

1ST ENERGY COMMUNITY CIVIL SOCIETY DAY

21st June 2016

POLICY BRIEFING

INTRODUCTION

The Energy Community is to be congratulated for having formally "opened its doors" to civil society organizations by holding an inaugural Civil Society Open Day.

Even prior to the establishment of this legal norm it should be recognized that the Energy Community Secretariat has made greater efforts in recent years to include the views of civil society organisations, and we encourage it to continue and formalise greater public participation in its work.

We have restated for the record on several occasions the EU's own guiding principles on CSOs, that "an empowered civil society is a crucial component of any democratic system and is an asset in itself. It represents and fosters pluralism and can contribute to more effective policies, equitable and sustainable development and inclusive growth...They embody a growing demand for transparent and accountable governance".

In order to benefit from CSOs' experience and competence, we encourage the Secretariat to grant full access to all the Task Forces and Coordination Groups within the Energy Community. Judging from the positive outcomes of CSOs' contributions to the Task Force on Environment, Energy Efficiency Coordination Group and the Permanent High Level Group, as well as the hosting of the SEE 2050 Energy Model by the Energy Community Secretariat, it is clear that CSOs can make a valuable contribution, while the process itself would ensure transparency of functioning of the Energy Community's institutions and bodies.

In advance of the first Civil Society Open Day we are providing this structured briefing note to help aid discussion at the event. What follows is a brief elaboration of the key recommendations from the undersigned CSOs for the continuing reform of the Energy Community Legal Framework.

New Global Climate Agreement – Need For Matching Climate Legislation In The Energy Community

On 12 December 2015 the United Nations Climate Change Conference in Paris reached a global agreement on addressing dangerous climate change. The participating Governments agreed:

- a long-term goal of keeping the increase in global average temperature to well below 2°C above pre-industrial levels;
- to aim to limit the increase to 1.5°C, since this would significantly reduce risks and the impacts of climate change;
- on the need for global emissions to peak as soon as possible, recognising that this will take longer for developing countries;
- to reach net zero emissions in the second half of this century.

Almost all of the Contracting Parties of the Energy Community Treaty (except Moldova and Kosovo¹) signed the agreement and submitted their Intended Nationally Determined Contributions (INDCs).

At the subsequent meeting of the PHLG (Permanent High Level Group) of the Energy Community on 17 December 2015 “the Commission underlined that after Paris, the Contracting Parties should make an effort in line with their INDCs. The Permanent High Level Group recommended that the Environmental Task Force looks into possible expansion of the acquis by technical measures such as the Greenhouse Gas Monitoring Mechanism Regulation (MMR)”.

The Energy Community Secretariat in March 2016 proposed treaty changes for the Ministerial Council in October 2016 with regards to climate change issues, proposing the following text to be included in the treaty: "The Parties recognize the importance of the Kyoto Protocol and the Paris Agreement. The Energy Community shall implement them in line with the European Union's policy and legislation."²

Supporting the commitment of the Signatory Parties, and the proposals by the Commission and Energy Community Secretariat, we believe that a simplified version of [Regulation \(EU\) No 525/2013 of the European Parliament and of the Council of 21 May 2013 on a mechanism for monitoring and reporting greenhouse gas emissions and for reporting other information at national and Union level relevant to climate change should be adopted this year](#). This would take into account the Contracting Parties' capacity constraints and effectively consist of at least:

[Low-carbon development strategies](#) [MMR Article 4]

[Approximated greenhouse gas inventories](#) [MMR Article 8]

[Policies and measures](#) [MMR Article 13]

[Projections](#) [MMR Article 14]

The Need For Revision Of The Energy Strategies In The Contracting Parties, Ambitious Energy Efficiency Targets And Further Utilization Of Sustainable Renewables

Having this in mind it is essential that the EU's medium and long term goals, presented through the resource efficiency initiative of the Europe 2020 Strategy, the planned EU 2030 framework on climate and energy policies, as well as the Roadmap for moving to a competitive low-carbon economy in 2050, need to be taken into account when strategically planning the future of the Energy Community. The long-term goal of the EU means 80–95% greenhouse gas emissions reductions by 2050 and almost complete decarbonisation of the energy sector, and needs to be referenced in the Energy Community Treaty to raise awareness within the Contracting Parties that they need to develop their energy sectors in line with this trajectory.

