

## **Appendix VII: Rules of Procedure of the Renewable Energy Sector Agreement Complaints and Dispute Committee (RECDC)**

### **Article 1**

1.1. *Independent Secretariat*: the independent body commissioned to support and facilitate the implementation of the International RBC Agreement for the Renewable Energy Sector.

1.2. *The Renewable Energy Agreement*: the 2022 multi-stakeholder sector agreement that seeks the effective implementation of the UN Guiding Principles and the OECD Guidelines for Multinational Enterprises by Companies in the renewable energy sector, and aims to tackle issues in the sector that the Companies cannot deal with individually.

1.3. *Complaint*: an issue between a Stakeholder (or its Mandated Representative) and a Company of the Agreement concerning an injury, loss or (environmental) damage of material significance suffered individually by a Stakeholder or a group to which the Stakeholder belongs, due to a violation of the Renewable Energy Agreement.

1.4. *The Renewable Energy Sector Complaints and Dispute Committee (RECDC)*: the arbitration body appointed by the Parties to the Renewable Energy Agreement and tasked with ruling on Complaints and Disputes arising under the Agreement.

1.5. *Dispute*: an issue between the Independent Secretariat and a Company arising from the due diligence monitoring mandate of the Independent Secretariat.

1.6. *Company*: an organisation that upon signing the Renewable Energy Agreement was designated as being part of the “company constituency” of the Agreement.

1.7. *Mandated Representative*: a natural or legal person mandated by the Stakeholder to represent the Stakeholder throughout the proceedings.

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1.8. *OECD Guidelines*: The OECD Guidelines for Multinational Enterprises as revised in 2011 and the OECD Due Diligence Guidance for Responsible Business Conduct (2018).

1.9. *Party to the Renewable Energy Agreement*: an organisation, be it a civil society organisation, industry association, knowledge institution, company or government entity that has signed the International RBC Agreement for the Renewable Energy Sector as a “Party”.

1.10. *Stakeholder*: anyone who has suffered damage due to a violation of the Agreement caused or contributed to by a company, or caused or contributed to by another entity to which the company is directly linked.<sup>1</sup> Legal entities can be considered Stakeholders when the interests that they specifically represent, according to the factual actions and objects clause found in the articles of association, have been adversely affected due to a violation of the Renewable Energy Agreement.

1.11. *Participant in the complaint or dispute proceeding (the Participant)*: a person or organisation directly involved in a given complaint or dispute proceedings, for example stakeholders, a defendant company, an agreement secretariat in case of a dispute or a mandated representative.

1.12. *Steering Committee*: the governing body of the Renewable Energy Agreement consisting of a representation of various constituencies: Companies, industry

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<sup>1</sup> According to the Guiding Principles on Business and Human Rights and OECD Guidelines for Multinational Enterprises, a business enterprise can “cause”, “contribute to” or “be directly linked to” adverse human rights impacts.

associations, civil society organisations and knowledge institutions, and the Dutch government. The Steering Committee is tasked with overseeing compliance with the Renewable Energy Agreement and the supervision of its implementation.

1.13. *UNGPs*: the United Nations Guiding Principles on Business and Human Rights (2011).

## **Composition**

### **Article 2**

2.1. The Renewable Energy Complaints and Disputes Committee (REDC) consists of three members.

2.2. All three members of the REDC shall be appointed unanimously by all the Parties to the Renewable Energy Agreement. One member shall be appointed as the chairperson of the three by the Parties. The Parties shall agree on the minimum professional qualifications and conflict resolution experience of the members of the REDC in a Profile that shall be used to invite candidates to apply for the position of member of the REDC. The Steering Committee shall draft a selection and appointment process that will be approved by all Parties to the Agreement and will be used for the recruitment of the members of the REDC. The composition of the members of the REDC shall reflect the multistakeholder character of the Renewable Energy Agreement.

