



KOMMISSIONEN FOR DE EUROPÆISKE FÆLLESSKABER

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Forslag til

RÅDETS AFGØRELSE

**om Fællesskabets holdning i Energifællesskabets Ministerråd til visse
procedurespørgsmål i forbindelse med Energifællesskabets budget, procedureregler for
godkendelse af lande som observatører i Energifællesskabet og godkendelse af Moldova,
Ukraine, Norge og Tyrkiet som observatører i Energifællesskabet**

(forelagt af Kommissionen)

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BEGRUNDELSE

Den 17. november 2006 afholder Energifællesskabets Ministerråd sit første møde.

Dette møde vil først og fremmest dreje sig om at vedtage de procedureafgørelser, der er omhandlet i energifællesskabstraktaten, og er nødvendige for Energifællesskabets problemfrie funktion. I henhold til energifællesskabstraktatens artikel 88 er det Europa-Kommissionen, som udarbejder forslag til og forelægger Energifællesskabet procedureafgørelser om budgetspørgsmål.

Et yderligere punkt på ministerrådsmødet er godkendelse af Moldova, Ukraine, Norge og Tyrkiet som observatører i Energifællesskabet i overensstemmelse med disse landes egen anmodning i henhold til energifællesskabstraktatens artikel 96.

Forslag til

RÅDETS AFGØRELSE

om Fællesskabets holdning i Energifællesskabets Ministerråd til visse procedurespørgsmål i forbindelse med Energifællesskabets budget, procedureregler for godkendelse af lande som observatører i Energifællesskabet og godkendelse af Moldova, Ukraine, Norge og Tyrkiet som observatører i Energifællesskabet

RÅDET FOR DEN EUROPÆISKE UNION HAR -

under henvisning til traktaten om oprettelse af Det Europæiske Fællesskab, særlig artikel 300, stk. 2, andet afsnit,

under henvisning til forslag fra Kommissionen, og

ud fra følgende betragtninger:

- (1) Energifællesskabstraktatens artikel 74 og 88 bestemmer, at Ministerrådet for Energifællesskabet vedtager en procedureafgørelse om fastsættelse af proceduren for gennemførelse af budgettet og for regnskabsaflæggelse, revision og kontrol.
- (2) I henhold til energifællesskabstraktatens artikel 96 kan Energifællesskabets Ministerråd med enstemmighed acceptere et naboland som observatør.
- (3) I henhold til energifællesskabstraktatens artikel 86 er Energifællesskabets institutioner bemyndiget til at træffe procedureafgørelser, som regulerer spørgsmål vedrørende organisation, budget og transparens.
- (4) Efter Bulgariens og Rumæniens tiltrædelse til Den Europæiske Union, vil disse landes bidrag til Energifællesskabets budget, der er omhandlet i bilag IV til Energifællesskabstraktaten, blive betalt af Det Europæiske Fællesskab jf. Tiltrædelsesaktens¹ artikel 6, og disse lande bliver i henhold til energifællesskabstraktatens artikel 99 medlemmer af Energifællesskabet -

¹ EUT L 157 af 21.6.2005, s. 203.

TRUFFET FØLGENDE AFGØRELSE:

Artikel 1

Fællesskabets holdning i Energifællesskabets Ministerråd til Energifællesskabets procedure for gennemførelse af budgettet og for regnskabsaflæggelse, revision og kontrol er fastlagt i forslaget til en procedureafgørelse om vedtagelse af Energifællesskabets procedurer for opstilling og gennemførelse af budgettet og for regnskabsaflæggelse, revision og kontrol, der er tilknyttet denne afgørelse som bilag A.

Artikel 2

Fællesskabets holdning i Energifællesskabets Ministerråd til gennemførelsen af bilag IV til energifællesskabstraktaten efter Bulgariens og Rumæniens tiltrædelse til Den Europæiske Union er fastlagt i forslaget til en procedureafgørelse om gennemførelsen af bilag IV til energifællesskabstraktaten for så vidt angår Bulgariens og Rumæniens deltagelse i Energifællesskabet, der er tilknyttet denne afgørelse som bilag B.

Artikel 3

Fællesskabets holdning i Energifællesskabets Ministerråd til procedurereglerne for godkendelse af lande som observatører og rettigheder og pligter for observatører i Energifællesskabet er fastlagt i forslaget til en procedureafgørelse om vedtagelse af procedureregler for godkendelse af lande som observatører og rettigheder og pligter for observatører i Energifællesskabet, der er tilknyttet denne afgørelse som bilag C.

Artikel 4

Fællesskabets holdning i Energifællesskabets Ministerråd til godkendelse af Moldova, Ukraine, Norge og Tyrkiet som observatører i Energifællesskabet er, at disse lande godkendes som observatører i Energifællesskabet.

Udfærdiget i Bruxelles, den

*På Rådets vegne
Formand*

ANNEX A

Draft

PROCEDURAL ACT OF THE MINISTERIAL COUNCIL OF THE ENERGY COMMUNITY

2006/...../MC-EnC: Ministerial Council Decision of 17 November 2006 on adoption of Energy Community Procedures for the Establishment and Implementation of Budget, Auditing and Inspection

The Ministerial Council of the Energy Community,

Having regard to the Treaty Establishing the Energy Community, and in particular Article 74 thereof,

Having regard to Article 88 of the Treaty Establishing the Energy Community,

Having regard to the proposal, made by the European Commission, dated,

HAS DECIDED AS FOLLOWS:

Article 1

Adopts the Procedures for the Establishment and Implementation of Budget of the Energy Community, Auditing and Inspection presented in annex to this procedural act.

Article 2

The Director of the Energy Community Secretariat shall be responsible for the implementation of these rules.

Article 3

This decision is addressed to all Parties and institutions under the Treaty Establishing the Energy Community.

Article 4

The Director of the Energy Community Secretariat shall make this decision and its annex available to all Parties and institutions under the Treaty Establishing the Energy Community within 7 days after its adoption.