With the adoption of the Energy Efficiency Directive in October 2015 by the Ministerial Council the Energy Community set a welcome 20% headline target on energy efficiency in 2020. However, the Community notes that the Contracting Parties face serious challenges in the implementation process, including weak institutional capacity, insufficient public funding, low electricity prices, etc. As noted in the last Special Edition on Energy Efficiency³ "...When properly supported by a solid legal and institutional framework and backed up by well designed and implemented policy measures and programmes, increased energy efficiency brings about a multitude of positive effects on competitiveness, environment, security of energy supply and economic development in general."

All Contracting Parties submitted the National Renewable Energy Action Plan (NREAP) to the Energy Community Secretariat. However, as noted by the

³ https://www.energy-community.org/portal/page/portal/ENC_HOME/DOCS/4172382/343359B931EF25C0E053C92FA8C0D3CC.pdf

Energy Community⁴ “Overall progress made by the CPs to improve administrative procedures since the adoption of the NREAPs has been limited. Lengthy procedures remain a key barrier for RES deployment in all three sectors.”

Several Contracting Parties have developed and submitted National Emissions Reduction Plans to the Secretariat, although in most cases without public consultation processes. These plans need to be subject to public participation procedures in line with national legislation and the Aarhus Convention, and energy strategies need to be adjusted in line with the plans.

The Energy Community could contribute to facing these challenges by assisting countries with developing energy efficiency and decarbonisation scenarios that could significantly reduce the need for fossil fuels, especially as the existing installed hydropower capacity in the region can help to balance fluctuating electricity generation from renewable energy sources such as solar and wind. This would make maximum use of indigenous renewable energy resources and energy efficiency potential.

During the last three years, CSO groups in southeast Europe have developed energy models for 7 countries of South East Europe – as well as a regional model – which allow us to make well-informed choices about our energy future in line with EU goals. The model, entitled the South East Europe 2050 Energy Model, is based on the UK Department of Energy and Climate Change (DECC) 2050 Calculator. It provides the capacity to easily explore a large variety of scenarios across the full energy system. A precondition for integration of the proposed scenarios is to modernise the distribution grid with smart capabilities. Bearing in mind that the distribution grid within the Contracting Parties is technologically outdated and inefficient, with high losses, we call on the Energy Community to assess its condition and develop plans for its upgrade, including smart capabilities, in order to enable higher uptake of RES.

4 Assessment of Renewable Energy Action Plan Implementation and Progress in the Promotion and Use of Renewable Energy in the Energy Community, 20th July 2015

The Limited Scope Of The Environmental Acquis Within The Treaty

With the Treaty's extension, the environmental acquis needs to be expanded to include the following Directives in order to ensure that the countries of the Energy Community are not left even further behind in the transformation into a low-carbon, energy-efficient, renewables-based society. We fully support the current proposals to update the EIA Directive⁵ and Sulphur in Fuels Directive⁶, as well as introducing the SEA Directive⁷ and Environmental Liability Directive⁸, and urge the European Commission and Contracting Parties to ensure that sufficient capacity is provided both within the Secretariat and the Parties for their timely implementation. In addition, we call for the timely inclusion of the following acquis in the Treaty:

Chapter II of Directive 2010/75/EU3 on industrial emissions

This particular chapter replaces the IPPC Directive, whose importance is already recognised by the Treaty, and has already been at least partly transposed by most Contracting Parties. It stipulates the use of best available techniques (BAT) which are the most effective techniques to achieve a high level of environmental protection, while accounting for costs and benefits. BAT is crucial because it details more substances than the basic emissions safeguards

5 Directive 2014/52/EU amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment

6 Directive 2012/33/EU amending Council Directive 1999/32/EC as regards the sulphur content of marine fuels

7 Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment

8 Directive 2004/35/CE on environmental liability with regard to the prevention and remedying of environmental damage

in Chapter III and helps to close the 'thermal efficiency loophole'. This Chapter also sets permitting conditions, rules on environmental inspections and those regarding access to information and public participation in the permit procedures and access to justice. An analysis by the Estonian Environmental Law Center shows that this Chapter can quite simply be adapted to the framework of network energy.⁹

Directive 2008/50/EC4 on ambient air quality and cleaner air for Europe

Air pollution is a deadly problem in the Energy Community countries, and much of the pollution comes from the energy sector. Residents of places like Skopje and Bitola in Macedonia, Pristina in Kosovo, Tuzla in Bosnia and Hercegovina, Pljevlja in Montenegro, Obrenovac, Kostolac and Belgrade in Serbia, are losing years of their lives due to this pollution. The Directive stipulates, among many other things, the common methods for assessing air quality and ensuring that information on ambient air quality is made available to the public, both of which are essential preconditions to improving the current situation. An analysis by environmental law organisation Frank Bold has shown how the Directive can be adapted to the concept of network energy.¹⁰

