the Panel shall be published on the website of the Secretariat.

Article 28

Entry into force

This Procedural Act shall enter into force upon adoption.

Article 29

Publicity

The Secretariat shall make this Procedural Act and any amendments available on its website.

Done in Vienna, 25 October 2018

RULES of 29 November 2018 on the establishment of a coordination group of the Energy Community distribution system operators for electricity

THE MINISTERIAL COUNCIL OF THE ENERGY COMMUNITY,

Having regard to the Treaty Establishing the Energy Community, and in particular Articles 86 and 87 thereof,

Whereas Directive 2009/72/EC of 13 July 2009 concerning common rules for the internal market in electricity, as incorporated in the Energy Community by Ministerial Council Decision 2011/02/MC-EnC of 6 October 2011, and in particular Articles 3, 24-31, and 41 thereof, set out the rules applicable to distribution system operators and retail markets;

Whereas the Treaty Establishing the Energy Community pursues the aims of developing and attracting investments in energy networks, reforms of energy sectors and integration of energy markets as instruments for stable and continuous energy supply and provision of energy to citizens,

Whereas distribution system operation and the development of retail markets plays a key role for achieving these aims,

Whereas distribution system operators develop, maintain and operate the networks, provide network access and services under regulated conditions and tariffs and secure energy supplies and support to consumers,

Whereas the evolution of markets in the Energy Community and progressing retail market opening in compliance with the *acquis* requires coherent rules and methodologies as well sharing best practices among distribution system operators,

Whereas the increasing use of renewable energy, digitalisation and smart technologies, deployment of production units within the distribution networks, entry of prosumers but also the continuous challenges of legal and functional unbundling, energy poverty, high level of losses etc. call for intensified and structured efforts to enhance the exchange information and experience between the Energy Community distribution system operators and building of their capacity,

Whereas the Energy Community Distribution System Operators in Electricity (ECDSO-E) coordination group, established informally and supported by the Secretariat, enables such communication and coordination already for several years,

Whereas the work of ECDSO has reached a level of maturity which calls for formalisation within the existing structures of the Energy Community,

Whereas the proposed approach was welcomed by the high-level representatives of the companies represented in ECDSO-E and supported by the Permanent High Level Group,

Upon proposal of the Secretariat,

HAS ADOPTED THIS PROCEDURAL ACT:

Article 1

1. A coordination group of the Energy Community Distribution System Operators for Electricity ("ECDSO-E") is hereby established.
2. The activities of ECDSO-E shall be governed by Terms of Reference stipulated in the Annex to this Procedural Act.

Article 2

This Procedural Act shall enter into force on the day of its adoption and is addressed to the Parties to the Energy Community.

Done in Skopje, on 29 November 2018

ANNEX:

Terms of Reference of the Energy Community Distribution System Operators in Electricity (ECDSO-E) cooperation group

This document describes the organizational structure, activities and the responsibilities of all parties concerned within the Coordination Group of distribution system operators in electricity from the Energy Community (ECDSO-E).

1. General

ECDSO-E is established as a group of experts from electricity distribution network operator (DSO) undertakings in the Energy Community Contracting Parties.

It is open for participation of distribution system operators from Observer and Participant countries.

Participation of the DSOs from the Energy Community in the ECDSO-E is voluntary.

2. Structure

The operational structure of the ECDSO-E comprises:

- a) The ECDSO-E Coordination Group plenary
- b) ECDSO-E Task Forces
- c) Technical Networks.

This document gives guidance to conveners and members of the ECDSO-E bodies, with the aim of harmonizing their activities, avoiding duplication of work and ensuring that their activities are carried out in the most efficient way in line with the Energy Community Treaty.

3. Format

ECDSO-E shall function in an open format with free access to events and activities by its members.

ECDSO-E shall take part in the meetings Energy Community Security of Supply Coordination Group and in its activities, where appropriate.

ECDSO-E shall organize meetings, and electronically or web based coordination and activities, facilitated by the Secretariat.

Access to specific data and files of ECDSO-E, in particular access to consultation papers and database may be limited where required. Limitations may be requested by reasoned request of a participating DSO.

4. Tasks

ECDSO-E provides the format for discussion of all questions pertinent to DSO operation and functioning related to implementation of provisions of the Energy Community Treaty.

In particular its tasks will be:

- a) to facilitate and harmonize the implementation of the Directive 2009/72/EC and Directive 2005/89/EC

and to elaborate guidance documents where necessary;

b) to follow up conformity of practices, processes and activities in the field relevant for DSO operation and issue assessments and official positions;

c) to discuss and, where appropriate, to develop a common view on issues to be discussed and agreed upon in the ECDSO-E and to be presented to other stakeholders;

d) to support individual DSOs in the implementation of their tasks and obligations agreed upon by ECDSO-E and to coordinate related activities where appropriate;

e) to follow up development of new rules and regulations and issue recommendations for implementation;

f) to support DSOs in the management of transition (guidelines, recommendations of best practices, peer to peer consultations);

g) to establish and maintain liaisons with other European and/or regional cooperation bodies by appointing a dedicated liaison person;

h) to cooperate with relevant stakeholders of the Energy Community, especially as far as the implementation of the provisions pertinent to DSOs is concerned;

i) to cooperate with the institutions and bodies of the Energy Community;

j) to nominate representatives to joint working groups with other stakeholders, and to maintain liaison as required;

k) to set up, develop and maintain the DSO electronic platform, by:

- maintaining the annual questionnaire dataset for benchmarking database;

- developing and making available other datasets in the content and format agreed upon by ECDSO-E, such as quality of service indicators, network costs and tariffs, investment dynamic and structure, connection of small installations.

5. Composition

5.1. Membership in the ECDSO-E Coordination Group is defined as follows:

- representatives of all interested DSO from the Energy Community, including Observers and Participants to the EnC Treaty, nominated to the Group;

- experts and officials of the Secretariat and the European Commission;

- representatives of other stakeholders nominated to liaise with the ECDSO-E or invited by the Chairperson or by the Secretariat;

5.2. The Secretariat shall provide overall logistic support for ECDSO-E.

5.3. The ECDSO-E Coordination Group may decide to establish special task forces, with an appointed convener, and to study a precisely defined problem and report back on it. The task forces are automatically disbanded after presenting their final results.

5.4. All conveners of the task forces are nominated by the ECDSO-E for a defined period. Candidates are proposed by the members of ECDSO-E to the Chairperson.

5.5 ECDSO-E shall nominate members for the Joint Working Groups and upon request, to the Technical Networks task forces.

6. Governance

- 6.1 ECDSO-E shall nominate and appoint a Chairperson and two Vice Chairpersons for a period of two years.
- 6.2. One expert appointed by the Secretariat shall be the Moderator of ECDSO-E activities.
- 6.3. The work of ECDSO-E is led by a team consisting of the Chairperson, Co-Chairs and the Moderator. They shall normally communicate by means of telecommunication.

7. Meetings of ECDSO-E

- 7.1. ECDSO-E will meet when considered necessary upon a motion of the Chairperson of ECDSO-E, the Secretariat, or at least one third of ECDSO-E's members. ECDSO-E will normally meet twice a year.
- 7.2 The Secretariat will provide logistic support and expert assistance for ECDSO-E meetings.
- 7.3. A draft agenda will be distributed at least two weeks before each meeting. Draft conclusions will be distributed within two weeks after the meeting for approval by the members.
- 7.4. The Secretariat will prepare and organize workshops, when considered useful, following the conclusions of ECDSO-E.