2.2.1 Members of the REDC shall be independent. They shall not be affiliated with any of the Parties. They shall not take instructions from any Party, organisation, or government with regard to matters related to the dispute. They shall not participate in the consideration of any disputes that would create a direct or indirect conflict of interest

2.3. For each of the three members of the REDC an alternate can be appointed. The alternates are tasked with functioning as substitutes for the members of the REDC when necessary.

2.4. The members of the REDC and the alternate members of the REDC will be appointed for a three-year term and may be reappointed twice after their first term.<sup>2</sup>

2.5. The members of the REDC and the alternate members of the REDC can be discharged during their term following a unanimous decision by the Steering Committee or at their request.

2.6. The alternate members shall be appointed in the same manner as the regular members of the REDC as laid down in subsection 2 of this article.

2.7. The tenure and mandate of the REDC is linked to the duration of the Agreement unless the Parties to the Agreement explicitly determine otherwise.

### **Article 3**

The REDC shall be assisted by a secretariat coordinator when executing its tasks.

## **Mandate and Jurisdiction**

### **Article 4**

4.1 The REDC shall resolve complaints and disputes arising out of the Renewable Energy Agreement subject to provisions of this Agreement.

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<sup>2</sup> This is contingent on the continuation of the Renewable Energy Agreement following its initial expiration date.

4.2 The RECDC has no jurisdiction with regard to complaints as stated under subsection 1:

- If these have already been settled/decided by an equivalent grievance mechanism.
- If it reaches the conclusion that it cannot make a positive contribution to the resolution of the issues raised and that handling the complaints would create serious prejudice for either of the parties involved in other parallel proceedings or cause a contempt of court situation.

4.3 The RECDC will substantiate its decision that it has no jurisdiction to decide on a complaint.

## **Admissibility Disputes**

### **Article 6**

6.1. Entities engaged in a dispute shall first enter into dialogue in good faith with a view to resolving the dispute bilaterally.

6.2. If the disputing entities are unable to resolve the issue bilaterally, they shall submit the dispute to the Steering Committee for resolution.

6.3. Within two months after receiving the submission of the dispute, the Steering Committee shall mediate a mutually acceptable resolution of the dispute, and share its unanimous conclusions with the disputing entities.

6.4. A disputing entity can submit the issue to the RECDC within two months after receiving the final conclusions of the Steering Committee as per article 6.3, if it still considers the conflict unresolved.

6.5. A dispute submitted by a Company or the Independent Secretariat to the RECDC is admissible if it was first brought to the attention of the Steering Committee within 2 months after a final decision of the Independent Secretariat following from the latter's due diligence mandate monitoring mandate.

6.6. A dispute shall be deemed inadmissible if it is manifestly unfounded.

### **Article 7**

7.1 A dispute should be submitted to the RECDC via e-mail, as published on the website of the Renewable Energy Agreement. The submission should at least contain the following information:

- a. Date of submission;
- b. Name of the defendant (Company, Secretariat, Party or Parties to the Renewable Energy Agreement) and, in case the defendant is a Company, the office address;
- c. Description and substantiation of the dispute.

7.2 Alternatively, other written means to submit the Dispute may be considered admissible by the RECDC. The RECDC has the opportunity to request followup information from an entity submitting the dispute, when the initial submission of the claim does not meet the required information for an admissible dispute. A failure to provide the requested information within the timeframe set by the RECDC will result in inadmissibility of the dispute.

## **Complaints**

### **Article 8**

8.1. Prior to submitting a complaint, the disputing persons shall, in good faith,

attempt to resolve the issue bilaterally and amicably.

8.2. A complaint is admissible when the issue concerned is of material significance to the Stakeholder individually or to the group to which he/she belongs, and can be substantiated both in relation to the Company concerned and on the basis of the goals of the Renewable Energy Agreement, the OECD Guidelines and the UNGPs. The complaint has to be substantiated in such a manner that it enables the RECDC to understand its nature.

8.3. The complaint is admissible when it meets the criterion of subsection 2 of this article as well as the criteria set out in article 9.

