

Inclusion of the Habitats, Birds and Water Framework Directives in the Energy Community Treaty: An urgent imperative

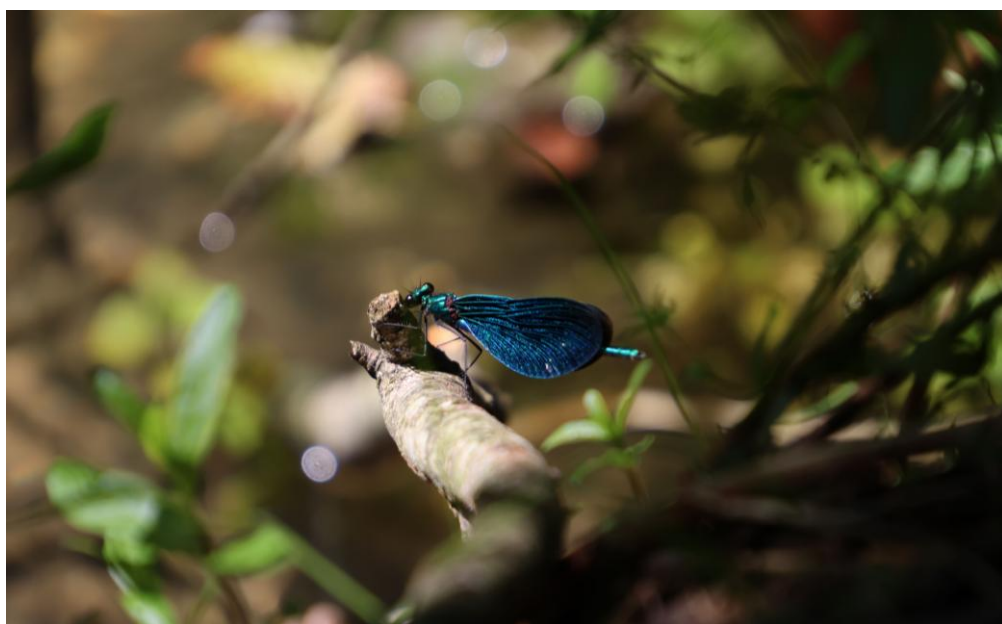


Photo: Ivan Posinjak

Stunning nature – but highly vulnerable

The Western Balkans and the Caucasus are biodiversity hotspots on a global scale, especially in terms of freshwater species. The regions' extensive mountains, river and lake systems, and coastline are home to numerous endangered species and important habitats with a high degree of endemism.

But in the Western Balkans, failure to legally protect nominated candidate Emerald sites and other valuable natural areas puts biodiversity at constant risk, as do insufficient protection and management regimes for areas which are formally protected.

For more information

Pippa Gallop

Southeast Europe energy policy
officer

CEE Bankwatch Network

pippa.gallop@bankwatch.org

Learn more: bankwatch.org



Ukraine, Moldova and Georgia are among the countries with the best developed Emerald networks, but most sites are not adequately protected. And in Ukraine, the sites' condition has considerably worsened as a result of Russia's war.

The Transport Community Treaty already requires the Western Balkan countries to apply the EU's Habitats and Water Framework Directives when developing transport infrastructure. And the Contracting Parties' Stabilisation and Association agreements and Association Agreements require them to enact EU nature protection legislation, but in many cases there are no clear deadlines for this.

Most of the countries have transposed large parts of the EU Habitats, Birds and Water Framework Directives. But the process has stagnated, with neither Emerald nor Natura 2000 designation moving forward in the Western Balkans. And neither Appropriate Assessments under Article 6(3) of the Habitats Directive nor Article 4(7) assessments under the Water Framework Directive (WFD) are carried out in practice when permitting projects that may have significant negative impacts on protected areas or prevent the WFD's objectives being reached.¹

This results in projects being permitted which destroy unique natural heritage, in many cases before it has even been properly researched. These deficiencies and gaps in the legislation increase the number of legal challenges launched during permitting procedures and increase legal uncertainty for investors.

