

Energy Community Treaty revision

Policy briefing, February 2014

In October 2013, the [Ministerial Council](#) of the Energy Community decided to extend by ten years 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 and public health 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.

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. We urge the Energy Community to take the opportunity to maximize the full potential of the revised Energy Community Treaty in protecting the environment.

Making the Consultation Process Work

The initial web based consultation on the future of the Energy Community has just concluded. The next step will be a public hearing in Brussels on 20th March. We are asking, in the interest of an open and frank discussion, that for the meeting on the 20th March, Chairperson Buzek would arrange for:

- The results of the web based public consultation to be presented and
- CSOs to ask questions/make inputs

Finally, when the HLRG submits its report to the Energy Community on 15th June, we ask that the report be made public immediately upon submission.

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;
- Create a level playing field by ensuring that the Energy Community countries comply with all relevant EU social and environmental/climate acquis, possibly through an automatic and systematic update of the Treaty with the energy-related EU environmental acquis. The current situation, in which only a small portion of the acquis has been adopted by the Energy Community countries means that there is a danger of "carbon leakage"¹ or "energy grabbing"²
- 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;
- Include the EU Directive on public procurement in the revised Energy Community Treaty, which would help rule out instances of foul play such as the planned lignite power plants in Pljevlja II in Montenegro and Kostolac B3 in Serbia where no regular tender procedures are being carried out, or Ugljevik III where a quasi-tender only

1 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); Pljevlja II (Montenegro)

2 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.

- confirmed that the company which initiated the investment would be chosen;
- Adapt Article 108 (ex–Article 88) of the TFEU on the notification of State Aid – in order to make the existing commitments under the Energy Community more functional;
 - Support countries with their energy strategies, bearing in mind long–term EU goals, in order to ensure that only appropriate investments leading to decarbonisation and the sustainable use of renewable resources are encouraged. This can be done through coordination of technical assistance/grants from EU governments and the EBRD to make sure the studies and consequent SE's are conducted professionally and to increase public participation in their preparation.

The limited scope of the environmental acquis within the Treaty is also inadequate to protect the environment and public health from the impacts of the energy sector. 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/EU³ 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/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 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/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 2001/42/EC⁷ on the assessment of the effects of certain plans and programmes on the environment**

According to the Directive the Strategic Impact Assessment is obligatory for for plans/programmes which are inter alia

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

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

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

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

7 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32001L0042:EN:HTML>



prepared for energy sector and which set the framework for future development consent of projects listed in the Environmental Impact Assessment Directive. The Directive provides members of the public with opportunities to participate on the permitting and ongoing regulation of certain categories of activities.

- **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 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.