8.4. The complaint is inadmissible when it is manifestly unfounded.

8.5. Where a Stakeholder (or its Mandated Representative) submits a complaint, the Stakeholder/Complainant must disclose if the Stakeholder/Complainant has already filed a complaint through another venue or if another authority has already decided the same issue against the Company of the Agreement. Failure to do so may result in the RECDC rejecting the claim.

## **Article 9**

9.1. A complaint should be submitted to the RECDC via its e-mail address, as published on the website of the Renewable Energy Agreement. The e-mail should at a minimum contain the following information:

- a. Date of submission;
- b. Name of the accused Company;
- c. The name of the Stakeholder and, if the Stakeholder is a legal entity, a copy of its articles of association;
- d. If the complaint is submitted by a Mandated Representative, proof of mandate granted by the Stakeholder and if possible, the contact details of the Stakeholder;
- e. Country and place of residence of the Stakeholder;
- f. Description and substantiation of the complaint;
- g. The location of the alleged violation.

9.2. Alternatively, a complaint submitted by other written means may also be declared admissible by the RECDC. If the information in the initial submission of the complaint does not meet the admissibility requirements, the RECDC may request additional information from the Stakeholder or the latter's Mandated Representative. Failure to provide the requested information within the timeframe set by the Committee will render the complaint inadmissible.

9.3. If the Stakeholder is unable to communicate in Dutch or English, the RECDC will suggest that the Stakeholder use a Mandated Representative.

9.4. Regarding the Stakeholder's anonymity:

At the claimant's request, the RECDC may decide to grant anonymity to a Stakeholder. The request must be substantiated and plausibly demonstrate that the Stakeholder's interests will be harmed without anonymity. If the RECDC rejects the request for anonymity, the requesting Participant will be given the opportunity to withdraw the complaint with regard to that Stakeholder or in its entirety.

## **Article 10**

A complaint by an organisation that is not a Stakeholder itself is admissible if the organisation(s) representing the Stakeholders or the Stakeholders represented themselves meet the criteria in articles 8 and 9.

## **General**

### **Article 11**

Upon receipt of the complaint or the dispute, the RECDC will rule within one month in principle on the admissibility of the complaint or the dispute as well as on the admissibility of the requesting Party or Parties.

### **Article 12**

When a dispute or complaint is admissible under the articles of this chapter, the RECDC will deal with and rule on it.

## **Complaints and Dispute procedure**

### **Article 13**

13.1 When the RECDC has declared a dispute or complaint admissible in principle, it will subsequently notify the opposing Participant of the dispute or complaint in writing, and send that Participant a copy of the dispute or complaint. The RECDC will at the same time inform the opposing Participant that it has one month in which to submit a memorandum of defence with documentary evidence relating to the complaint or dispute. This period may be shortened or extended by the RECDC or at the request of any of the Participants.

13.2 A copy of the memorandum of defence submitted to the RECDC with documentary evidence will be sent to the Participant who has submitted the complaint.

### **Article 14**

The RECDC can decide – whether or not following a request to that effect – to join cases when the complaints are similar and concern the same:

- a. Company;
- b. Breach;
- c. Location of the violation.

If the RECDC decides to merge cases, it shall notify all Participants concerned in writing and provide reasons for its decision. If the RECDC decides not to grant a request to join cases, it will motivate its decision.

### **Article 15**

Participants in the proceedings have the right to representation throughout the proceedings.

### **Article 16**

16.1. In the case of a complaint, the RECDC will summon the Participants to an oral hearing.

16.2. In the case of a dispute, the RECDC has the discretion to summon Participants to an oral hearing. The RECDC can only refrain from holding an oral hearing with the Participants' consent.

16.3. The hearing will take place within one month after the date set for submission of the memorandum of defence as mentioned in article 14, subsection 1. The RECDC will determine the location, date and time and will notify the Participants thereof. The RECDC may, at its discretion, extend the one-month period.

