



**PROCEDURAL ACT No 01/2019  
OF THE REGULATORY BOARD OF THE ENERGY COMMUNITY**

**2019/01 ECRB-EnC: Decision of 24 April 2019 of the Energy Community Regulatory Board on the amendment of the Internal Rules of Procedure, Procedural Act 2007/01.**<sup>1</sup>

The Regulatory Board of the Energy Community,

Having regard to the Treaty Establishing the Energy Community (hereafter "Energy Community Treaty") and in particular Article 60, 86 and 87 thereof,

Having regard to the proposal, made by the President and Vice-President,

Acting in accordance with the procedure laid down in Article 82 and 83 of the Energy Community Treaty,

Acting in accordance with the procedure laid down in Article 13.3 of the Internal Rules of Procedure of the Regulatory Board of the Energy Community, Procedural Act No. 01/2007 amended by Procedural Acts 2009/01, 2012/01, 2013/02 and 2015/01.

HAS DECIDED AS FOLLOWS:

**Article 1**

Procedural Act No. 2019/01 amending the Internal Rules of Procedure of the Regulatory Board of the Energy Community as laid down in the Annex to this Act is hereby adopted.

**Article 2**

This decision is addressed to the members of the Energy Community Regulatory Board.

**Article 3**

The Energy Community Secretariat shall make this decision and its annex available to all Parties and institutions under the Energy Community Treaty within seven days after its adoption.

**Article 4**

This decision shall enter into force upon adoption.

Done in Athens on 24 April 2019.

For the Regulatory Board

The President

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<sup>1</sup> Amended by Procedural Act 2009/01, 2011/01, 2012/01, 2013/02 and 2015/01.



## **ANNEX TO PROCEDURAL ACT No 01/2019 OF THE REGULATORY BOARD OF THE ENERGY COMMUNITY**

### **THE ENERGY COMMUNITY REGULATORY BOARD INTERNAL RULES OF PROCEDURE**

#### **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 and Procedural Acts. 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. These registers shall form a part of the management report.

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 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.

11.2 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.