8. Task Forces

- 8.1. Task Forces can be established for well-defined tasks. Terms of Reference will be defined by ECDSO-E. Task Forces will report to ECDSO-E at each meeting. A clear time frame for each task shall be defined.
- 8.2. Convenors are nominated by ECDSO-E.
- 8.3. Members of the Working Groups may be representatives of DSOs, representatives from interested parties and other stakeholders, including transmission system operators, generators and regulatory authorities. They are invited by the Convenors.
- 8.4. The Task Forces will be disbanded as soon as their tasks are carried out.
- 8.5. The Task Forces will co-ordinate their activities with the activities of other working groups within the Energy Community framework, as well as other regional and European co-operation institutions and initiatives. They will exchange results with these groups whenever possible.
- 8.6. Task Forces will meet when considered necessary by their convenors or by the Secretariat or by ECDSO-E. Meetings can be web meetings, as considered appropriate by Convenors. Invitations to the meetings will be distributed among the members of the groups and sent to all members of ECDSO-E at least two weeks before each meeting.
- 8.7. Task Forces will send copies of their minutes to the ECDSO-E Chair for distribution to ECDSO-E members within two weeks after the meeting and report to ECDSO-E at each meeting.
- 8.8. The ECDSO-E Moderator will keep a list of the active task forces, their tasks and composition.
- 8.9. Joint Working Groups are expert teams working jointly with other organizations or bodies of the Energy Community under the work plan of the SoS CG. They will follow the same rules as Task Forces, unless otherwise agreed upon by the organizations concerned.

9. Technical networks (TNs)

9.1 The TNs are established to stimulate discussion and harmonisation in selected technical fields. The TNs operate by suitable electronic means and are moderated by the Secretariat.

9.2. The TNs offer to the ECDSO-E members an informal platform for discussion and exchange of experience and of technical expertise and assessors. TNs can hold a physical meeting when necessary, with the logistics support of the Secretariat

9.3. The members of the TNs are the nominated persons actively engaged in the particular field of the TN.

9.4. The ECDSO-E evaluates the work of and the need for TNs biannually. New TNs are established based on the need and interest of the ECDSO-E members following the conclusion of the meetings.

9.5. The Secretariat will keep a list of the active networking groups, their tasks and composition.

RULES of 29 November 2018 on the establishment of an Energy Community coordination group for cyber-security and critical infrastructure

THE MINISTERIAL COUNCIL OF THE ENERGY COMMUNITY,

Having regard to the Treaty Establishing the Energy Community, and in particular Articles 86 and 87 thereof, Having regard to Articles 2 and 3 of the Treaty Establishing the Energy Community calling for the enhancement of the security of supply of the single regulatory space in the Energy Community, and access for all Contracting Parties to a stable and continuous energy supply that is essential for economic development and social stability;

Whereas due to the proliferation of information and communication technologies in the energy sector, cyber-security matters have become an intrinsic part of a number of existing Energy Community acquis, that deal with the security of supply or safe operation of energy systems,

Whereas the stabilization and association agreements of the European Union and its Member States with Albania, Bosnia and Herzegovina, former Yugoslav Republic of Macedonia, Kosovo¹, Montenegro, and association agreements with Georgia, Moldova and Ukraine require these Contracting Parties adopt a series of European Union legislation on cybersecurity matters and protection of critical infrastructure, including in the energy sectors,

Whereas there are certain critical infrastructures in the Energy Community, the disruption or destruction of which would have significant cross-border impacts or cross-sectoral effects resulting from interdependencies between interconnected infrastructures and systems, which require the setting-up of a coordination mechanism at Energy Community level,

Whereas timely and effective response to incidents relies on the existence of previously established and, to the extent possible, well-rehearsed cooperation procedures and mechanisms having clearly defined the roles and responsibilities of the key actors at national and Energy Community level,

Whereas an effective organizational framework for a high level of security of information systems and critical infrastructures requires taking an all-hazard approach where man-made, technological threats and natural disasters need all to be taken into account in the protection process,

Whereas a Community approach will encourage private sector involvement in overseeing and managing risks, business continuity planning and post-disaster recovery,

Whereas existing sectoral measures at national level require coordinated regional action through Community mechanisms, with a view to enhancing effectiveness, avoid duplication of, or contradiction between, different acts or measures,

Whereas cyber-security calls for a group of experts to advise the Energy Community, the national institutions as well as to coordinate incident and crisis management measures,

Whereas such a group should be composed of all relevant stakeholders and should cover electricity, gas and oil sectors, encompassing generation, distribution, transmission and supply,

Upon proposal of the Secretariat,

¹ This designation is without prejudice to positions on status, and is in line with UNSCR 1244 and the ICJ Opinion on the Kosovo.

HAS ADOPTED THIS PROCEDURAL ACT:

Article 1

1. To promote a high level of security of network and information systems and of critical infrastructures within the Energy Community, a coordination group for cyber-security and critical infrastructure ("Cyber-CG") is hereby established.
2. Each Party shall designate and notify to the Energy Community Secretariat one or more national competent authorities as well as a single point of contact for the security of network and information systems and of critical infrastructures ('competent authority' and 'single point of contact'), covering at least the sectors referred to in referred to in point 2. e) of the Annex.
3. Each Party shall designate and notify to the Energy Community Secretariat one or more national computer security incident response teams ('CSIRTs').
4. The CyberCG shall
 - (a) perform its tasks as described in the Annex to the present Procedural Act;
 - (b) liaise with a network of CSIRTs as described in the Annex to the present Procedural Act;
 - (c) liaise with security liaison officer for each critical infrastructure in Contracting Parties.
5. The activities of the CyberCG shall be governed by Terms of Reference stipulated in the Annex to this Procedural Act.
6. This article is without prejudice to the actions taken by the Parties to safeguard their essential State functions, in particular to safeguard national security, including actions protecting information the disclosure of which Parties consider contrary to the essential interests of their security, and to maintain law and order, in particular to allow for the investigation, detection and prosecution of criminal offences.

Article 2

This Procedural Act shall enter into force on the day of its adoption and is addressed to the Parties to the Energy Community.

Done in Skopje, on 29 November 2018

ANNEX

Terms of Reference of the Energy Community cyber-security and critical infrastructure cooperation group (CyberCG)

This document describes the organizational structure, activities and the responsibilities of all parties concerned within the coordination group for cyber-security and critical infrastructure (“CyberCG”).

1. General

The CyberCG aims to support and facilitate strategic cooperation and the exchange of information within the Energy Community and to develop trust and confidence, and with a view to achieving a high common level of security of network and information systems and of critical infrastructures in the Energy Community.

2. Definition of Terms

For the purposes of the present Annex, the following definitions apply:

- a) ‘network and information system’ means: (a) an electronic communications network within the meaning of point (a) of Article 2 of Directive 2002/21/EC; (b) any device or group of interconnected or related devices, one or more of which, pursuant to a program, perform automatic processing of digital data; or (c) digital data stored, processed, retrieved or transmitted by elements covered under points (a) and (b) for the purposes of their operation, use, protection and maintenance;
- b) ‘security of network and information systems’ means the ability of network and information systems to resist, at a given level of confidence, any action that compromises the availability, authenticity, integrity or confidentiality of stored or transmitted or processed data or the related services offered by, or accessible via, those network and information systems;
- c) ‘national strategy on the security of network and information systems’ means a framework providing strategic objectives and priorities on the security of network and information systems at national level in accordance with requirements of Article 7 of Directive 2016/1148/EU;
- d) ‘operator of essential services’ means a public or private entity which provides an energy service that (i) is essential for the maintenance of critical societal and/or economic activities, (ii) the provision of that service depends on network and information systems, (iii) and an incident would have significant disruptive effects on the provision of that service, in accordance with the criteria laid down in Article 5(2) of Directive 2016/1148/EU;
- e) ‘energy services’ comprise (i) electricity generation, supply, market operation, distribution, transmission, and storage, (ii) natural gas production, supply, market operation, transmission, distribution, storage and LNG, (iii) oil production, refining and treatment facilities, market operation, storage and transmission, (iv) monitoring and control of pollution and emissions from energy combustion and (v) digital services and electronic communication services, in case and to the extent that the latter provide services to operators of essential services of the energy sectors, and/or that provide services that are essential to the functioning of the energy sector”;
- f) ‘critical infrastructure’ means an asset, system or network or part thereof within the energy sector or interdependent with the energy services referred to in point e), located in Contracting Parties which is es-

essential for the maintenance of vital societal functions, health, safety, security, economic or social well-being of people, the disruption or destruction of which would have a significant impact in a Contracting Party as a result of the failure to maintain those functions;