16.4. The minutes of all hearings can be made available upon request of the

Participants.

**Article 17**

At least 10 days prior to the hearing, the Participants must exchange copies of all exhibits they intend to introduce at the hearing. The RECDC may permit additional time to furnish rebuttal exhibits or exhibits pertaining to unanticipated issues. The RECDC may exclude exhibits that a Participant fails to exchange in a timely manner from the proceedings.

**Article 18**

At the RECDC's discretion, the Participants can be summoned to additional hearings when this is warranted by the nature of the complaint or dispute.

**Article 19**

The RECDC may, at its discretion, advise the Participants to engage in mediation or negotiations facilitated by a neutral Participant at all times during the complaint proceedings. The Independent Secretariat shall administer a list of mediators/facilitators whom Participants could engage. The Participants are, however, free to engage other mediators/facilitators.

**Article 20**

At the RECDC's discretion or at the request of (one of the) the Participants, the RECDC can decide to allow additional written submissions.

**Article 21**

The RECDC will grant all Participants an equal and adequate opportunity to present their case. The RECDC will decide on the manner in which the hearing is conducted in order to promote the fair and speedy resolution of the complaint or dispute.

**Article 22**

22.1. If one or more Stakeholders reside in a foreign country and is/are unable to physically attend the oral hearing, the RECDC can conduct remote hearings, for example via teleconference or videoconferencing. The RECDC may also choose to hold remote hearings when a Stakeholder is represented during the physical hearing (see article 15) but is unable to attend this hearing himself or herself.

22.2. If the RECDC decides during a hearing that it is not feasible to have remote contact at that moment, it can schedule a new remote hearing at its discretion. The Company shall be notified of this alternative hearing. The RECDC shall decide, at its own discretion, whether or not the Company may be present at the remote hearing or will be provided with the minutes of the hearing afterwards.

22.3. At the request of a Participant, the RECDC can decide to hear third parties (other than the Stakeholder) residing in a foreign country and unable to physically attend the hearing. The RECDC can decide on safeguarding the anonymity of the third party. The RECDC therefore has the discretion to hear the third party during the hearing or at a different time. The Stakeholder or Mandated Representative will be notified of the alternative hearing and will, at the RECDC's discretion, either be allowed to be present during the hearing or will be provided with minutes of the hearing afterwards.

## **Article 23**

23.1. Under exceptional circumstances the RECDC may appoint an independent facilitator in the following situations to hear Stakeholders and/or witnesses:

- a. If the Stakeholder(s) reside(s) in a foreign country and is/are unable to attend the hearing physically or otherwise or to provide the necessary information through a Mandated Representative;
- b. When during the investigation the RECDC deems it necessary to speak to local witness(es) in order to acquire more information.

23.2. The RECDC will appoint the facilitator after consulting both Participants on the person of the facilitator as well as the issues and questions that will be communicated by the facilitator to the Stakeholder(s) and/or witness(es).

23.3. The RECDC will draw up a written assignment for the facilitator. A copy of the assignment will be sent to both Participants.

23.4. The RECDC can decide on safeguarding the anonymity of the persons mentioned under subsections 1, a) and 1, b).

23.5. Upon request of one of the Participants, the RECDC can hear the facilitator alone or together with the Stakeholder or Mandated Representative and/or other witnesses when deemed necessary. This hearing can take place before or during the oral hearing. If the hearing of the facilitator takes place during the oral hearing, the RECDC as well as both Participants may question the facilitator. If the hearing takes place before the oral hearing, the Participants will be sent a list of questions prior to the hearing of the facilitator.

Participants will be granted the opportunity to add questions to the list.

23.6. Participants will be sent minutes of the hearing. Under exceptional circumstances such as significant safety concerns, the RECDC can decide not to provide the Participants with the complete minutes of the hearing of the facilitator.

## **Article 24**

24.1. If additional information from the location of the alleged violation is deemed necessary to decide the Complaint, the RECDC can order the Company to provide such evidence as specified by the RECDC.