Article 5

This decision shall enter into force upon adoption.

Done at (place), (date).

For the Ministerial Council

..... (signed by Presidency)

**Annex to the
Procedural Act**

on

**Adoption of Energy Community Procedures for the Establishment and Implementation
of Budget, Auditing and Inspection**

TITLE I

SCOPE AND APPLICATION

Article 1

This Procedural Act on Budgetary Issues (hereinafter “Rules”) spells out the essential financial rules for the administration of the Energy Community budget.

TITLE II

OBLIGATIONS OF THE PARTIES

Article 2

1. Parties assume full responsibility for the operational expenditure of the Energy Community, by way of annual contributions as set out in Annex IV of the Treaty, as stipulated in the relevant article 74 of the Treaty.
2. The annual contributions of the Parties are to be transferred to the Energy Community budget during the first quarter of each budget year.
3. Annual contributions of the Parties to the Energy Community budget are paid in Euros.
4. If a Party fails to meet its obligation to the Energy Community, the Budget Committee shall report to the Ministerial Council that in turn determine the existence of a breach by a Party pursuant to article 91 of the Treaty.

TITLE III

BUDGETARY PRINCIPLES

Article 3

The establishment and implementation of the budget of the Energy Community (hereinafter "the budget") shall comply with the principles of unity and budget accuracy, annuality, equilibrium, unit of account, universality, specification, sound financial management and transparency as provided for in these rules.

CHAPTER 1 PRINCIPLE OF UNITY AND BUDGET ACCURACY

Article 4

The budget is the instrument which, for each financial year, forecasts and authorises the revenue and expenditure considered necessary for the functioning of the Energy Community and its relevant institutions.

Article 5

The budget shall comprise:

- a. Revenue made up of the financial contributions by the Parties to the Treaty, in accordance with Article 2(1) of these Rules,
- b. Revenue assigned to specific items of expenditure in accordance with Article 15(1) of these Rules,
- c. Carry over of the previous year in accordance with Article 10 of these Rules,
- d. The expenditure of the Energy Community, in accordance in Article 74 of the Treaty, including administrative expenditure.

Article 6

1. No revenue shall be collected and no expenditure effected unless booked to a line in the budget.

2. An appropriation must not be entered in the budget, if it is not for an item of expenditure considered necessary.
3. No expenditure may be committed or authorised in excess of the appropriations authorised by the budget.

CHAPTER 2 PRINCIPLE OF ANNUALITY

Article 7

1. According to Article 74 of the Treaty, the Ministerial Council adopts every two years the budget of two consecutive years. Each year is covered by a separate budget endorsed by the Ministerial Council on an annual basis.
2. The appropriations entered in the budget shall be authorised for one financial year which shall run from 1 January to 31 December.

Article 8

1. The budget shall contain administrative appropriations which are non-differentiated and which shall consist of commitment appropriations and payment appropriations.
2. Commitment appropriations shall cover the total cost of the legal commitments entered into during the current financial year.
3. Payment appropriations shall cover payments made to honour the legal commitments entered into in the current financial year and/or earlier financial years.
4. Administrative expenditure arising from contracts covering periods that extend beyond the financial year, either in accordance with local practice or relating to the supply of equipment, shall be charged to the budget of the financial year in which it is effected.

Article 9

1. The revenue of the Energy Community referred to in Article 5 shall be entered in the accounts for the financial year on the basis of the amounts collected during the financial year in accordance with Article 2(2) of these Rules.
2. The appropriations authorised in the budget for a relevant year may be used solely to cover expenditure committed and paid in that financial year, and to cover amounts due against commitments from the previous financial year
3. Commitments shall be entered in the accounts on the basis of the legal commitments entered into up to 31 December.
4. Payments shall be entered in the accounts for a financial year on the basis of the payments effected by the accounting officer by 31 December of that year at the latest.

Article 10

1. Appropriations which have not been used at the end of the financial year for which they were entered shall be carried over into the following budget year as revenue.
2. Appropriations carried over shall be identified respectively in the accounts.

**CHAPTER 3
PRINCIPLE OF EQUILIBRIUM**

Article 11

1. The budget revenue and expenditure must be in balance.
2. The Energy Community may not raise loans.

**CHAPTER 4
PRINCIPLE OF UNIT OF ACCOUNT**

Article 12

The budget shall be drawn up and implemented in Euro and the accounts shall be presented in Euro.

**CHAPTER 5
PRINCIPLE OF UNIVERSALITY**

Article 13

Total revenue shall cover total expenditure. All revenue and expenditure shall be entered in full without any adjustment against each other.

Article 14

1. Revenue earmarked for specific purposes in the form of donations (Other income) shall be used only to finance them in accordance with these Rules.
2. All items of revenue within the meaning of paragraph 1 shall cover all direct or indirect expenditure incurred by the activity or purpose in question.
3. The budget shall carry lines to accommodate the categories of assigned revenue referred to in paragraph 1 and shall indicate the amount.

Article 15

1. The Director may accept donations to the Energy Community only upon in advance agreement of the Budget Committee, based on written information about the amount and the purpose of the donation and the financial charges involved.
2. The yearly financial report to the Ministerial Council shall include explicit information on proposed and received donations and their usage.

Article 16

1. The following deductions may be made from payment requests, invoices or statements, which shall then be passed for payment of the net amount:
 - (a) penalties imposed on parties to contracts, including procurement contracts;
 - (b) adjustments for amounts paid unduly, which can be made by means of direct deduction against a new payment of the same type to the same payee under the chapter, article and financial year in respect of which the excess payment was made, and which give rise to interim payments or payments of balances.
2. Discounts, refunds and rebates on invoices and payment requests shall not be recorded as revenue of the Energy Community.
3. Any negative balance shall be entered in the budget as expenditure.