g) 'Energy Community critical infrastructure' means critical infrastructure located in Contracting Parties the disruption or destruction of which would have a significant impact on at least two Contracting Parties and/or Member States. The significance of the impact shall be assessed in terms of cross-cutting criteria. This includes effects resulting from cross-sector dependencies on other types of infrastructure;

h) 'owners/operators of critical infrastructures' means those entities responsible for investments in, and/or day-to-day operation of, a particular asset, system or part thereof designated as a critical infrastructure in the relevant Contracting Parties. For the avoidance of doubt, the definition of an operator of critical infrastructure encompasses and is broader than that of an operator of essential services, as it covers also critical infrastructures that do not depend on information network and systems;

i) 'incident' means any event having an actual adverse effect on the security of network and information systems within the meaning of Directive 2016/1148/EU or any event causing a disruption or destruction of critical infrastructure installations within the meaning of Directive 2008/114/EC;

j) 'incident handling' means all procedures supporting the detection, analysis and containment of an incident and the response thereto, as provided under Directive 2016/1148/EU and related implementing acts;

k) 'risk' means any reasonably identifiable circumstance or event having a potential adverse effect on the security of network and information systems, as provided under Directive 2016/1148/EU and related implementing acts, or having the potential of causing a disruption or destruction of critical infrastructure installations as provided under Directive 2008/114/EC, including cyber-attacks, natural disasters, terrorist attacks or any other sources of attack.

l) 'risk analysis' means consideration of relevant threat scenarios, in order to assess the vulnerability and the potential impact of disruption or destruction of critical infrastructure or network and information systems,;

m) 'protection' means all activities aimed at ensuring the functionality, continuity and integrity of critical infrastructures in order to deter, mitigate and neutralize a threat, risk or vulnerability;

n) 'standard' means a standard within the meaning of point (1) of Article 2 of Regulation No 1025/2012/EU;

o) 'specification' means a technical specification within the meaning of point (4) of Article 2 of Regulation No 1025/2012/EU.

3. Composition

3.1. The CyberCG consists of representatives of the Parties (competent authorities and single point of contacts), the CSIRTs network, security liaison officers, the Secretariat, the European Commission, and the European Union Agency for Network and Information Security ("ENISA").

3.2. Representatives of Observer and Participant countries may participate in the CyberCG.

3.3. Where appropriate, the CyberCG may invite representatives of the relevant stakeholders to participate in its work.

3.4. The Secretariat shall provide assistance and logistical support to the CyberCG.

4. Single points of contact

4.1. The single points of contact exercises a liaison function to ensure cross-border cooperation of Parties' authorities and with the relevant authorities in other Parties, with the CyberCG and the CSIRTs network. Tasks of the single point of contact may be assigned to the competent authority.

4.2. Single points of contact notify and report to the CyberCG, the CSIRTs network and the Secretariat, by 15 January 2019, and every year thereafter, on provisions of national law and measures in the fields covered by point 2. e) of this Annex, including but not limited to:

a) adoption of a national strategy on the security of network and information systems covering at least the sectors point 2. e) of this Annex, in compliance with requirements set forth in Article 7 of Directive 2016/1148/EU, and adoption of security strategies or equivalent instruments on the protection of critical infrastructures from other risks, not covered by national strategy on the security of network and information systems, in compliance with requirements laid down in Directive 2008/114/EC;

b) on the identification of operators of essential services for sectors and services referred to in point 2.e) of this Annex, in compliance with requirements of Articles 5 and 6 of Directive 2016/1148/EU; on security and incident notification requirements that those operators of essential services shall implement, in compliance with requirements laid down in Article 14 of Directive 2016/1148/EU; as well as on enforcement powers and means given to competent authorities in this respect, in compliance with requirements laid down in Article 15 of Directive 2016/1148/EU;

c) on security requirements and incident notification obligations that entities operating organized energy trading and balancing services' platforms as referred to in point 2. e) of this Annex implement, in compliance with requirements laid down in Directive 2016/1148/EU; or in compliance with security requirements equivalent to those laid down in Directive 2014/65/EU on markets in financial instruments, supplemented by any implementing acts, or equivalent to those laid down in Regulation 600/2014/EU, as supplemented by any implementing acts, as well as national provisions on enforcement powers and means given to competent authorities in this respect;

d) on security requirements and incident notification obligations that digital service providers referred to in point 2. e) of this Annex implement, in compliance with requirements laid down in Article 16 of Directive 2016/1148/EU; as well as national provisions on enforcement powers and means given to competent authorities in this respect, in compliance with requirements laid down in Article 17 of Directive 2016/1148/EU;

e) on security requirements and incident notification obligations that electronic communications operators referred to in point 2. e) of this Annex implement, in compliance with requirements laid down in Articles 13a and 13b of Directive 2002/21/EC,; as well as national provisions on enforcement powers and means given to competent authorities in this respect, in compliance with requirements laid down in Articles 13a and 13b of Directive 2002/21/EC;

f) on the identification of critical infrastructures located on the territory of the concerned Contracting Party, on security measures and operational plans that are implemented to ensure a level of security and protection of critical infrastructures for sectors and services referred to in point 2. e) of this Annex, in compliance with requirements equivalent to those laid down in Article 5 and Annex II of Directive 2008/114/EC, for risks and incidents that are not covered by the above-mentioned from b) to e), as well as on enforcement powers and means given to competent authorities in this respect.

5. Tasks

5.1. The CyberCG covers the following tasks:

- a) providing strategic guidance for the activities of the CSIRTs established and the CSIRTs network;
- b) exchanging best practice on the exchange of information related to incident notification within the meaning of or equivalent to provisions in Article 14(3) and (5) and Article 16(3) and (6) of Directive 2016/1148 EU, and/or to the identification of critical infrastructures in the Contracting Parties for at least the sectors referred to in point 2. e) of this Annex;
- c) exchanging best practice between Parties and other stakeholders involved;
- d) assisting Contracting Parties in building capacity to ensure the security of network and information systems, and in securing critical infrastructures;
- e) discussing capabilities and preparedness of the Contracting Parties, and evaluating national strategies on the security of network and information systems and the effectiveness of CSIRTs, and of critical infrastructures protection and identifying best practice;
- f) exchanging information and best practice on awareness-raising and training;
- g) exchanging information and best practice on research and development relating to the security of network and information systems and to the protection of critical infrastructures;
- h) where relevant, exchanging experiences on matters concerning the security of network and information systems and of critical infrastructures, with relevant Energy Community institutions, in particular the Secretariat and the Energy Community Security of Supply Coordination Group;
- i) discussing the standards and specifications with relevant stakeholders and with relevant organizations where appropriate;
- j) collecting best practice information on risks and incidents;
- k) examining, on an annual basis, the reports submitted;
- l) discussing the work undertaken with regard to exercises relating to the security of network and information systems and of critical infrastructures, education programmes and training;
- m) exchanging best practice with regard to the identification of operators of essential services by the Contracting Parties, identification of critical infrastructures, including in relation to cross-border dependencies, and cross-sectoral dependencies regarding risks and incidents, where appropriate with the assistance of the Energy Community Security of Supply Coordination Group, building on the best practice of ENISA;
- n) engaging in discussions with the Contracting Party, or Contracting Parties and Member States on whose territory a potential critical infrastructure is located, and with the other Contracting Parties and Member States which may be significantly affected by the potential critical infrastructure, providing guidance for the identification of critical infrastructures or of operator of essential service and where necessary facilitating agreements between the concerned Contracting Parties and Member States on common security and protection measures;
- o) discussing modalities for reporting notifications of incidents;
- p) developing common methodological guidelines for carrying out risk analyses in respect of Energy Community critical infrastructures. The CyberCG shall support, through the relevant Contracting Party's competent authority/single point of contact, the owners/operators of critical infrastructures by providing access to available best practices and methodologies as well as support training and the exchange of

information on new technical developments related to critical infrastructure protection;

q) promoting convergent implementation of security requirements of network and information systems and of critical infrastructures, without imposing or discriminating in favour of the use of a particular type of technology,

r) encouraging the use of European or internationally accepted standards and specifications relevant to the security of network and information systems.

