

PROCEDURAL ACT OF THE MINISTERIAL COUNCIL OF THE ENERGY COMMUNITY

2022/PA/01/MC-EnC: 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;

Having regard to the proposal made by the European

Union, HAS ADOPTED THIS PROCEDURAL ACT:

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

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.
- (2) 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.
- (3) 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

For the Ministerial Council

Presidency A blue ink signature, likely of the President of the Council, written over the word "Presidency".