CHAPTER 6 PRINCIPLE OF SPECIFICATION

Article 17

The appropriations in their entirety shall be earmarked for specific purposes by title and chapter; the chapters shall be further subdivided into articles and items.

Article 18

1. The Director shall take decisions on transfers of appropriations [(excluding human resources budget line)] within the lines of the budget within the a total limit of [10%] of the appropriations for the financial year.
2. The Director shall inform the Chairman of the Budget Committee within 7 days upon deciding on transfers in accordance with item 1 of this Article.

3. Other transfers than those referred to in paragraph 1 have to receive the preliminary agreement of the Budget Committee.

Article 19

Appropriations corresponding to assigned revenue may be transferred only, if they are used for the purpose to which the revenue is assigned. Appropriations may be transferred only to budget lines for which the budget has authorised appropriations or carries a token entry.

**CHAPTER 7
PRINCIPLE OF SOUND FINANCIAL MANAGEMENT**

Article 20

1. Budget appropriations shall be used in accordance with the principle of sound financial management, i.e., in accordance with the principles of economy, efficiency and effectiveness.
2. The principle of economy requires that the resources used by the Energy Community for the pursuit of its activities shall be made available in due time, in appropriate quantity and quality and at the best price.
3. The principle of efficiency is concerned with the best relationship between resources employed and results achieved.
4. The principle of effectiveness is concerned with attaining the specific objectives set and achieving the intended results. These results shall be evaluated.
5. The annual work programme of the Energy Community adopted by the Ministerial Council shall contain objectives and performance indicators.

**CHAPTER 8
PRINCIPLE OF TRANSPARENCY**

Article 21

1. The budget shall be drawn up and implemented and the accounts presented in compliance with the principle of transparency.
2. The budget and amending budgets, as finally adopted, shall be published on the website of the Energy Community Secretariat.

TITLE IV

BUDGET COMMITTEE

Article 22

1. A Budget Committee is hereby established.
2. The Budget Committee supervises and advises the Director in the financial management of the operations of the Energy Community and, in case of disagreement with the Director, reports to the Ministerial Council in accordance with these rules.
3. The Director shall inform regularly the Budget Committee on all matters relating to budgetary and financial management. The Budget Committee shall be empowered to obtain any necessary information or explanations regarding budgetary matters.

Article 23

1. The Budget Committee of the Energy Community shall consist of one member from each of the Contracting Parties and two members of the European Community, represented by the European Commission.
2. The European Community and each Contracting Party nominate their representatives. The term of office of the Budget Committee is 2 years.
3. Meetings of the Budget Committee will be chaired by the European Commission. The Chairperson may appoint a Co-chair.
4. The Budget Committee shall hold at least four ordinary meetings a year. In addition it shall meet at the instance of the Chairperson or at the request of at least one third of its members
5. The Budget Committee shall adopt its internal rules of procedure. Its decisions may be taken by written procedure. Budget Committee shall act by simple majority of the votes including the positive vote of the European Community. In case of a equal votes, the European Community shall have the deciding vote.
6. The Secretariat of the Budget Committee shall be provided by the Energy Community Secretariat.
7. The Energy Community Secretariat shall be represented at the meetings of the Budget Committee without voting rights.

TITLE V

ESTABLISHMENT AND STRUCTURE OF THE BUDGET

CHAPTER 1

ESTABLISHMENT OF THE BUDGET

Article 24

The budget shall be established in accordance with the Article 74 and 75 of the Treaty. It shall cover the operational expenses of the Energy Community necessary for functioning of its institutions in accordance with the tasks of those defined in Title V ("Institutions of the Energy Community") of the Treaty. The expenditure of each Institution shall be set out in a different part of the budget.

Article 25

1. For each year, the Director of the Energy Community Secretariat shall propose to the European Commission an estimate of the revenue and expenditure of the Energy Community of year N+1, by 31 March each year at the latest. This proposal shall be accompanied by explanatory general budgetary assumptions.
2. The European Commission shall submit this estimate to the Ministerial Council and propose the amount of the appropriations for the Energy Community in accordance with Annex IV of the Treaty. It shall also propose the number of staff of the Secretariat it considers that the Energy Community needs to carry out the tasks given under the Treaty in the budget period in question.
3. The budget proposal of the Energy Community , in addition to the stipulations of point (2) above, shall contain the following:
 - a. Outline of the work programme of the Energy Community for the budget period in question.

- b. An establishment plan setting the number of permanent and temporary posts authorised within the limits of the budget appropriations;
- c. a statement justifying the request for new posts- where there is a change in the number of persons in post.

Article 26

Any required amendment to the budget related to the estimated expenditures, including the number staff of the Secretariat, shall be subject of an amended budget adopted by the Ministerial Council by the same procedure as the initial budget.

**CHAPTER 2
STRUCTURE AND PRESENTATION OF THE BUDGET**

Article 27

The budget shall comprise a statement of revenue and a statement of expenditure.

Article 28

The budget shall show:

1. In the statement of revenue:
 - a. The estimated revenue of the Energy Community for the financial year in question;
 - b. The estimated revenue of the Energy Community for the preceding financial year;
 - c. Appropriate remarks on each revenue line;
2. In the statement of expenditure:
 - a. Appropriations for the financial year in question;
 - b. Appropriations for the preceding financial year;
 - c. Appropriate remarks on each subdivision.

Article 29

The establishment plan referred to in Article 24 shall show next to the number of posts authorised for the financial year, the number authorised for the preceding year and the number of posts actually filled.

It shall constitute an absolute limit for the Energy Community; no appointment may be made in excess of the limit set.

Article 30

The draft Budget presented for adoption to the Ministerial Council shall contain an explanatory memorandum prepared by the Director and agreed by the European Commission setting out the considerations which have guided the preparation of the budget, together with a summary table showing the proposed appropriations apportioned by the major items of the Energy Community expenditure.