5.2. The CyberCG shall carry out its tasks on the basis of biennial work programmes. The work programme shall outline actions to be undertaken to implement the CyberCG's objectives and tasks.

5.3. The CyberCG shall take part in the meetings and activities of the SoS CG, where appropriate.

5.4. The CyberCG shall prepare a report assessing the experience gained with the strategic cooperation by October 2019, and every year thereafter, and submit it to the Secretariat, so that the latter uses it for the preparation of its implementation report for the Ministerial Council.

6. Chairs

The Cyber-CG shall nominate and appoint a Chairperson and two Vice Chairpersons for a period of two years.

7. Meetings of the Cyber-CG

7.1. The Cyber-CG will meet when considered necessary upon a motion of the Chairperson, the Chairperson of Energy Community Security of Supply Coordination Group, the Secretariat, or ENISA. The Cyber-CG will normally meet twice a year.

7.2. A draft agenda will be distributed at least two weeks before each meeting. Draft conclusions will be distributed within two weeks after the meeting for approval by the members.

7.3. The Secretariat will prepare and organize workshops, when considered useful, following the conclusions of the Cyber-CG.

8. Computer security incident response teams (CSIRTs)

8.1. CSIRTs designated by Contracting Parties covering at least the sectors referred to in in point 2. e) of this Annex, responsible for risk and incident handling in accordance with a well-defined process. CSIRTs could also be established within the competent authority.

8.2. CSIRTs should have access to an appropriate, secure, and resilient communication and information infrastructure at national level in accordance with requirements of Directive 2016/1148. 8.3. Contracting Parties shall inform the Secretariat and the CyberCG about the remit, as well as the main elements of the incident-handling process, of their CSIRTs.

8.4. Contracting Parties may request the assistance of the CyberCG in developing national CSIRTs.

9. CSIRTs Network

9.1. In order to promote swift and effective operational cooperation in cases of risks or incidents to information and communications networks and systems, a network of the national CSIRTs is established.

9.2. The CSIRTs Network shall be composed of representatives of the Contracting Parties CSIRTs. The Secretariat shall participate in the CSIRTs network.

9.3. The CSIRTs network shall have the following tasks:

- a) exchanging information on CSIRTs' services, operations and cooperation capabilities;
- b) at the request of a representative of a CSIRT from a Contracting Party potentially affected by an incident, exchanging and discussing non-commercially sensitive information related to that incident and associated risks; however, any Contracting Party's CSIRT may refuse to contribute to that discussion if there is a risk of prejudice to the investigation of the incident;
- c) exchanging and making available on a voluntary basis non-confidential information concerning individual incidents;
- d) at the request of a representative of a Contracting Party's CSIRT, discussing and, where possible, identifying a coordinated response to an incident that has been identified within the jurisdiction of that same Contracting Party;
- e) providing Contracting Parties with support in addressing cross-border incidents on the basis of mutual assistance, including under Chapter IV, Title IV of the Energy Community Treaty
- f) discussing, exploring and identifying further forms of operational cooperation, including in relation to:
 - (i) categories of risks and incidents;
 - (ii) early warnings;
 - (iii) mutual assistance;
 - (iv) principles and modalities for coordination, when Contracting Parties respond to cross-border risks and incidents;
- g) informing the CyberCG of its activities and of the further forms of operational cooperation discussed pursuant to point (f), and requesting guidance in that regard;
- h) discussing lessons learnt from exercises relating to the security of network and information systems, including from experience shared by ENISA;
 - i) at the request of an individual CSIRT, discussing the capabilities and preparedness of that CSIRT;
- j) issuing guidelines in order to facilitate the convergence of operational practices and operational cooperation;
- k) developing a blueprint for cooperation at Energy Community level in case of incidents or crisis affecting one or more Contracting Parties to such an extent that an intervention at Energy Community level is required.

9.4. The CSIRTs network produces an annual report assessing the experience gained with the operational cooperation, including conclusions and recommendations. That report shall be submitted to the CyberCG.

9.5. The CyberCG and the Secretariat shall actively support the cooperation among the CSIRTs. The CSIRTs shall build on best practice of ENISA in performing its tasks and duties, and where appropriate and possible may seek assistance from ENISA.

10. Closed-CSIRT network

10.1. Within the CSIRT network, a closed-CSIRT network is established to treat such a threat and risk landscape and incidents that are considered as classified information by the Contracting Parties concerned. The closed-CSIRT network is composed of a representative from each Contracting Party which shall have an appropriate level of security vetting and clearance equivalent to that of handling classified information at European Union level.

10.2. The closed-CSIRT network shall make use of specific certified communication means that provide a secure way to communicate the classified information. The same applies to non-written information exchanged during meetings of the closed-CSIRT network.

11. Security liaison officer for critical infrastructures

11.1. Contracting Parties should designate one security liaison officer for security issues for each critical infrastructure. The security liaison officer functions as the point of contact between the owner/operator of the Energy Community critical infrastructure, the relevant Contracting Party's competent authority/single point of contact and the Cyber-CG.

11.2. Contracting Parties shall inform the Energy Community Secretariat and the Cooperation Group about the remit, as well as the main elements of the incident- handling process, of their security liaison officers.

12. Competent authorities, single point of contacts, CSIRTs and security liaison officers

12.1. Competent authorities, single points of contact, CSIRTs and security liaison officers should have adequate resources to carry out, in an effective and efficient manner, the tasks assigned to them.

12.2. Competent authorities, single points of contact, CSIRTs and security liaison officers, whenever appropriate and in accordance with national law, consult and cooperate with the relevant national law enforcement authorities and national data protection authorities.

13. Cooperation with ENISA (European Union Agency for Network and Information Security)

By 1 July 2019, the CyberCG shall explore possibilities and options for Contracting Parties and the Secretariat to engage as observer with ENISA on issues related to cybersecurity in Network Energy, and participate in the international activities organized by ENISA.

RULES of 16 October 2015 on strengthening the role of civil society

Procedural Act 2015/03/MC-EnC of 16 October 2015 on strengthening the role of civil society.

The Ministerial Council of the Energy Community,

Having regard to the Treaty establishing the Energy Community (hereinafter referred to as the Treaty), and in particular Articles 86, 87, 82 and 83 thereof,

Having regard to the report of the High Level Reflection Group, which concluded that the role of civil society in the Energy Community institutions should be strengthened,

Whereas enhancing the role of civil society organisations will render the Energy Community's institutions and bodies more transparent,

Whereas strengthening the role of civil society organisations will make the Energy Community better equipped to meet its objectives, notably by increasing its transparency, public acceptance as well as providing additional expertise to the implementation of the acquis if necessary,

HAS ADOPTED THIS PROCEDURAL ACT:

Article 1

1. Representatives of Civil Society Organisations may attend the meetings of Working Groups and Task Forces upon invitation of the chairman of a Working Group or a Task Force.

Article 2

1. Representatives of Civil Society Organizations may be invited to attend specific agenda items of meetings of the Ministerial Council or the Permanent High Level Group as observers.

2. Such invitations may be issued in particular to seek information from the Civil Society Organizations, for instance as regards new legislative initiatives planned in the Energy Community.

3. The procedure to issue such an invitation shall be determined in the Rules of Procedure of the Ministerial Council and the Permanent High Level Group respectively.

Article 3

1. A Civil Society Day shall be convened once a year to increase the transparency of the activities of the Ministerial Council and the Permanent High Level Group towards Civil Society Organizations. The meeting shall be prepared by the Secretariat.

Article 4

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

Done in Tirana on 16 October 2015.

RULES of 16 October 2015 on establishment of Energy Community parliamentary plenum meetings

Procedural Act 2015/05/MC-EnC of 16 October 2015 on establishment of Energy Community parliamentary plenum meetings.

