

PROCEDURAL ACT 2024/01/MC-EnC

OF THE MINISTERIAL COUNCIL OF THE ENERGY COMMUNITY

amending the Energy Community Staff Regulations of 18 December 2007 as amended by Procedural Act 2009/04/MC-EnC and Procedural Act 2022/02/MC-EnC, and amending Procedural Act 2006/02/MC-EnC on the adoption of Rules for Recruitment, Working Conditions and Geographical Equilibrium of the Secretariat's Staff of the Energy Community, as amended by Procedural Act 2016/01/MC-EnC and Procedural Act 2022/02/MC-EnC

The Ministerial Council of the Energy Community,

Having regard to the Treaty establishing the Energy Community, and in particular Articles 69, 82, 83, 86 and 87 thereof,

Whereas the Energy Community's Staff Regulations should be amended to provide greater clarity as regards the rules of appointment and performance evaluation, on salaries and social benefits, on the arbitration of disputes concerning the staff of the Energy Community Secretariat and on the applicability of these Staff Regulations to Director of the Energy Community Secretariat,

Whereas the Energy Community's Rules for Recruitment, Working Conditions and Geographical Equilibrium of the Secretariat's Staff of the Energy Community should be amended to ensure alignment with the above-mentioned amendments to the Staff Regulations,

Whereas it is necessary to provide transitional arrangements to ensure legal certainty on the applicability of these amendments to the present Director of the Energy Community Secretariat during his current mandate,

Having regard to the proposal of the European Commission,

HAS ADOPTED THIS PROCEDURAL ACT:

Article 1

Amendments to the Energy Community Staff Regulations of 18 December 2007 as amended by Procedural Act 2009/04/MC-EnC and Procedural Act 2022/02/MC-EnC

- (1) In Section 2.1. ('Definitions'):
- In the first subparagraph a sentence shall be added at the end: 'The Director is a staff member.';
 - Third subparagraph shall be amended to read as follows: 'Seconded Staff': staff members seconded by their governments or international organisations for an assignment within the Secretariat';

- Sixth subparagraph shall be amended to read as follows: ‘Employer’: The Energy Community, represented by the Director of the Energy Community Secretariat or by the Ministerial Council as regards the Director’;
- (2) Section 3.1. ("The international nature of service") shall be amended to read as follows:
 - ‘The staff members are international civil servants whose obligations are exclusively international. By accepting appointment, they pledge themselves to discharge their functions and to regulate their conduct with the interests of Energy Community alone in view. They shall be subject to the authority of the Director and shall be responsible to him/her in the exercise of their functions. The Director shall be subject to the authority of the Ministerial Council. The staff members shall not seek or accept instructions in the performance of their duties from any government or other authority external to the Energy Community.’
- (3) In Section 3.3. ("Outside activities"):
 - Subparagraph a) shall be amended to read as follows: ‘Staff members shall not engage in any activity outside the Energy Community which is incompatible with the proper performance of their duties, may give rise to a conflict of interest, or may cause damage to the reputation of the Energy Community.’;
 - Subparagraph b) shall be amended to read as follows: ‘Staff members shall not engage in any paid occupation of employment outside Energy Community without prior written approval of the Director. Any staff member who has a share directly or indirectly of a company, involved in the energy sector, which may allow him/her to influence the management of the company, shall notify in writing the Director about this fact. In a similar case, the Director shall notify in writing the Presidency of the Ministerial Council. The Director shall not engage in any paid occupation of employment outside Energy Community without prior written approval of the Presidency of the Ministerial Council. The Presidency of the Ministerial Council may grant its written approval for a range of activities.’
 - Subparagraph c) shall be replaced to read as follows: ‘Before taking up duties in the Secretariat, the Director shall submit to the Ministerial Council of the Energy Community a declaration of integrity laying down any interest which might be considered prejudicial to his independence. The Director shall update such declaration when circumstances change. If at any time in the course of duties the Director becomes aware of any potential conflict of interest that may be perceived as possibly jeopardising his or her independence and integrity, he or she shall inform the Presidency of the Ministerial Council without undue delay.’
 - Subparagraph d) shall be inserted and read as follows: ‘The Director shall report about the implementation of this provision annually to the Ministerial Council.’
- (4) Section 3.5.a) ("Use and release of information") shall be amended to read as follows:
 - ‘Officials of the Secretariat shall exercise the necessary discretion in all matters of official business. They shall not, except in the performance of their duties or by authorization of the Director, or by the Presidency of the Ministerial Council as regards the Director, communicate to any person unpublished information known to them by reason of their official position, nor shall they at any time use such information to personal advantage including financial advantages. This obligation shall continue to bind Officials of the Secretariat after their separation from service.’
- (5) Section 3.7.a) ("Honours and Gifts") shall be amended to read as follows:

- ‘In connection with their duties staff member shall not accept, or offer, any honor, decoration, favor, gift or fee from/to any government or any other source external to the Secretariat, which is incompatible with his/her status as an international civil servant. A staff member being offered or receiving any such honor, decoration, favor, gift or fee shall report this fact forthwith to the Director. The Director shall report such facts to the Ministerial Council. Gifts received by staff members in an official capacity become property of the Energy Community, shall be kept at the premises of the Secretariat and shall be listed in an index drawn up for this purpose.’
- (6) In Section 4.1. ("Appointment of the Director") under 4. ("Appointments") a sentence shall be added at the end:
 - ‘The appointment of the Director shall take effect as of the date that the Director signs his or her Employment Agreement as set out in Section 4.4.’
- (7) Section 4.1.bis ("Deputy Director") shall be amended to read as follows:
 - The Director may assign the function of Deputy Director to one of the existing heads of unit in the Secretariat. The Director shall define tasks of Deputy Director.’
- (8) In Section 4.4. ("Employment Agreement"):
 - Subparagraph a) shall be amended to read as follows: ‘The terms of employment of a staff member shall be governed by an Employment Agreement which shall be signed by the Director and by the staff member. Before taking up his or her functions, the Director and the Presidency of the Ministerial Council shall sign an Employment Agreement, which has been approved by the Ministerial Council in line with the Rules for Recruitment, Working Conditions and Geographical Equilibrium of the Secretariat’s Staff.’;
 - Subparagraph b) shall be amended to read as follows: ‘The Employment Agreement shall state as a minimum:
 - (a) Name and legal address of the employer;
 - (b) Name and legal address of the employee;
 - (c) The effective date of appointment;
 - (d) The duration of the appointment;
 - (e) Ordinary duty station;
 - (f) The job title;
 - (g) Total remuneration pertaining to the appointment;
 - (h) Conditions for probation;
 - (i) Total of the annual leave entitlement;
 - (j) The number of working hours per week;
 - (k) Explicit list of documents, which are attached to the Agreement, including these Staff Regulations, and which refer to regulation of the employment relationship.’.
- (9) In Section 4.5.b) ('Job descriptions') a sentence shall be added at the end:
 - The job description for the Director’s post shall be set out in his or her Employment Agreement.
- (10) In Section 4.7. ('General Performance requirements'):

- Subparagraph a) shall be amended to read as follows: ‘Staff members shall fulfil their duties and responsibilities conscientiously and shall strictly follow all instructions and guidelines provided by the Director and other superiors and/or supervisors. Staff members shall report to the Director regarding their activities on a regular basis.’;
 - Subparagraph b) shall be amended to read as follows: ‘The Director may assign, either temporarily or permanently, duties and responsibilities to a Staff member that correspond to the Staff member’s education and training and capabilities, and which are reasonable in terms of the relevant job description.’;
 - Subparagraph c) shall be amended to read as follows: ‘Staff members may present in writing their disagreement with any assignment if they are of the view that it is not in accordance with the requirements under point (b) of this Section.’;
 - Subparagraph d) shall be inserted and read as follows: ‘The Director shall establish a human resources performance management strategy that includes a promotion procedure linked to performance criteria, subject to budgetary constraints.’.
- (11) In Section 4.8. (‘Performance Appraisal/Staff Dialogues’):
- Subparagraph b) shall be amended as follows: ‘Performance reports, including comments and recommendations, shall be made in writing by immediate superiors. The annual report shall be discussed with and shown to the staff member concerned who may attach to it such comments as he or she may consider relevant and shall sign and date it.’.
 - Subparagraph c) shall be inserted and read as follows: ‘In the first quarter of each calendar year, the Director shall be subject to an annual performance appraisal. The objective of the annual appraisal is to assess the competence, the efficiency, and the conduct in the service of the Director and to adjust the Job Description, as need be. A representative of the Contracting Party holding the Presidency of the Ministerial Council in the year preceding the assessment, as well as a representative of the European Commission, shall act as reporting officers. The Director shall establish a self-assessment by 31 January of the following year, which is subsequently discussed with the two reporting officers. Within 4 weeks, the reporting officers draw a report which is notified in writing to the Director and circulated for information to the Ministerial Council. In case of disagreement with the report, the Director may ask the Presidency of the Ministerial Council to reconsider it. The Presidency must duly motivate its opinion in writing and inform the Ministerial Council’.
- (12) Section 4.9.c) (‘Appointment/Extension Periods’) shall be added and read as follows:
- ‘The appointment of the Director may be renewed once for a fixed term of five years. This shall be indicated in his or her Employment Agreement.’.
- (13) In Section 4.10. (‘Probationary Period’):
- Subparagraph a) shall be amended to read as follows: ‘Appointments of Staff members shall be subject to a probation period of six months according to the Rules for Recruitment, Working Conditions and Geographical Equilibrium for Secretariat’s Staff and to conditions to be specified in the Employment Agreement.’;
 - A new subparagraph shall be added after subparagraph a) and read as follows: ‘The Director shall serve a probationary period of six months. The Ministerial Council, following an appraisal of the Director’s performance at the end of the probationary period in accordance with the rules set out in Section 4.8.c), shall decide to confirm or terminate the Employment Agreement for the Director in accordance with the rules set out in Article