24.2. If the requested Participant deems the requested information confidential, the alternate chairperson of the RECDC will inspect the relevant information and rule on the confidentiality. The alternate chairperson can issue the following rulings:

- a. When the alternate chairperson deems the information confidential and irrelevant for the decision of the dispute or complaint, the requested Participant will no longer be obliged to provide the requested information;
- b. When the alternate chairperson deems the information confidential but essential to decide the dispute or complaint, the RECDC may only inspect the information with the permission of the requested Participant. If the permission is withheld, the RECDC may infer from this refusal the consequence it deems fit;
- c. When the alternate chairperson deems the information to be nonconfidential, the information will be disclosed to the RECDC and the Participants, unless the disclosing Participant objects. If permission is withheld, the RECDC may infer the consequence it sees fit.

## **Article 25**

25.1. Upon the request of one of the Participants the RECDC can grant Participants' requests to call witnesses and/or experts for the oral hearing. The RECDC as

well as both Participants may question the witnesses and/or experts. Names and addresses of the witnesses and/or experts must be submitted to the RECDC no less than one week prior to the hearing.

25.2. Participants are allowed to attend the expert hearings.

25.3. Participants are allowed to attend the witness hearings, unless the RECDC holds a closed hearing due to privacy or safety concerns. In case of a closed hearing the Participants will be sent a list of questions that the RECDC envisages to ask the witness(es) prior to the hearing. The Participants will be granted the opportunity to add questions to the list. After the closed hearing the RECDC will provide the Participants with minutes of the hearing. When necessary, sensitive information regarding privacy may be omitted from the minutes. The minutes may also be in anonymous form altogether.

#### **Article 26**

26.1. An expert can be appointed at the reasonable discretion of the RECDC, to conduct research deemed necessary to decide the complaint or dispute. The RECDC will appoint the expert after consulting both Participants.

26.2. The RECDC will draw up a written assignment containing points of research for the expert. A copy of the assignment will be sent to both Participants.

26.3. The RECDC will send a copy of the expert's report to the Participants, who can submit a written response to the report within a two-week period. The RECDC can extend or shorten the two-week period.

#### **Article 27**

The RECDC can appoint an independent translator if a Stakeholder and/or facilitator and/or witness and/or expert is unable to communicate in English or Dutch.

#### **Article 28**

28.1. The Participants may offer evidence in any form as long as it is relevant and material to the complaint or dispute. Evidence that is deemed irrelevant and immaterial to the complaint or dispute by the RECDC will not be accepted in the proceedings and will therefore not be a part of the decision-making by the RECDC.

28.2. The RECDC may order the Participants to produce additional information that is considered necessary to decide on the complaint or dispute. In the event that the requested participant deems the requested information confidential, the procedure as laid down in article 24, subsection 2 will be utilised to determine the confidentiality of the requested information.

#### **Arbitral Award**

#### **Article 29**

The RECDC will decide on the complaint or dispute based on the Agreement, the UNGPs, the OECD Guidelines and the standards of reasonableness and fairness.

#### **Article 30**

30.1 The RECDC will issue an arbitral award within two months of the oral hearing. This term may be extended based on the complexity of the procedure.

30.2 The RECDC will issue an arbitral award within three months after submission of a Dispute or Complaint if no hearing is sought by either of the Participants



involved in the Dispute or the Complaint. This three month term may be extended with the consent of the Participants involved in the Dispute or Complaint.

### **Article 31**

31.1. The RECDC will reach its decisions by a majority of votes.

31.2. The arbitral award of the RECDC will be binding on all the Participants involved in the process.

31.3. The arbitral award will be signed by all the members of the RECDC and its secretariat coordinator and shall be sent to the Participants in writing.

### **Article 32**

32.1. The RECDC will rule on its jurisdiction, the admissibility of Participants and the admissibility of the complaint or dispute.