The Ministerial Council of the Energy Community,

Having regard to the Treaty establishing the Energy Community and in particular Articles 90 to 93 as well as Articles 86, 87, 82 and 83 thereof,

Whereas participation of representatives of parliaments would make the Energy Community better equipped to meet its objectives, notably by increasing political support for the implementation of the Energy Community acquis and the sense of ownership of the organisation,

Whereas it is fitting to increase transparency of the organisation and improve knowledge of the parliaments regarding the Energy Community processes,

Whereas it shall improve through dialogue, better acceptance of the Energy Community and its objectives in the Parties to the Treaty,

Whereas bringing together elected representatives of the national parliaments of the Contracting Parties and the European Parliament would help to address shared challenges, and support to build a fully functioning pan-European energy market which works to the benefit of citizens,

HAS ADOPTED THIS PROCEDURAL ACT:

Article 1

1. The Parliamentary Plenum meetings shall be organized up to two times a year.

Parliaments of Contracting Parties may appoint two representatives from each national parliament, preferably from the governing political spectrum and opposition. The European Parliament may send up to 16 representatives.

2. The meetings take place under the chairmanship of the Member of the Parliament of the Contracting Party holding the Presidency of the Ministerial Council.

3. The meetings of the Parliamentary Plenum shall be administered by the Secretariat.

Article 2

1. The participants in the Parliamentary Plenum meetings may express views and opinions on all matters falling within the scope of the Treaty in the form of reports or resolutions, as appropriate, with the exception of dispute settlement under Articles 90-93 of the Treaty. They are invited to prepare a report on the annual progress report prepared by the Secretariat in accordance with Article 67(b) of the Treaty, to be submitted to the Ministerial Council.

2. The participants in the Parliamentary Plenum meetings may pose questions to the institutions of the Energy Community.

3. The chairperson of the Parliamentary Plenum meetings is invited before the Ministerial Council.

4. Representative of the Contracting Party holding the Presidency of the Energy Community or the Director

of the Energy Community Secretariat may be invited to take part in the meetings of the Parliamentary Plenum.

5. The Secretariat is invited to propose organizational rules and procedures of the Parliamentary Plenum meetings for adoption by the Ministerial Council upon the consultation with the Parliamentary Plenum meeting.

Article 3

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

Done in Tirana on 16 October 2015.

RULES of 11 December 2008 on the establishment of a security of supply co-ordination group

Procedural Act 2008/02/MC-EnC of 11 December 2008 on establishment of a security of supply co-ordination group.

The Ministerial Council of the Energy Community,

Having regard to the Treaty Establishing the Energy Community ("the Treaty"), and in particular Articles 46 and 87 thereof,

Having regard to Directives 2004/67/EC and 2005/89/EC as implemented by Ministerial Council Decision No. 2007/06/MC-EnC of 18 December 2007,

Having regard to the deliberations at the Permanent High Level Group and the input from the Contracting Parties,

Having regard to the proposal by the Secretariat,

Whereas securing energy supply through solidarity constitutes one of the main objectives of the Energy Community;

Whereas the implementation of Directives 2004/67/EC and 2005/89/EC requires the setting-up of a co-ordination mechanism in the Energy Community;

Whereas this objective requires a group of experts to advise Energy Community and national institutions as well as to coordinate crisis management measures;

Whereas such a group should be composed of all relevant stakeholders and should cover both electricity and gas so as to ensure utmost efficiency,

HAS ADOPTED THIS PROCEDURAL ACT:

Article 1

Security of Supply Coordination Group

A Security of Supply Coordination Group is hereby established.

Article 2

Composition

(1) The Security of Supply Coordination Group shall be composed of representatives of the Parties and representative bodies of the industry concerned and of relevant consumers. The composition of the Group may differ for gas and electricity respectively.

(2) Participant and Observer countries may be represented in accordance with Articles 95 and 96 of the Treaty.

(3) The Security of Supply Coordination Group shall be chaired by the member representing the European Community.

(4) Each Party shall nominate its representatives and inform the Secretariat. The list of representative bodies of the industry concerned and of relevant consumers shall be established and updated by the Permanent High Level Group upon pro-posal by the Chair of the Security of Supply Coordination Group.

(5) The Security of Supply Coordination Group and its Chair shall be assisted by the Secretariat.

Article 3

Tasks

(1) The Security of Supply Coordination Group shall facilitate the coordination of security of supply measures and advise the Energy Community institutions on issues relating to gas and electricity security of supply.

(2) The Security of Supply Coordination Group shall regularly monitor the state of security of supply of network energy within the Energy Community share experience on security of supply mechanisms and develop comprehensive risk analysis. The conclusions of the Group's annual meetings shall be submitted to the Ministerial Council, the Permanent High Level Group and the Regulatory Board.

(3) The tasks of the Security of Supply Coordination Group are without prejudice to the obligations of the Parties to adopt and update security of supply statements in accordance with Article 29 of the Treaty. The Security of Supply Coordination Group shall support the Parties in the preparation and updating of national emergency measures.

(4) In the event of an existing or imminent threat to security of supply or in the event of a supply disruption affecting a Party and involving another Party or a third country, the Security of Supply Coordination Group shall, where appropriate, coordinate measures taken at national levels. In doing so, it shall follow the principles established by Article 9 of Directive 2004/67/EC in both the gas and electricity sectors.

(5) In the cases mentioned in paragraph 4, the Chair of the Security of Supply Coordination Group or any Party directly affected may request an ad-hoc meeting of the Ministerial Council to take measures in response to the existing or imminent threat to security of supply.

(6) The activities of the Security of Supply Coordination Group may relate to, but are not restricted to, all issues falling within the scope of Directives 2004/67/EC and 2005/89/EC as well as mutual assistance within the meaning of Chapter IV in Title IV of the Treaty and the handling of unilateral safeguard measures in accordance with Article 39 of the Treaty.

Article 4

Meetings

(1) The Security of Supply Coordination Group shall meet regularly once per year. Normally this meeting shall take place in connection with the second Permanent High Level Group meeting in the second half of the year. The meeting may be split in two parts for gas and electricity respectively.

(2) Ad hoc meetings of the Security of Supply Coordination Group shall be convened by the Chair in case of

existing or imminent threat to security of supply on its own initiative or upon request of a Party to the Treaty.
(3) Upon initiative of the Chair, the Security of Supply Coordination Group may hold additional ad hoc joint sessions with the European Community Gas Coordination Group to discuss issues of common interest.

Article 5
Review

Within three years of the date of its entry into force, this Procedural Act shall be reviewed in order to assess the functioning of the cooperation mechanisms it establishes. This review may provide for the conferral of powers to take interim measures to the Permanent High Level Group, as foreseen in Article 46 of the Treaty.

Article 6
Addressees

This Procedural Act shall enter into force on the day of its adoption and is addressed to the Parties.

Done in Tirana on 11 December 2008.

RULES OF PROCEDURE of 16 October 2015 on dispute settlement under the Treaty

Procedural Act 2008/01/MC-EnC of 27 June 2008 on Rules of Procedure for dispute settlement under Treaty as amended by Procedural Act 2015/04/MC-EnC of 16 October 2015 on amending Procedural Act 2008/01/MC-EnC

The Ministerial Council of the Energy Community,

Having regard to the Treaty Establishing the Energy Community, and in particular Articles 90 to 94 as well as Articles 47(c), 86, 87, 82 and 83 thereof,

Having regard to the proposal by the Secretariat,

Whereas it is of crucial importance that the provisions of the Treaty, including the Decisions adopted thereunder, are properly implemented in the national legal orders of the Parties and correctly applied by their authorities,

Whereas each Party to the Treaty is responsible for the timely implementation and correct application of Energy Community law within its own legal system,

Whereas the Treaty establishes a system of dispute settlement within the Energy Community by decision of the Ministerial Council,

Whereas the procedure leading up to such a decision may be initiated by a Party, the Secretariat or the Regulatory Board,

Whereas the Treaty gives private bodies the right to approach the Secretariat with complaints,

Whereas a Party concerned has the right to make observations in response to the request or complaint,

Whereas the Ministerial Council may decide on the existence of a breach by a Party of its obligations,

Whereas the Ministerial Council may further decide on the existence of a serious and persistent breach and on possible sanctions resulting therefrom,

Whereas the Treaty provisions establish a framework which requires more detailed procedural rules for practical implementation,