88 of the Treaty. Any Member of the Ministerial Council may inform the Ministerial Council of their views in writing no later than two weeks prior to the end of the six-month probationary period. In derogation from Section V 23—25 (sentences 1 and 2) of Procedural Act 2006/01/MC-EnC on the adoption of the internal Rules of Procedures of the Ministerial Council of the Energy Community, as amended, the Director may initiate a decision by correspondence within ten calendar days prior to the end of the six-month probationary period on the basis of the appraisal. Section 4.10h) does not apply’.

- (14) Section 9.1.a) ('Salaries') shall be amended to read as follows:
- 'The Director, in consultation with the European Commission, shall establish a competitive salary scale corresponding to the classification of posts in the Energy Community Secretariat. The salary scale shall include a fork for promotions. It shall be proposed by the European Commission and approved by the Ministerial Council as part of the relevant budget proposal, pursuant to the rules set out in Article 88 of the Treaty.'
- (15) A new Section ("Parental Leave") shall be inserted after Section 10.4. and read as follows:
- 'Any staff member shall be entitled to up to six months of parental leave without basic salary for every child, to be taken during the first twelve years after the birth or adoption of the child. The duration of the leave may be doubled for single parents. The minimum leave taken at any one time shall not be less than one month.'
- (16) Section 10.7 ("Special non-paid leave") shall be amended to read as follows:
- Staff members may be granted special leave without pay. The Director, and the Presidency of the Ministerial Council as regards the Director, shall decide on the conditions and the period of the special non-paid leave in each individual case on the ground of the relevant application.'
- (17) In Section 12.1 ("Participation/ National Social Security Schemes"):
- Subparagraph a) shall be amended to read as follows: 'Staff members are responsible to arrange at their own cost for appropriate health and pension insurance as of the first day of appointment, subject to point c) below. Staff members have to inform the Director, and the Presidency as regards the Director, in writing of their health insurance coverage within one month of the appointment date.';
 - Subparagraph c) shall be added and read as follows: 'The Employer may compensate staff members for a fixed share of the costs of their health insurance. Such compensation shall be approved as part of the relevant budget proposal.'
- (18) Section 13 ('Staff Appeal') shall be amended to read as follows:
- 'Staff members can notify in written form the Director, or the President and the Vice-President of the PHLG in the eventuality that a complaint concerns the Director, whenever the Staff member considers that he/she has been treated in a manner that is inconsistent with the provisions of the Staff Regulations, the rules on recruitment, working conditions and geographical equilibrium or other relevant rules or that he/she has been subjected to unjustifiable or unfair treatment by a superior.'
- (19) Section 14 ('Arbitration Committee') shall be amended to read as follows:

- ‘Any dispute between the Employer and a Staff Member concerning these Staff Regulations shall, in the first instance, be submitted by the Director or the Staff Member to an Arbitration Committee. The Arbitration Committee shall be composed by:
 - An independent and experienced EU law expert nominated by the Contracting Party holding the Presidency when the Arbitration Committee is meeting;
 - An independent and experienced EU law expert nominated by Contracting Party that will hold the Presidency for the next term;
 - An independent and experienced EU law expert nominated by the European Commission, who acts as the chair of the Arbitration Committee.

The list of nominated experts shall be adopted by the Permanent High Level Group by simple majority for a period of five years. Before taking its decision, the Permanent High Level Group may reject experts based on the lack of independence or expertise and request a renomination by the nominating party.