TITLE VI

IMPLEMENTATION OF THE BUDGET

CHAPTER 1 GENERAL PROVISIONS

Article 31

The Director shall perform the duties of authorising officer. He shall implement the budget in compliance with these rules on the ground of Article 74 of the Treaty, on his own responsibility and within the limits of the appropriations authorised.

Article 32

1. The Director may delegate his powers of budget implementation to staff of the Secretariat. Those so empowered may act only within the limits of the powers expressly conferred upon them.

Article 33

1. All financial actors within the meaning of Chapter 2 of this Title shall be prohibited from taking any measures of budget implementation which may bring their own interests into conflict with those of the Energy Community. Should such a case arise, the actor in question must refrain from such measures and refer the matter to the competent authority.
2. There is a conflict of interests where the impartial and objective exercise of the functions of an actor in the implementation of the budget or an internal auditor is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other shared interest with the beneficiary or contractor.
3. The competent authority referred to in paragraph 1 shall be the immediate superior of the member of staff concerned. If the member of staff is the Director, the competent authority shall be the Chairperson of the Budget Committee.

Article 34

Technical expertise tasks and administrative, preparatory or ancillary tasks involving neither the exercise of public authority nor the use of discretionary powers of judgement may be entrusted by contract to external private-sector entities or bodies, where this proves to be indispensable.

CHAPTER 2 FINANCIAL ACTORS

SECTION 1 PRINCIPLE OF SEGREGATION OF DUTIES

Article 35

The duties of authorising officer and accounting officer shall be segregated and mutually incompatible.

SECTION 3 AUTHORISING OFFICER

Article 36

1. The authorising officer shall be responsible for implementing revenue and expenditure in accordance with the budgetary principles as described in Title III of this Procedural Act, and for ensuring that the requirements of legality and regularity are complied with.
2. To implement expenditure, the authorising officer shall make budget commitments and legal commitments, shall validate expenditure and authorise payments in accordance with the relevant provisions of this Procedural Act, and shall undertake the preliminaries for the implementation of appropriations.
3. Implementation of revenue shall comprise drawing up estimates of amounts receivable, establishing entitlements to be recovered and issuing recovery orders. It shall involve waiving established entitlements where appropriate.
4. The authorising officer shall assure that all the supporting documents related to operations carried out for a period of five years from the date of the decision granting discharge in respect of implementation of the budget are properly preserved.

Article 37

1. Having due regard to the risks associated with the management environment and the nature of the actions financed, the authorising officer shall put in place the organisational structure, internal management, control systems and procedures (hereinafter “Internal Management Rules of the Energy Community”) suited to the performance of his duties, including where appropriate *ex post* verifications
2. Before an operation is authorised, the operational and financial aspects shall be verified by members of staff other than the one who initiated the operation. Initiation and the *ex ante* and *ex post* verification of an operation shall be separate functions.

3. The staff responsible for the verifications shall be different from those initiating the operation and shall not be their subordinates.

Article 38

The Director, as authorising officer, shall report to Ministerial Council and inform the Budget Committee on the performance of his duties in the form of an annual activity report (hereinafter "Authorising officer's report"), together with financial and management information.

Article 39

Any member of staff involved in the financial management and control of transactions who considers that a decision he is required by his superior to apply or to agree to is irregular or contrary to the budgetary principles, as defined in Title III of this Procedural Act, or the professional rules he is required to observe shall inform the Director in writing and, if the latter fails to take action within a reasonable period, the Budget Committee. In the event of evidence of any illegal activity, fraud or corruption which may harm the interests of the Community, he shall inform the authorities and bodies designated by the applicable legislation of the domicile country.

Article 40

Where powers of budget implementation are delegated, Article 36 of these Rules shall apply *mutatis mutandis* to the authorised officers.

**SECTION 3
ACCOUNTING OFFICER**

Article 41

1. Upon proposal of the European Commission, the Director shall appoint an accounting officer, in accordance with the Procedural Act applicable to Rules for the recruitment, working conditions and geographic equilibrium of the Secretariat, who shall be responsible in the Secretariat for:
 - a. Proper implementation of payments, collection of revenue and recovery of amounts established as being receivable;
 - b. Preparing and presenting the accounts in accordance with Title VI;
 - c. Keeping the accounts in accordance with Title VI;
 - d. Implementing, in accordance with Title VI, the accounting rules and methods and the chart of accounts;

- e. Laying down and validating the accounting systems and where appropriate validating systems laid down by the authorising officer to supply or justify accounting information;
 - f. Treasury management.
2. Subject paragraph 3 the accounting officer is alone empowered to manage monies and other assets. He shall be responsible for their safekeeping.
 3. If necessary, the accounting officer may delegate certain tasks, with respect to the principle of segregation of duties.

CHAPTER 3 LIABILITY OF THE FINANCIAL ACTORS

SECTION 1 GENERAL RULES

Article 42

1. The responsibility under these Rules is personal.
2. Any member of staff may be required to make good, in whole or in part, any damage suffered by the Energy Community as a result of misconduct on his part in the course of or in connection with the performance of his duties assigned to him in accordance with the relevant duty description.

Article 43

1. Without prejudice to any disciplinary action, the authorising officer may withdraw any delegation at any time temporarily or definitively. The Chairman of the Budget Committee shall be immediately informed for such an action with a proper justification.
2. Without prejudice to any disciplinary action, the accounting officer may at any time be suspended temporarily or definitively from his duties by the Director, upon preliminary agreement of the European Commission. On a proposal of the European Commission, the Director shall appoint an interim accounting officer and consequently a permanent accounting officer in accordance with the recruitment rules of the Energy Community.

Article 44

1. The provisions of this chapter are without prejudice to the criminal law liability which the authorising officer and the persons referred to in this Chapter may incur as provided in the applicable national law of the domicile country and in the provisions in force on the protection of the Energy Communities' financial interests and on the fight against corruption involving officials of the Energy Community or officials of the Parties.
2. Any person, who has authority under these Rules, shall be respectively liable to disciplinary action in accordance with them and/or the applicable legislation of the domicile country. In the event of evidence of illegal activity, fraud or corruption which may harm the interests of the Energy Community, the matter will be referred to the competent authorities and bodies.