Whereas the institutions of the Energy Community shall interpret any term or other concept used in the Energy Community Treaty that is derived from European Community law in conformity with the case-law of the Court of Justice of the European Union, including its General Court,

Upon review as envisaged by Article 47 of this Procedural Act,

Whereas the Ministerial Council already on 29 June 2007 concluded that a formal process at a level below the Ministerial would have to be considered for the issue of non-implementation of Treaty commitments by Parties to the Treaty,

Whereas the European Commission in 2011 demanded “more effective implementation and enforcement” in the Energy Community¹; the European Parliament in 2013 requested “adapting [the Energy Community’s] decision-making to future challenges, including by setting up legal control mechanisms to deal with

¹ Commission Communication: The EU Energy Policy: Engaging with Partners beyond Our Borders, 7.9.2011, COM(2011) 539 final.

deficient *acquis* implementation”²; and the European Council in 2014 called for the Energy Community to “be reinforced so as to ensure the application of the *acquis* in those countries”³,

Whereas the High Level Reflection Group mandated by the Ministerial Council concluded that “Weak enforcement mechanism constitute one of the major obstacles to implementation of the *acquis communautaire* in the Contracting Parties”⁴ and considered that “a refurbishment of the institutional architecture is necessary, in particular to enable the enforcement of the far-reaching commitments the Parties accepted under the Treaty”⁵,

Whereas the Permanent High Level Group, at its meetings on 15 October 2015 endorsed the present Procedural Act, as amended,

HAS ADOPTED THIS PROCEDURAL ACT:

Article 1

Purpose

These rules specify the procedure to be followed in cases of failure by a Party (hereinafter “the Party concerned”) to comply with a Treaty obligation or to implement a Decision or Procedural Act addressed to it within the required period (hereinafter “Energy Community law”) as established by Articles 90 to 93 of the Treaty (hereinafter “dispute settlement procedure”, Titles II-IV), as well as a cooperation mechanism between national authorities or courts and the Secretariat in cases concerning the interpretation or application of Energy Community law without prejudice to Article 94 of the Treaty (Title I).

Title I

COOPERATION BETWEEN NATIONAL AUTHORITIES OF THE CONTRACTING PARTIES AND THE SECRETARIAT

Article 2

Cooperation between national authorities of the Contracting Parties and the Secretariat

(1) Where a question concerning the interpretation or application of Energy Community law is raised in proceedings before a national authority of a Contracting Party, such authority, upon request of a party to the procedure before it or on its own motion, notifies the Secretariat in writing at the earliest stage possible in the procedure. The Secretariat shall ensure the confidentiality of all information received.

(2) Contracting Parties shall ensure that, where a question concerning the interpretation or application of Energy Community law is raised in proceedings before a national court, such court, upon request of a party to the procedure before it or on its own motion, may notify the Secretariat in writing at the earliest

² European Parliament Resolution of 23 October 2013 on the European Neighborhood Policy: towards a strengthening of the partnership, (2013/2621(RSP).

³ European Council Conclusions of 27 June 2014, EUCO 79/14.

⁴ An Energy Community for the Future, p. 19.

⁵ An Energy Community for the Future, p. 19.

stage possible in the procedure. The Secretariat shall ensure the confidentiality of all information received.

(3) Where the coherent interpretation or application of Energy Community law so requires, the Secretariat shall submit its opinion to the national authority or court of the Contracting Party in writing within the timelines set by national procedural rules, but not later than within four weeks. It may consult the Advisory Committee before submitting an opinion. The Secretariat's opinion must be in conformity with the case-law of the Court of Justice of the European Union.

(4) In its final decision or judgment, the national authority or court of the Contracting Party takes into account of the opinion submitted by the Secretariat.

(5) The Secretariat shall submit to the Ministerial Council an annual report on the application and interpretation of Energy Community law by national authorities of the Contracting Parties.

Title II

PROCEDURES UNDER ARTICLES 90 TO 93

Article 3

Failure to comply

(1) A Party fails to comply with its obligations under the Treaty if any of its measures (actions or omissions) are incompatible with a provision or a principle of Energy Community law.

(2) Failure by a Party to comply with Energy Community law may consist of any measure by the public authorities of the Party (central, regional or local as well as legislative, administrative or judicative), including undertakings within the meaning of Article 19 of the Treaty, to which the measure is attributable.

Article 4

Burden of proof

The burden of proving the allegation of non-compliance by a Party with Energy Community law and to place before the Ministerial Council the information needed to enable it to determine whether the obligation has not been fulfilled shall rest on the initiator of the proceedings. Where, however, the Party invokes an exemption to a rule or general principle of Energy Community law, it is incumbent upon the Party concerned to prove that the requirements for such exemption are fulfilled.

Article 5

Dispute settlement procedures and private disputes

Dispute settlement procedures must relate to a violation by a Party of Energy Community law and may not concern disputes between private parties.

Article 6

Case register

- (1) The Secretariat keeps a case register at its premises under the control of the Legal Counsel.
- (2) Each dispute settlement procedure case shall be assigned an official case number. Incoming and outgoing documents shall be registered under this number in the case file. If several pending cases concern the same subject matter, they may be consolidated and processed under the same case number.
- (3) The representatives of the Energy Community institutions and their staff shall not disclose information acquired or exchanged by them pursuant to this Procedural Act and of the kind covered by Energy Community Staff Regulation 3.5. a), unless the present Rules permit such disclosure.

Article 7

Access to the case file

- (1) At their request, Parties, Participants and Observers to the Treaty, the complainant as well as private or public bodies with a legitimate interest (hereinafter "interested parties") shall have access to the case file, subject to an eventual request by complainants to confidential treatment.
- (2) In cases of doubt, the Director of the Secretariat shall take a decision on the existence of a legitimate interest of private or public bodies requesting access to the case file.
- (3) The Secretariat shall adopt a Procedural Act⁶ laying down specific rules on access to the case file.

Article 8

Procedural documents

- (1) The language of the procedure is English. Any procedural documents expressed in another language shall be accompanied by a translation into English.
- (2) All procedural documents shall bear a date, the case number and the name and the address of the sender.
- (3) The original of every procedural document shall be signed by a person authorised to represent the sender by law, by its constitution or by authorisation.
- (4) If a procedural document does not comply with the requirements set out in paragraphs 1 to 3, the Secretariat shall prescribe a reasonable period within which the sender is to comply with them.

Article 9

Costs

Costs incurred by all parties to or persons participating in the procedure are not recoverable.

⁶ Procedural Act 2018/06/ECS-EnC of 10 December 2018 on Rules on access to the case file

Article 10**Time-limits**

- (1) Unless otherwise indicated, time-limits established by these Rules and time-limits prescribed by the competent institutions shall be binding.
- (2) Time-limits shall be prescribed so as to specify the precise date on which the required action is to take place rather than expressing periods in days, weeks, months etc. Where that day is a Saturday, Sunday or an official holiday, the deadline shall be extended until the end of the first following working day.
- (3) Time-limits may be extended by the institution that prescribed it upon a reasoned application.
- (4) Communication by telefax and email shall be deemed sufficient for the purposes of compliance with the time-limits.

Title III**THE COURSE OF DISPUTE SETTLEMENT PROCEEDINGS****Chapter I - Preliminary Procedure****Article 11****Scope and purpose**

- (1) When initiating a dispute settlement procedure within the meaning of Article 11, the Secretariat shall carry out the preliminary procedure set out in this Title. A Party or the Regulatory Board shall initiate dispute settlement procedures either by notification to the Secretariat or directly by submitting a reasoned request to the Ministerial Council in accordance with Article 29 below.
- (2) The purpose of the preliminary procedure is to establish the factual and legal background of cases of alleged non-compliance, and to give the Party concerned ample opportunity to be heard. In this respect, the preliminary procedure shall enable the Party concerned to comply of its own accord with the requirements of the Treaty or, if appropriate, to justify its position.
- (3) Where the Secretariat initiates a dispute settlement procedure on the grounds that a Party has failed to fulfil its obligation to notify measures transposing a Decision addressed to it within the deadline specified in that Decision, the Secretariat shall submit a reasoned request to the Ministerial Council without preliminary procedure.