The Arbitration Committee shall decide by majority. The Permanent High Level Group shall establish rules governing the procedure before the Arbitration Committee by Procedural Act. The Arbitration Committee shall protect personal data of all Staff Members concerned.’

- (20) Section 15 (‘Dispute Settlement’) shall be replaced by the following:

‘Once the procedure under Section 14 has been exhausted, any dispute between the Employer and a Staff Member shall, upon request of one of the parties, be finally settled by a tribunal composed of a single arbitrator appointed by the Secretary General of the Permanent Court of Arbitration, Peace Palace, Carnegieplein 2, 2517 KJ The Hague, The Netherlands, in accordance with the relevant Optional Rules for Arbitration involving international organizations and private parties, as set out in Article 5(4) of the Agreement between the Republic of Austria and the Energy Community Regarding the Seat of the Secretariat of the Energy Community. The tribunal shall decide a dispute in accordance with these Staff Regulations. Matters concerning the interpretation of the Treaty establishing the Energy Community and its appendices shall not be within the competence of the tribunal.’

Article 2

Amendments to Procedural Act 2006/02/MC-EnC on the adoption of Rules for Recruitment, Working Conditions and Geographical Equilibrium of the Secretariat's Staff of the Energy Community, as amended by Procedural Act 2016/01/MC-EnC and Procedural Act 2022/02/MC-EnC

- (1) Section II. 9 shall be deleted.
- (2) Section II.10. shall be amended to read as follows:
 - ‘Within 7 days after the Ministerial Council meeting, on the ground of its decision, the Ministerial Council represented by the Presidency shall issue an Act of Appointment containing an Employment Agreement, which shall be signed by the Director. The draft Act of Appointment shall be included in the annex to the Ministerial Council decision on the appointment of the Director. The Employment Agreement shall include the elements

listed in point 4.4(b) of the Staff Regulations of the Energy Community as well as the Director's job description and a reference to the rules on the probationary period set out in point 4.10b) of the Staff Regulations of the Energy Community. The appointment of the Director shall take effect as of the date the Director signs his or her Employment Agreement.'

(3) Section II. bis shall be amended to read as follows:

- 'The Director may assign the function of Deputy Director to one of the existing heads of unit in the Secretariat. The Director shall define the tasks of Deputy Director.'

(4) In Section III. 9:

- Subparagraph 9.2 shall be amended to read as follows: 'During the sixth month of any probationary period, the staff member's immediate superior shall draw up a report on his or her competence, efficiency and conduct. The report shall recommend:
 - (a) that the official's appointment be confirmed;
 - (b) that his or her period of probation be extended to maximum of six more months;
 - (c) that his or her appointment be terminated.'
- Subparagraph 9.3 shall be amended to read as follows: 'The report shall be transmitted before the end of the sixth month to the Director for decision.'

(5) A new Section shall be added after Section III.11. and read as follows:

- 'The Director shall serve a probationary period of 6 months. The procedure set out in Section 4.10.b) of the Staff Regulations of the Energy Community shall apply.'

Article 3

Entry into force and applicability

- (1) This Procedural Act shall enter into force upon adoption.
- (2) The provisions of Staff Regulations, as amended by this Procedural Act, that concern the Director of the Energy Community Secretariat shall apply to the present Director upon entry into force of this Procedural Act except for Section 4.1. on appointment of the Director, the last sentence of Section 4.5.b) on defining the job description in the Employment Agreement and Section 4.10.b) on probationary period of the Director.

Second sentence of Section 4.4.a) on Employment Agreement shall apply to the present Director upon entry into force of this Procedural Act by including the conditions for employment in the Act of Appointment issued by the Presidency representing the Ministerial Council.

Pursuant to Section 3.3. of the Staff Regulations of the Energy Community, the Director shall, no later than 31 January 2024, submit to the Ministerial Council the first declaration of integrity laying down any interest which might be considered prejudicial to his independence.

The Director shall, by end of 2024, provide a first report to Ministerial Council about his activities held outside the Energy Community. The report may be provided orally or in writing.

- (3) The provisions of Rules for Recruitment, Working Conditions and Geographical Equilibrium of the Secretariat's Staff of the Energy Community, as amended by this Procedural Act, that concern the Director of the Energy Community Secretariat shall apply to the present Director upon entry into force of this Procedural Act except for Rule II.9 on recruitment of the Director and Rule III.12 on probationary period for the Director.

Article 4

The Secretariat shall make this Procedural Act available to all Parties and institutions under the Energy Community Treaty within 7 days after its adoption.

Done by correspondence, on the 19th of February 2024.

For the Ministerial Council

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Presidency