SECTION 2

RULES APPLICABLE TO THE AUTHORISING OFFICER

Article 45

1. The authorising officer may be required to make good, in whole or in part, any damage suffered by the Energy Community as a result of serious misconduct on his part in the course of or in connection with the performance of his duties, in particular if he determines entitlements to be recovered or issues recovery orders, commits expenditure or signs a payment order without complying with this Procedural Act. The same shall apply where, through serious misconduct, he fails to draw up a document establishing an amount receivable or if he fails to issue a recovery order or is, without justification, late in issuing it, or if he fails to issue a payment order or is late in issuing it, thereby rendering the Energy Community liable to civil action by third parties.
2. An authorising officer by delegation who considers that a decision falling under his responsibility is irregular or contrary to the principles of sound financial management shall inform the delegating authority in writing. If the delegating authority then gives a reasoned instruction in writing to the authorising officer by delegation to implement the decision in question, the latter must implement it and may not be held liable.
3. In the event of delegation, the authorising officer shall continue to be responsible for the effectiveness of the internal management rules put in place and for the choice of the authorising officer by delegation.
4. The Authorising officer shall not be held responsible for any rulings, provided by the Budget Committee and/or the Ministerial Council, in case they are strictly followed. Should the Authorising officer disagree with any of these rulings, he has the right to notify the relevant authority in writing. However, he is obliged to follow the relevant rulings.

SECTION 3
RULES APPLICABLE TO THE ACCOUNTING OFFICER

Article 46

In case of misconduct, the accounting officer may be liable to disciplinary action, in particular but not exclusively, where:

- a. he loses or damages money, assets and documents in his keeping or causes them to be lost or damaged by his negligence;
- b. he alters bank accounts or postal giro accounts without notifying the authorising officer in advance;
- c. he recovers or pays amounts which are not in conformity with the corresponding recovery or payment orders;
- d. he fails to take all necessary measures to collect revenue due.

CHAPTER 4
REVENUE OPERATIONS

SECTION 1
GENERAL PROVISIONS

Article 47

The Energy Community shall receive contributions from the Parties as laid down in Article 2 of this document.

Article 48

The funds paid to the Energy Community by the Parties shall bear interest for the benefit of the Energy Community budget.

SECTION 2
ESTIMATE OF AMOUNTS RECEIVABLE

Article 49

An estimate of the amount receivable shall first be made by the authorising officer responsible in respect of any measure or situation which may give rise to or modify an amount owing to the Community body.

SECTION 3
ESTABLISHMENT OF AMOUNTS RECEIVABLE

Article 50

1. Establishment of an amount receivable is the act by which the authorising officer or authorising officer by delegation:
 - (a) verifies that the debt exists;
 - (b) determines or verifies the reality and the amount of the debt;
 - (c) verifies the conditions in which the debt is due.
2. Any amount receivable that is identified as being certain, of a fixed amount and due must be established by a recovery order given to the accounting officer, accompanied by a debit note sent to the debtor. Both of these documents shall be drawn up and sent by the authorising officer responsible.
3. Without prejudice to the provisions laid down in the rules, contract or agreement applicable, any debt not repaid on the due date laid down in the debit note shall bear interest.
4. In duly substantiated cases, certain routine revenue items may be established provisionally.

Provisional establishment shall cover the recovery of several individual amounts which need not therefore be established individually.

Before the end of the financial year, the authorising officer shall amend the amounts established provisionally to ensure that they correspond to the amounts receivable actually established.

Article 51

The authorisation of recovery is the act whereby the authorising officer responsible instructs the accounting officer, by issuing a recovery order, to recover an amount receivable which he/she has established.

Article 52

1. Amounts wrongly paid shall be recovered.
2. The accounting officer shall act on recovery orders for amounts receivable duly established by the authorising officer or authorising officer responsible. He/she shall exercise due diligence to ensure that the Energy Community receives its revenue and shall see that its rights are safeguarded.
3. Where the authorising officer responsible is planning to waive recovery of an established amount receivable, he/she shall ensure that the waiver is in order and complies with the principle of sound financial management.

Such a waiver shall be by decision of the authorising officer, which must be substantiated. The authorising officer may not delegate such a decision.

The waiver decision shall state what action has been taken to secure recovery and the points of law and fact on which it is based.

4. The authorising officer responsible shall cancel an established amount receivable when the discovery of a mistake as to a point of law or fact reveals that the amount had not been correctly established. Such cancellation shall be by decision of the authorising officer responsible and shall be suitably substantiated.
5. The authorising officer responsible shall adjust the amount of an established debt upwards or downwards when the discovery of a factual error entails the alteration of the amount of the debt, provided that this correction does not involve the loss of the established entitlement of the Energy Community. Such an adjustment shall be by decision of the authorising officer responsible and shall be suitably substantiated.

Article 53

1. Upon actual recovery of the sum due, the accounting officer shall make an entry in the accounts and shall inform the authorising officer responsible.
2. A receipt shall be issued in respect of all cash payments made to the accounting officer.

Article 54

1. If actual recovery has not taken place by the due date stipulated in the debit note, the accounting officer shall inform the authorising officer responsible and immediately launch the procedure for effecting recovery by any means offered by the law, including, where appropriate, by offsetting and, if this is not possible, by enforced recovery.
2. The accounting officer shall recover amounts by offsetting them against equivalent claims that the Energy Community has on any debtor who himself has a claim on the Community body that is certain, of a fixed amount and due, provided that offsetting is legally possible.