Article 12**Initiation of a dispute settlement procedure by the Secretariat**

- (1) A dispute settlement procedure may be initiated by the Secretariat by way of an opening letter in accordance with Article 13 below.

(2) The Secretariat initiates procedures in response to alleged non-compliance arising from either a complaint by a private body, a notification by a Party or by the Regulatory Board or by its own initiative. Within the Secretariat, the Legal Counsel shall coordinate the procedure.

(3) The decision to initiate a dispute settlement procedure shall be made publicly available on the Energy Community website, stating the date of sending out the opening letter, the Party concerned and a brief summary of the subject matter.

Article 13

Opening letter

(1) If the Secretariat considers that a possible non-compliance of which it has become aware or issues raised in a complaint warrant the opening of a dispute settlement procedure, it addresses an opening letter to the Party concerned, requesting it to submit its observations within a specified time period. This period shall normally be two months.

(2) The Party concerned is requested to adopt a position on the points of fact and of law raised in the opening letter.

Article 14

Reasoned opinion

(1) In the light of the reply or absence of a reply from the Party concerned, the Secretariat may address a reasoned opinion to that Party. The reasoned opinion must contain a coherent and detailed statement of the reasons which led the Secretariat to conclude that the Party concerned failed to fulfil its obligations under the Treaty.

(2) The reasoned opinion shall call on the Party concerned to comply with the law within a specified time period. This period shall normally be two months.

Article 15

Submission to the Ministerial Council

In the light of the reply or absence of a reply from the Party concerned, the Secretariat may bring the matter to the attention of the Ministerial Council by way of a reasoned request in accordance with Article 29 below.

Article 16

Request for information

(1) The Secretariat may, by simple request, require any authority of the Party concerned to provide all necessary information at any stage of the preliminary procedure.

(2) The Secretariat may also request information from other natural or legal persons.

(3) The Secretariat may ask national authorities of Contracting Parties to conduct inspections of undertakings and associations of undertakings in line with the respective authorities' competences under national law.

Article 17

Interested parties

(1) Interested parties may submit written observations to the Secretariat at any stage of the preliminary procedure.

(2) Private and public bodies other than Parties, Participants and Observers shall substantiate the required legitimate interest.

(3) Any written observations received shall be immediately forwarded to the Party concerned and shall be attached to the reasoned request referred to the Ministerial Council.

Article 18

Urgency

(1) In cases of urgency due to the risk of serious and irreparable damage to an objective of the Treaty, the Secretariat may, on the basis of a *prima facie* finding of non-compliance, refer a reasoned request directly to the next possible meeting of the Permanent High Level Group.

(2) The Permanent High Level Group may take appropriate and proportionate interim measures upon request by the Secretariat. The Permanent High Level Group shall review the existence of urgency.

(3) For the application of this article, the Permanent High Level Group shall adopt guidelines determining the criteria for urgency, the procedure for adoption as well as the scope and limits of interim measures.

Article 19

Suspension and discontinuance of the procedure

(1) The Secretariat may, at any point of the preliminary procedure, decide to suspend or discontinue the procedure, in particular where the Party brings the state of non-compliance with Energy Community law to an end or where it makes credible commitments as to its intention to amend its legislation, administrative or judicial practice. Such decision may also be taken where the Party concerned successfully refutes factual assumptions or convincingly counters the legal arguments made by the initiator.

(2) To achieve the results described in paragraph 1, the Secretariat may enter into informal bilateral discussions with the Party concerned. A short report on the results achieved shall be submitted by the initiator to the Ministerial Council upon closure of the file and be included to the case file.

(3) The Secretariat may reopen the procedure where there has been a material change in any of the facts on which the decision was based, where the Party concerned acts contrary to its commitments or where the decision was based on incomplete, incorrect or misleading information provided by that Party.

Chapter II - The role of private bodies

Article 20

Right to approach the Secretariat

- (1) Private bodies may lodge a complaint with the Secretariat against a Party arising from any measure the complainant considers incompatible with Energy Community law.
- (2) The notion of private body encompasses all natural and legal persons as well as companies, firms or associations having no legal personality.

Article 21

Subject matter

- (1) A complaint has to relate to a failure to comply with Energy Community law by a Party as defined above in Article 3.
- (2) A complaint against an EU Member State will be passed on to the European Commission. The Secretariat will inform the complainant and the Permanent High Level Group of the transfer to the European Commission. Such transfer shall be without prejudice to the obligations arising from Title III and IV of the Treaty.

Article 22

Form of the complaint

- (1) A complaint shall be made to the Secretariat in writing, by letter, fax or e-mail.
- (2) Complainants should send supporting documentary evidence, if available, and copies of relevant correspondence with the national authorities of the Party.

Article 23

Acknowledgment of receipt

- (1) Following registration by the Secretariat and assignment of a case number, an acknowledgement will immediately be sent to the complainant.
- (2) The complainant shall be asked to indicate whether he/she wishes their complaint to be treated in a confidential or non-confidential manner. The Secretariat will abide by the choice a complainant has made regarding confidentiality, i.e. disclosure of his/her identity, in its communication with the authorities of the Party concerned, other interested parties or the general public. Where a complainant has not indicated his/her choice, the Secretariat shall presume that the complainant has opted for non-confidential treatment.
- (3) The Secretariat will keep the complainant informed of the course of the procedure.

Article 24**Information of the Party concerned**

In its opening letter, the Secretariat shall inform the Party concerned that it is acting on the complaint.

Article 25**Request for information**

The Secretariat may, by simple request, require the complainant to provide all necessary information at any stage of the preliminary procedure.

Article 26**Reaction by the Secretariat**

(1) If the Secretariat takes the view that the subject matter of the complaint gives rise to a breach of Energy Community law, it shall initiate a preliminary procedure by way of an opening letter within six months upon registration of the complaint, with the aim to either resolve the dispute or to submit a reasoned request to the Ministerial Council.

(2) If the Secretariat takes the view that the subject matter of the complaint does not give rise to a breach of Energy Community law, it shall notify the complainant the reasons for not pursuing the case further. The complainant may bring its case to the Permanent High Level Group. The latter may request the Secretariat to initiate a preliminary procedure.

Article 27**Withdrawal of the complaint**

Withdrawal of the complaint shall not affect the right of the Secretariat to pursue the procedure further.

Article 28**Notification by a Party or by the Regulatory Board**

Articles 22 to 27 shall apply by analogy to cases where the Secretariat initiates a preliminary procedure upon notification by a Party or the Regulatory Board.

Title IV

PROCEDURE BEFORE THE MINISTERIAL COUNCIL

Chapter I - Breaches by a Party of its obligations (Article 91 of the Treaty)

Article 29

Reasoned request

- (1) A reasoned request for a decision of the Ministerial Council pursuant to Article 90 of the Treaty may be submitted by the Secretariat either upon complaint, upon notification by a Party or the Regulatory Board, or on its own initiative. In these cases, the reasoned request shall be preceded by a preliminary procedure in accordance with the provisions laid down in Title III, save as otherwise provided for in these Rules of Procedure.
- (2) A reasoned request may also be submitted by a Party or the Regulatory Board directly. In that case, the Party or the Regulatory Board may ask the Secretariat for factual information and legal advice before submitting the reasoned request.
- (3) The reasoned request shall be based on concrete factual findings and backed up by sufficient legal analysis. The reasoned request including annexes shall be sent to the Party concerned, to the Presidency and the Vice-Presidency as well as to the President of the Advisory Committee. A copy of the reasoned request shall be sent to the Secretariat in case the latter is not the initiator.
- (4) The reasoned request shall contain a proposal for the decision to be taken by the Ministerial Council pursuant to Article 91 of the Treaty.
- (5) The reasoned request shall be published on the Energy Community's website providing for confidentiality of the complainant, where applicable.

Article 30

Scope of the decision

- (1) The Ministerial Council decides on the proposal made in the submitted reasoned request. It applies Energy Community law including these Rules.
- (2) In its decision, the Ministerial Council shall either establish the existence of a breach by a Party of its obligations arising from Energy Community law according to the proposal or dismiss the request entirely or partially.