32.2. The RECDC will decide on the merits of the Complaint or Dispute by rendering one of the following decisions:

- a. The complaint or dispute is unfounded;
- b. The complaint or dispute is partially unfounded and partially wellfounded;
- c. The complaint or dispute is well-founded.

32.3. If the RECDC rules the complaint or dispute as unfounded, it can include non-binding recommendations in the decision.

32.4. If the RECDC rules that the complaint or dispute is well-founded, the RECDC must include one or more of the following measures in the decision, taking into account existing standards, precedents and/or the preferences of the Stakeholder:

- a. Binding recommendations for improvement;
- b. A duty to remediate in accordance with the UNGPs and OECD Guidelines.

32.5. The RECDC can only award financial compensation as a duty to remediate, as stated in subsection 4, under b, when the Company has been found to cause or contribute to an adverse human rights impact and the Stakeholder or Mandated Representative has proven causality between the violation of the Agreement by the Company and the damage.

### **Article 33**

33.1 Each participant shall bear its own costs.

33.2 Where the Committee considers the complaint to be well-founded in whole or in part, it may - in derogation of subsection 1 - order the Company to compensate all or part of the costs of the procedure incurred by the Stakeholder or the Mandated Representative who submitted the Complaint, insofar as the costs were reasonably incurred in the Committee's opinion and are reasonable in terms of their extent and taking into account the size of the Enterprise.

### **Article 34**

The ruling of the RECDC, including in relation to the admissibility of a complaint, shall be published on the website of the Renewable Energy Agreement. The ruling of the RECDC shall also be made available in English if one of the Participants involved is non-Dutch speaking. When warranted by privacy concerns the RECDC can publish an anonymised version of the decision. The Renewable Energy Agreement can determine other means of publishing the ruling.

### **Article 35**

35.1. The chairperson of the RECDC can, at his/her own discretion or at a request of a participant, rectify a manifest error in the decision within two weeks after the dispatch of the binding decision.

35.2. A copy of the request as mentioned under subsection 1 will be sent to the other participant in the proceedings and will suspend the possible execution of the decision until the RECDC has decided upon the request.

35.3. The other participant in the proceedings will be offered a two-week term to respond to the request as mentioned under subsection 1.

35.4. Rectification will occur through a written notification to both Participants.

35.5. The rectified decision will be published on the website of the Renewable Energy Agreement.

### **Article 36**

The RECDC is authorised to decide on procedural issues not expressly addressed in these rules of procedure.

## **Confidentiality, challenge and recusal**

### **Article 37**

RECDC hearings are closed and not open to the public.

### **Article 38**

Members of the RECDC are bound by confidentiality regarding all information presented to them in light of the proceedings and that has not been made public throughout the proceedings.

### **Article 39**

Participants in a dispute or complaint proceedings are bound by confidentiality regarding all information presented to them in light of the proceedings and which has not been made public throughout the proceedings.

### **Article 40**

The RECDC shall make public on its website information about:

- Complaints or disputes it has received, providing a brief summary;
- Its decision concerning the admissibility of the complaint or dispute;
- Whether or not a complaint or dispute is in the process of being reviewed on the merits;
- The outcome of the complaints or disputes resolution.

### **Article 41**

41.1. Each of the members of the RECDC charged with handling the proceedings can be challenged by one or both of the Participants when there are grounds to doubt their impartiality or independence. The RECDC members can be recused throughout the proceedings.

41.2. A request to recuse one of the RECDC members must be submitted to the alternate chairperson of the RECDC in writing and contain substantiation of the request. The alternate chairperson of the RECDC will decide upon the request. The proceedings will be paused until the alternate chairperson has decided upon the request and, if necessary, the RECDC member will be replaced.

41.3. A member of the RECDC can recuse him-/herself from the proceedings at his/her own discretion. The proceedings will be paused until the RECDC

member has been replaced.

**Miscellaneous**

41. The seat of the arbitration shall be The Hague, The Netherlands.