Article 55

The accounting officer, in collaboration with the authorising officer responsible, may allow additional time for payment only at the written request of the debtor, with due indication of the reasons, provided that the following two conditions are met:

- (a) the debtor undertakes to pay interest at the rate specified for the entire additional period allowed, starting from the date on which the payment was originally due;
- (b) in order to safeguard the rights of the Energy Community, the debtor provides a financial guarantee covering both the principal sum and the interest.

CHAPTER 5 EXPENDITURE OPERATIONS

Article 56

1. Every item of expenditure shall be committed, validated, authorised and paid.
2. Every commitment of expenditure shall be preceded by a justified financing decision.
3. The work programme of the Energy Community shall be equivalent to the financing decisions for the activities it covers, provided that they are clearly identified and the underlying criteria are spelled out precisely.
4. Administrative appropriations related to the every-day operations of the Energy community and its institutions may be implemented without a prior financing decision.

SECTION 1
COMMITMENT OF EXPENDITURE

Article 57

1. The budget commitment is the operation reserving the appropriation necessary to cover subsequent payments to honour a legal commitment.
2. The legal commitment is the act whereby the authorising officer responsible enters into or establishes an obligation which results in a charge for the budget.
3. The budget commitment is individual when the beneficiary and the amount of the expenditure are known.
4. The budget commitment is global when at least one of the elements necessary to identify the individual commitment is still not known.

Article 58

1. In respect of any measure which may give rise to expenditure chargeable to the budget, the authorising officer responsible must first make a budget commitment before entering into a legal obligation with third parties.
2. Individual legal commitments relating to individual budget commitments shall be concluded by 31 December of the current financial year.
3. The legal commitments entered into for actions extending over more than one financial year and the corresponding budget commitments shall, save in the case of officials expenditure, have a final date for implementation set in compliance with the principle of sound financial management.

Article 59

1. In respect of any measure which may give rise to expenditure chargeable to the budget, the authorising officer responsible must first make a budget commitment before entering into a legal obligation with third parties.
2. Global budget commitments shall cover the total cost of the corresponding individual legal commitments concluded up to 31 December of year $n + 1$.
3. Individual legal commitments relating to individual budget commitments shall be concluded by 31 December of year N.

4. At the end of the periods referred to in the paragraphs 2 and 3, the unused balance of these budget commitments shall be decommitted by the authorising officer responsible.
5. The legal commitments entered into for actions extending over more than one financial year and the corresponding budget commitments shall, save in the case of staff expenditure, have a final date for implementation set in compliance with the principle of sound financial management.

Any parts of such commitments which have not been executed six months after that final date shall be decommitted
6. Where a legal commitment has not then resulted in a payment after a period of three years, the authorising officer responsible shall decommit it.

Article 60

When adopting a budget commitment, the authorising officer responsible shall ensure that:

- b. The expenditure has been charged to the correct item in the budget;
- c. The appropriations are available;
- d. The expenditure conforms to the applicable provisions, in particular those of the Treaty, the internal management rules of the institutions of the Energy Community;
- e. The principle of sound financial management is complied with.

SECTION 2 VALIDATION OF EXPENDITURE

Article 61

Validation of expenditure is the act whereby the authorising officer responsible:

- a. Verifies the existence of the creditor's entitlement;
- b. Verifies the conditions in which payment is due;
- c. Determines or verifies the reality and the amount of the claim.

Article 62

1. Validation of any expenditure shall be based on supporting documents attesting the creditor's entitlement, on the basis of a statement of services actually rendered, supplies actually delivered or work actually carried out, or on the basis of other documents justifying payment.

2. The validation decision shall be expressed by the signing of a "passed for payment" voucher by the authorising officers responsible.

SECTION 3 AUTHORISATION OF EXPENDITURE

Article 63

1. Authorisation of expenditure is the act whereby the authorising officer responsible, by issuing a payment order, instructs the accounting officer to pay an item of expenditure which he has validated. .
2. The payment order shall be dated and signed by the authorising officer responsible, then sent to the accounting officer. The supporting documents shall be kept by the authorising officer responsible in accordance with Article 36(4).
3. Where appropriate, the payment order sent to the accounting officer shall be accompanied by a document certifying that the goods have been entered in the inventories referred to in Article 71.

SECTION 4 PAYMENT OF EXPENDITURE

Article 64

1. Payment shall be made on production of proof that the relevant action has been carried out in accordance with the provisions of the basic act and shall cover one of the following operations:
 - a. Payment of the entire amount due;
 - b. Payment of the amount due in any of the following ways:
 - i. pre-financing, which may be divided into a number of payments;
 - ii. one or more interim payments;
 - iii. payment of the balance of the amounts due.

Pre-financing shall count in full or in part against the interim payments.

The entire pre-financing and interim payments shall count against the payment of balances.

2. A distinction shall be made in the accounts between the different types of payment referred to in paragraph 1 at the time they are made.
3. The validation, authorisation and payment of expenditure must be carried out within the time-limits specified in - and in accordance with the provisions of - the detailed rules for implementation provided for in Article 88.

Article 65

Payment of expenditure shall be made by the accounting officer within the limits of the funds available.

TITLE VII

PROCUREMENT AND GRANTS

Article 66

As regards procurement, the relevant provisions for public procurement of the domicile country shall apply.

Article 67

The Energy Community Secretariat may not award grants.

TITLE VIII

PRESENTATION OF THE ACCOUNTS AND ACCOUNTING

CHAPTER 1 PRESENTATION OF THE ACCOUNTS

Article 68

The annual accounts of the Energy Community shall comprise:

- a. The financial statements of the Energy Community
- b. The report on implementation of the budget of the Energy Community
- c. The annual accounts of the Energy Community shall be accompanied by explanations referring to the financial statements, consisting of the balance sheet, income statement as well as assets analysis of the Energy Community.

