

## Silver lining in the Energy Community Treaty

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In October 2013, the [Ministerial Council](#) of the Energy Community decided to extend by ten years the duration of the EU-backed Energy Community Treaty, which brings together the Western Balkans, Ukraine and Moldova in order to integrate them with the EU energy market. The original Treaty entered into force in 2006 and expires in 2016. Although it contains some environmental obligations for signatory countries, the Treaty has been criticised by civil society groups for paying relatively little attention to environmental concerns, given the massive impacts of the energy sector in the region. This in turn increases the likelihood of EU countries importing energy produced at great costs to the people and environment in accession and neighbouring countries. The revision of the Treaty is a valuable opportunity to rectify this problem.

Yet so far, indications are that environmental issues are low on the agenda. Currently, a [High Level Reflection Group](#) is evaluating the institutional set-up and working methods of the Energy Community and will report this June with suggested improvements to the Ministerial Council. Yet the composition of this group and the informal reports from its first meeting suggest that the environment is in danger of being neglected once again in the updated Treaty.

### Making the Treaty work

EU legislation already included in the Treaty has not been adequately implemented, so the revised Treaty must:

- Increase the Secretariat's capacity to monitor and enforce existing commitments, including by automatically opening dispute settlement procedures in cases of non-compliance;
- Close all current loopholes on environmental issues;
- Increase the openness and transparency of the Energy Community bodies, including by allowing non-voting participants/observers from civil society to be present on meetings;;
- Create a level playing field by ensuring that Energy Community countries comply with all relevant EU social, environmental and climate acquis. The current situation, in which only a small portion of the acquis has been adopted by Energy Community countries, means that there is a danger of "carbon leakage"<sup>1</sup> or "energy grabbing"<sup>2</sup>; and
- Address corruption and minimise special interests by adopting EU public procurement legislation and better implementing and enforcing the existing Energy Community state aid subsidies obligations.

CEE Bankwatch Network's mission is to prevent environmentally and socially harmful impacts of international development finance, and to promote alternative solutions and public participation.

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<sup>1</sup> Some of the energy from planned coal power plants is planned for export to the EU rather than used for domestic consumption eg. Burshtyn, Dobrotvir (UKR); Pjjevlja II (Montenegro)

<sup>2</sup> Italy plans, through its Renewable Energy Action Plan, to import from Albania no less than 2/3 of the amount of electricity generated annually in Albania in 2009, along with smaller amounts from Montenegro, Bosnia and Herzegovina and Serbia.

The limited scope of the environmental acquis within the Treaty is also the subject of criticism from the CSOs. 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.

- **Chapter II of Directive 2010/75/EU<sup>3</sup> on industrial emissions**

This particular chapter replaces the IPPC Directive, whose importance is already recognised by the Treaty, and 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 in Chapter III and helps to close the 'thermal efficiency loophole'. This Chapter also sets permitting conditions, environmental inspections rules regarding access to information and public participation in the permit procedures and access to justice.

- **Directive 2008/50/EC<sup>4</sup> 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. The combustion of coal contributes the most to air pollution. The pollution from coal-fired power plants comes from the emission of gases such as carbon dioxide, nitrogen oxides, and sulphur dioxide and from the emission of particular matter into the air. Residents of places like Pristina, Tuzla and Pljevlja are losing years of their lives due to this pollution. The Directive stipulates, among many other things, that common methods for assessing air quality and ensuring that information on ambient air quality are made available to the public, both of which are essential preconditions to ensuring that the situation is improved.

- **Directive 2008/105/EC<sup>5</sup> 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/EC<sup>6</sup> 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 aspects such as water pollution from hydropower generation, 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 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.

<sup>3</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:334:0017:0119:en:PDF>

<sup>4</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:152:0001:0044:EN:PDF>

<sup>5</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:348:0084:0097:EN:PDF>

<sup>6</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:102:0015:0033:en:PDF>