Article 31

Reply by the Party concerned

- (1) Within two months following receipt of a copy of the reasoned request, the Party concerned may reply in writing to the Secretariat.
- (2) The Secretariat shall notify all Parties and Participants, the Regulatory Board, the Advisory Committee

as well as persons and bodies participating in the preliminary procedure of the reasoned request as well as any reply to it. Within two months of this notification, they shall be entitled to submit written observations to the Secretariat. The Regulatory Board and the Secretariat may submit written observations where they are not the initiator of the case.

Article 32

Advisory Committee

(1) Before taking the decision pursuant to Article 91 of the Treaty, the Presidency and the Vice-Presidency shall ask an Advisory Committee for its opinion on the reasoned request, taking into account any reply by the Party concerned. The Ministerial Council shall not be bound by the opinion of the Advisory Committee.

(2) The Advisory Committee shall be independent from the authorities of the Parties and the institutions established under the Treaty. It shall be bound by Energy Community law, including these Rules, and in particular Article 94 of the Treaty.

(3) The Advisory Committee shall be composed of five members appointed by the Ministerial Council by unanimity for a renewable term of four years, including one member representing the European Union. Members shall be chosen from persons whose independence is beyond doubt and who possess the qualifications required for appointment to the highest judicial offices in the respective Party.

(4) The procedure before the Advisory Committee shall not last longer than five months upon being tasked in accordance with paragraph 1 of this Article. Based on the reasoned request and taking into account a reply by the Party concerned as well as the written observations received and after having conducted a public hearing, the Advisory Committee of the Energy Community shall adopt an opinion on the reasoned request.

(5) The Advisory Committee shall adopt its opinion by majority of its members. The opinion shall propose to uphold or dismiss the reasoned requests entirely or partially. The President of the Advisory Committee shall forward it to the President of the Permanent High Level Group the Party concerned and the Secretariat within five working days upon its adoption.

(6) The Advisory Committee shall adopt its internal rules of procedure. The members of the Advisory Committee shall elect among themselves a President for the period of two years.

Article 33

Proceedings of the Permanent High Level Group

(1) The President of the Permanent High Level Group shall circulate the opinion of the Advisory Committee to the members of the Permanent High Level Group. The opinion of the Advisory Committee shall be made publicly available on the Energy Community website not later than three days upon its adoption.

(2) At the next meeting after the adoption of the Advisory Committee's opinion, the Permanent High Level Group shall hear both parties to the dispute as well as the President of the Advisory Committee. The Permanent High Level Group shall include the reasoned request on the agenda of the next meeting of the Ministerial Council. If it agrees with the reasoned request, it may include it as an "A" item on the agenda of the Ministerial Council in line with its Rules of Procedure.

Article 34

Decision by the Ministerial Council

(1) At its meeting, or, as the case may be, by correspondence, the Ministerial Council takes its decision in accordance with Article 30(2).

(2) The decision by the Ministerial Council shall be taken in accordance with the rules laid down in Article 91(1) of the Treaty.

(3) The decision shall be signed by the Presidency. It shall be sent to the Party concerned, the submitted of the reasoned request and the Secretariat. The Advisory Committee's opinion shall be appended to the Ministerial Council's decision.

Article 35

Decision in the absence of a reply

Where the Party concerned, after having been duly informed, fails to reply in its defence on time, a decision shall be taken based on the facts submitted in the reasoned request alone.

Article 36

Publication of the decision

The decision taken by the Ministerial Council shall be made publicly available on the website of the Secretariat.

Article 37

Binding nature of the decision

The decision by the Ministerial Council shall be binding on the Parties concerned from the date of its adoption.

Article 38

Consequences of a decision establishing failure to comply

(1) Where the Ministerial Council establishes the existence of a breach of a Party's obligation pursuant to Article 91 of the Treaty the Party concerned shall take all appropriate measures to rectify the breach and ensure compliance with Energy Community law.

(2) The Secretariat, in accordance with Article 67(b) of the Treaty, shall review the proper implementation by the Party concerned of the decision, and may bring the matter directly before the Ministerial Council on the grounds of a failure to take the necessary measures to comply with the decision.

Chapter II - Serious and persistent breaches (Article 92 of the Treaty)

Article 39

Serious and persistent breach

The Ministerial Council shall establish the existence of a serious and persistent breach by a Party of its obligations under the Treaty taking into account the particularities of each individual case.

Article 40

Request

(1) A Party, the Secretariat or the Regulatory Board may request the Ministerial Council to determine the existence of a serious and persistent breach without a preliminary procedure.

(2) The request may follow up on a prior decision taken by the Ministerial Council under Article 91 of the Treaty or raise a new issue.

(3) The request shall set out the allegations against the Party concerned in factual and legal terms. It shall also contain a proposal as to concrete sanctions to be taken in accordance with Article 92(1) of the Treaty.

(4) The request shall be submitted to the Presidency and the Vice-Presidency at least 60 days before the respective meeting. A copy shall be submitted to the Secretariat for registration. The request shall not be made public.

Article 41

Decision-making procedure

(1) The Presidency shall, within seven days after receiving it, forward the request to the Party concerned and ask it for a reply to the allegations made in the request.

(2) The Presidency and the Vice-Presidency may ask the Advisory Committee for its written opinion.

(3) The decision by the Ministerial Council on the existence of a serious and persistent breach shall be taken in accordance with Articles 92(1) and 93 of the Treaty.

(4) The decision taken by the Ministerial Council shall be made publicly available on the Secretariat's website.

Article 42

Measures under Article 92

(1) In the decision establishing the existence of a serious and persistent breach, the Ministerial Council shall determine measures in accordance with Article 92(1) of the Treaty and specify a time-limit.

(2) The obligations of the Party concerned under the Treaty shall in any case continue to be binding on that Party.

(3) The Ministerial Council shall at each subsequent meeting verify that the grounds continue to apply on which the decision establishing the existence of a serious and persistent breach was made and sanctions were imposed.

Chapter III - Revocation of decisions

Article 43

Procedural aspects

(1) The Ministerial Council, in accordance with Articles 91(2) and 92(2), may decide by simple majority to revoke decisions taken under Articles 91(1) and 92(1) respectively. Revocation of a decision may be proposed by any Party.

(2) Before taking the decision to revoke decisions taken under Articles 91(1) or 92(1) of the Treaty, the Ministerial Council shall ask the Secretariat and the Party concerned for their reports on the factual circumstances, as well as a legal opinion by the Advisory Committee based on the two reports.

(3) The Ministerial Council shall give reasons for its decision to revoke a previous decision and shall make the revocation decision publicly available on the Energy Community website.

(4) A revocation shall not affect decisions taken within the domestic legal orders following up the initial decision by the Ministerial Council.

Title V

FINAL PROVISIONS

Article 44

Amendments to Rules of Procedure of the Ministerial Council

(1) In Item VII.5. of Procedural Act 2006/01 on Internal Rules of Procedure of the Ministerial Council of the Energy Community, the text after the semicolon is deleted. The semicolon is replaced by a full stop.

(2) In Item VII.6. of Procedural Act 2006/01 on Internal Rules of Procedure of the Ministerial Council of the Energy Community, the last sentence is deleted.

Article 45

Addressees

This Procedural Act is addressed to and shall be binding on all Parties to the Treaty and institutions set up under the Treaty.

Article 46

Entry into force

(1) This Procedural Act shall enter into force upon adoption.

(2) Cases initiated already before 16 October 2015 shall be dealt with in accordance with the Procedural Act applicable before the amendments adopted on that date.

Article 47

Review

The Rules of Procedure in this Procedural Act shall be reviewed in the light of experience upon proposal by the Secretariat in 2016. The review shall include the approach towards measures under Article 92 of the Treaty and the institutional set up for dispute resolution.

Article 48

Publication

The Director of the Energy Community Secretariat shall make this Procedural Act available to all Parties and institutions under the Treaty within 7 days of its adoption and to the public on the website of the Energy Community.

Done in Tirana on 16 October 2015