Article 69

The accounts must comply with the fundamental accounting rules and be accurate and comprehensive and present a true and fair view:

- a. as regards the financial statements, of the assets and liabilities, charges and income, entitlements and obligations not shown as assets or liabilities and cash flow;
- b. as regards report on budget implementation, of revenue and expenditure operations

Article 70

The financial statements shall be drawn up in accordance with the generally accepted accounting principles, namely:

- a. Going concern;
- b. Prudence;
- c. Consistent accounting methods;
- d. Comparability of information;
- e. Materiality[];
- f. No netting;
- g. Fair presentation;
- h. Accrual-based accounting.

Article 71

1. In accordance with the principle of accrual-based accounting revenue and expenses are recorded in the period in which they are earned or incurred regardless of the date of payment or collection.
2. The value of assets and liabilities shall be determined in accordance with the valuation rules laid down by the accounting methods provided for in International Accounting Standard and, if necessary, in National standards of the domicile country.

Article 72

1. The financial statements shall be presented in Euro and shall comprise:
 - a. The balance sheet and the income statement, which represent the assets and liabilities and result of the financial year at 31 December in comparison with the previous year;
 - b. The cash-flow statement showing amounts collected and disbursed during the year and the final treasury position;

- c. The statement of changes in equity during the financial year.
2. The annex to the financial statements shall supplement and comment on the information presented in the statements referred to in paragraph 1 and shall supply all the additional information prescribed by internationally accepted accounting practice where such information is relevant to the Energy Community's activities.

CHAPTER 2 ACCOUNTING

SECTION 1 COMMON PROVISIONS

Article 73

1. The accounting system of the Energy Community is the set of manual and computerized procedures and controls that provide for identifying relevant transactions or events; preparing accurate source documents, entering data into the accounting records accurately, processing transactions accurately, updating master files properly, and generating accurate documents and reports.
2. The accounts shall consist of general accounts and budget accounts. These accounts shall be kept in Euro on the basis of the calendar year.
3. The figures in the general accounts and the budget accounts shall be adopted at the close of the budget year so that the accounts referred to in Chapter 1 can be drawn up.
4. The accounting officer shall adopt accounting rules and methods which take account of the internationally accepted accounting standards for the public sector, and if necessary of the rules applied by the public authorities of the [domicile country] or [European Communities].

SECTION 2 GENERAL ACCOUNTS

Article 74

The general accounts shall record, in chronological order using the double entry method, all events and operations which affect the economic and financial situation and the assets and liabilities of the Energy Community.

Article 75

1. Movements on the accounts and the balances shall be entered in the accounting ledgers.
2. All accounting entries, including adjustments to the accounts, shall be based on supporting documents, to which they shall refer.
3. The accounting system must be such as to leave a trail for all accounting entries.

Article 76

The accounting officer of the Energy Community shall, after the close of the budget year and up to the date of presentation of the final accounts, make any adjustments which, without involving disbursement or collection in respect of that year, are necessary for a true and fair presentation of the accounts in compliance with these rules.

**SECTION 3
BUDGET ACCOUNTS**

Article 77

1. The budget accounts shall provide a detailed record of budget implementation.
2. For the purposes of paragraph 1, the budget accounts shall record all budget revenue and expenditure operations provided for in Title V of these rules.

**CHAPTER 3
PROPERTY INVENTORIES**

Article 78

The Energy Community shall keep inventories showing the quantity and value of all the tangible, intangible and financial assets constituting Energy Community property.

TITLE IX

EXTERNAL AUDIT AND DISCHARGE

CHAPTER 1 EXTERNAL AUDIT

Article 79

Each year, the accounting officer establishes the accounts of the previous year no later than the 31 March. These accounts are validated by the Director.

Article 80

The Director shall, subject to approval by the Budget Committee, designate an independent External Auditor to carry out the annual audit of the Energy Community as defined under the Treaty, the Terms of Reference for which shall also be approved by the Budget Committee. The term of service of the External Auditors is renewable every year, unless otherwise specified by the Ministerial Council.

Article 81

1. The External Auditors shall submit to the Ministerial Council and the Budget Committee a report, together with the statement of assets and liabilities and certified accounts, not later than eight months after the end of the financial year to which they relate.
2. The Director shall make such observations as he considers appropriate on the External Auditors' report.
3. The External Auditors shall conduct such audits as deemed necessary, in accordance with their approved Terms of Reference. The External Auditors shall, in particular, inspect the accounting records and procedures of the Energy Community for the purpose of verifying the accuracy and completeness of the records. The external audit determines the overall validity of financial statements.
4. The External Auditors shall as a part of the annual audit, review the Internal Management Rules of the Energy Community and its operational implementation.
5. The External Auditors shall submit an audit report and certified accounts, together with a statement of assurance relating to the reliability of the accounts and the legality and regularity of the underlying transactions, to the Budget Committee so that they may be available to the Ministerial Council not later than eight months after the end of the financial year to which the accounts relate. The Budget Committee shall make to the Ministerial Council such observations on the documents submitted by the Auditors as it may consider appropriate.

CHAPTER 2 DISCHARGE

Article 82

Taking account of the potential observations of the Budget Committee, and with a view to granting the discharge to the Director, the Ministerial Council shall examine the certified accounts and financial statements of the Energy Community. It shall also examine the report of the external auditors and the auditors' statement of assurance.

Article 83

On the basis of this report, and, the Ministerial Council shall discharge the Director from his management and administrative responsibility in respect of the budget before 31 December N+ 1.

Article 84

1. The Director shall take all appropriate steps to act on the observations accompanying the Ministerial Council's discharge decision.
2. At the request of the Ministerial Council or of the Budget Committee, the Director shall report on the measures taken in the light of these observations and comments.

TITLE X

TRANSITIONAL AND FINAL PROVISIONS

Article 85

[These rules are in compliance with the fundamental principles of the accounting of the Commercial Code of the domicile country as well as of the International Accounting Standards.]

Article 86

The Ministerial Council, Budget Committee and the Parties to the Treaty shall be empowered to obtain any necessary information or explanations regarding budgetary matters within their fields of competence.