9 <http://bankwatch.org/sites/default/files/Legal-analysis-application-ChapterII-IED-Energy-Community.pdf>

10 <http://bankwatch.org/sites/default/files/Prospects-for-implementing-air-quality-directives-Energy-Community.pdf>

Directive 2008/105/EC5 on environmental quality standards in the field of water policy

The energy sector has serious impacts on water bodies, especially the coal and oil sectors. In the coal sector, intakes for cooling water, thermal impacts of discharged water, and direct pollution of water from waste containing heavy metals and radioactive material are all important, as well as pollution from open-cast mining of high-sulphur coal. The Environmental Quality Standards Directive would provide clear public benefits by assisting in reducing such pollution.

Directive 2006/21/EC6 on the management of waste from extractive industries

This Directive is clearly relevant to mining related to the energy sector in the Energy Community countries. The mismanagement of such waste may cause pollution of a trans-boundary nature, so implementing this Directive would ensure a minimum level of safe and responsible management of such waste and maximising its recovery throughout the region.

Directive 2000/60/EC establishing a framework for Community action in the field of water policy

The Water Framework Directive is needed within the Energy Community Treaty to ensure that impacts such as degradation and modification of water bodies due to hydropower construction and operation, but also extraction, cooling and processing in the coal sector, are not neglected in the Contracting Parties' energy sectors.

Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora

Energy investments, particularly in the hydropower or wind sector, can have a serious impact on natural habitats, flora and fauna, when not appropriately sited. The Directive allows the protection of priority species and habitats to avoid their deterioration and the significant disturbance of other species, by ensuring that energy installations are not built at the expense of the natural value of the region.

CONCLUDING REMARKS

The Energy Community Treaty is a substantial tool for the Contracting Parties to integrate into a single energy market and enhance security of supply while meeting EU and international climate change commitments. Having in mind that the main objective of the reform of the Treaty is to adapt the Energy Community to the new challenges faced by European and international energy policy, we urge the Energy Community to take the opportunity to maximize the full potential of the revised Energy Community Treaty in protecting the environment.

In this policy briefing we have not added our position on State Aid, Public Procurement and Enforcement (noted in our [Policy Briefing on Energy Community Treaty revision dating February 2014](#) and [Comments on the High Level Reflection Group report "An energy community for the future"](#)) since these issues are not part of the event agenda. However, we are looking forward to discussing and elaborating them further.

1. **SEE Change Net** (Bosnia and Herzegovina)
2. **Analytica** (Macedonia)
3. **Advocacy Training and Resource Center – ATRC** (Kosovo)
4. **Center for Ecology and Sustainable Development – CEKOR** (Serbia)
5. **CPI** (Bosnia and Herzegovina)
6. **Center for Environment** (Bosnia and Herzegovina)
7. **Society for Sustainable Development Design – DOOR** (Croatia)
8. **Environmental Center for Development, Education and Networking – EDEN** (Albania)
9. **Ekolevizja** (Albania)
10. **Eko-Svest** (Macedonia)
11. **Forum for Freedom in Education** (Croatia)
12. **Fractal** (Serbia)
13. **Front 21/42** (Macedonia)
14. **Green Home** (Montenegro)
15. **MANS** (Montenegro)
16. **WWF Adria** (Croatia)
17. **CEE Bankwatch** (Czech Republic)
18. **Climate Action Network Europe – CAN Europe** (Belgium)
19. **Health and Environment Alliance – HEAL** (Belgium)
20. **National Ecological Centre of Ukraine – NECU** (Ukraine)
21. **Belgrade Fund for Political Excellence – BFPE** (Serbia)
22. **Center for Ecology and Energy – CEE** (Bosnia and Herzegovina)
23. **Ekotim** (Bosnia and Herzegovina)
24. **Center for Investigative Reporting – CIN** (Bosnia and Herzegovina)

* According to the UN, Kosovo is "under the United Nations Interim Administration Mission in Kosovo (UNMIK) established pursuant to Security Council Resolution 1244." In this brief it is referred to as "Kosovo".

** According to the UN, the official name for Macedonia is "The Former Yugoslav Republic of Macedonia"