Article 87

Upon approval of the European Commission, the Director shall, as far as is necessary, adopt detailed rules for implementing of these rules applicable to the Energy Community.

Article 88

Till the formal establishment of a Budget Committee, its functions will be performed by the European Commission.

Article 89

This Procedural Act shall be binding in its entirety on all Parties to the Treaty and the Institutions set up under the Treaty.

The Ministerial Council may amend these rules upon a proposal of the European Community.

This Procedural Act has been adopted by the Ministerial Council of the Energy Community on the ground of Article 74 of the Treaty Establishing the Energy Community on and become effective upon the day of their adoption.

ANNEX B

Draft

PROCEDURAL ACT OF THE MINISTERIAL COUNCIL OF THE ENERGY COMMUNITY

2006/...../MC-EnC: Ministerial Council Decision of 17 November 2006 on the implementation of Annex IV of the Treaty establishing the Energy Community with respect to Bulgaria and Romania becoming Participants of the Energy Community

The Ministerial Council of the Energy Community,

Having regard to the Treaty Establishing the Energy Community, and in particular to Articles 86 and 99 thereof,

Having regard to Article 73 of Treaty Establishing the Energy Community, which provides for a procedure for a review of Annex IV of that Treaty and that procedure can be applied by analogy,

Whereas,

(1) Annex IV provides that Bulgaria and Romania shall, respectively, cover 1 and 2.2 % of the Energy Community Budget.

(2) On 1st January 2007, Bulgaria and Romania will join the European Union, and thus will become Participants in the Energy Community as provided for Article 99 of the Treaty and without any further act of any institution of the Energy Community being necessary to that effect,

(3) From 1st January 2007, the contributions of Bulgaria and Romania to the budget of the Energy Community specified in Annex IV to the Treaty will, in accordance with the internal rules of the European Community respectively be covered by the European Community,

HAS DECIDED AS FOLLOWS:

Article 1

The financial contributions to the budget of the Energy Community of Bulgaria and Romania upon their accession to the European Union shall be covered by the European Community.

Article 2

This decision is addressed to all Parties and institutions under the Treaty Establishing the Energy Community.

Article 3

The Director of the Energy Community Secretariat shall make this decision and its annex available to all Parties and institutions under the Treaty Establishing the Energy Community within 7 days after its adoption.

Article 4

This decision shall enter into force upon adoption.

Done at (place), (date).

For the Ministerial Council

..... (signed by Presidency)

ANNEX C

Draft

**PROCEDURAL ACT
OF THE MINISTERIAL COUNCIL
OF THE ENERGY COMMUNITY**

2006/...../MC-EnC: Ministerial Council Decision of 17 November 2006 on adoption of Procedural Rules on Acceptance of Countries as Observers to the Energy Community and on Rights and Obligations of Observers

The Ministerial Council of the Energy Community,

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

Having regard to the proposals, made by the Permanent High Level Group, dated 16 November 2006,

Having regard to Article 96 of the Treaty,

HAS DECIDED AS FOLLOWS:

Article 1

Adopts Procedural Rules on Acceptance of Countries as Observers to the Energy Community and on Rights and Obligations of Observers as presented in annex to this procedural act.

Article 2

This decision is addressed to all Parties and institutions under the Treaty Establishing the Energy Community.

Article 3

The Director of the Energy Community Secretariat shall make this decision and its annex available to all Parties and institutions under the Treaty Establishing the Energy Community within 7 days after its adoption.

Article 4

This decision shall enter into force upon its adoption.

Done at (place), (date).

For the Ministerial Council

..... (signed by Presidency)

**Annex to the
Procedural Act
On
Rules on Acceptance of Countries as Observers to the Energy Community and Rights
and Obligations of Observers**

I. GENERAL

1. Without prejudice to Article 96(1), second sentence, of the Treaty Establishing the Energy Community (hereinafter: “the Treaty”), these rules establish the procedure for the acceptance of a country as an Observer to the Energy Community in accordance with Article 96 of the Treaty. These Rules further set forth the rights and obligations of the Observer(s).
2. In accordance with the Treaty and its objectives, Observer status might be granted to a neighboring country ready to gradually take up the *acquis*.

II. PROCEDURAL STEPS

1. The Observer status is granted by the Ministerial Council of the Energy Community upon a reasoned request by the applicant country submitted to the Presidency.
2. The Presidency shall notify the request to the Ministerial Council at the next meeting of the Ministerial Council following the receipt of the request. In parallel, the Presidency, after consultation with the Vice-Presidents and prior to the Ministerial Council’s meeting, may ask the Secretariat to prepare additional information in relation to the request.
3. The decision of the Ministerial Council under subparagraph 1 shall be taken unanimously. It shall refer to Article 96(1) of the Treaty and these Rules.

III. PRINCIPAL RIGHTS AND OBLIGATIONS OF THE OBSERVERS

1. The Observers to the Energy Community have the rights to be represented at the meetings of the Ministerial Council, the Permanent High Level Group, the Regulatory Board and the Fora (one representative per meeting, excluding the Fora, where any Observer might have up to three representatives).

2. The Observers are entitled to receive any information distributed before, during and after the relevant meetings which is related to the discussed topics.
3. The Observers follow any requirements for confidentiality, which are valid to the Parties.
4. The Observers may make statements upon request and consequent permission by the chair of the meeting at which they want to make statement.
5. Observers have no right to participate in voting.
6. In case of conflict between these Rules and the specific Internal Rules of Procedure of any institution of the Energy Community, the Internal Rules of Procedure of the institution in question shall prevail.

IV. MISCELLANEOUS AND CONCLUSIVE REMARKS

1. The Observer status, granted to any country by the Ministerial Council, prior to the adoption of these rules, shall not be affected by them.
2. The rules have been adopted by the Ministerial Council on the ground of Articles 86 and 96 of the Treaty.
3. The rules enter into force on the day of their adoption.

These rules have been adopted on