Increasing pressure from energy infrastructure

After a slow start, the energy transition is gathering pace in the Energy Community Contracting Parties. In December 2022, the Energy Community Ministerial Council committed to 2030 targets for greenhouse gas reductions, energy efficiency and renewable energy, and more and more renewable energy facilities are being built.

Appropriately-sited solar and wind power are a welcome and necessary step towards tackling air pollution and climate change and should make up a large proportion of the countries' electricity mixes in the coming years.

But all forms of energy installations can have environmental impacts. If not accompanied by adequate environmental protection safeguards and public participation, the construction of new energy facilities in the countryside damages nature and generates widespread public opposition.

In particular, rampant hydropower construction has damaged rivers and streams in some of their most precious and pristine areas. This has attracted widespread public resistance, especially in the Western Balkans, Dniester River basin, and Georgia, resulting in protests and lengthy court battles.

¹ In most cases this is due to selective transposition or delayed implementing legislation. For a relatively up-to-date overview of the status in the Western Balkans, see Maja Pravuljac and Małgorzata Smolak, [Are Balkan Countries Safeguarding Their Rivers? A Legal Analysis of Environmental Standards in Six Western Balkan countries](#), ClientEarth, EuroNatur, Riverwatch, June 2024.

But a similar backlash is starting against solar, wind and the accompanying transmission infrastructure in some locations as well, often connected with the projects' impact on biodiversity and lack of adequate public consultation.

Unlike newbuild hydropower – which has limited potential in southeast Europe due to its climate change vulnerability and inherent biodiversity impacts – solar and wind are essential for the energy transition.

So we cannot afford a backlash against their development caused by poor planning, a lack of clear rules and enforcement of nature protection and a dearth of public participation, as this will jeopardise decarbonisation altogether.

Level playing field needed in European energy markets

The Energy Community Treaty² aims to create an integrated energy market between the EU and its Contracting Parties,³ which requires common rules in order to function. The Contracting Parties' legal frameworks on environment need to be as stringent to those of the EU, otherwise they have an unfair advantage on the market.

With weaker environmental rules, energy companies have lower production costs when planning, building and operating their facilities compared to their EU counterparts. But these costs are paid by the public, either directly or via their taxes, for example through healthcare, lost work days or livelihoods, water and wastewater treatment, remediation activities and dealing with the consequences of climate-related disasters. This turns the 'polluter pays' principle on its head, forcing the public to pay for the environmental damage done by energy companies.

The existing safeguards from the Energy Community Treaty, like the Environmental Impact Assessment (EIA) Directive and Strategic Environmental Assessment (SEA) Directive, are valuable pieces of legislation. When properly applied, they can make a useful contribution to assessing and preventing or mitigating the likely impacts of energy infrastructure on the environment, including biodiversity and water bodies. However, without the explicit protection of specific habitats and species, and without a general prohibition on causing deterioration in the status of water bodies, the current *acquis* is insufficient. This is also recognised by the European Commission in its annual enlargement reports.⁴

Just as the EIA and SEA Directives would not afford adequate protection for biodiversity and water quality within the EU without the additional binding provisions from the Water Framework Directive and Birds and Habitats Directives, so the existing Energy Community *acquis* falls far short of what is needed to protect the

² See [Energy Community page](#) for more details.

³ Albania, Bosnia and Herzegovina, Georgia, Kosovo, Moldova, Montenegro, North Macedonia, Serbia, Ukraine.

⁴ For example, see country reports under [EU 2025 Enlargement Package](#), *European Commission*, 5 November 2025.

environment from the impacts of the energy sector. This also leads to an uneven playing field on the European energy market.

High time to complete the Treaty's nature safeguards

Among others, the impact of energy generation and transmission on water and biodiversity needs to be minimised by including the Birds Directive, Habitats Directive and Water Framework Directive in the Treaty, and it is highly welcome that the European Commission has made a proposal to do so.

These Directives play a significant role in energy investments, particularly in the thermal power, hydropower, biomass and wind sectors, which can have a serious impact on natural habitats, flora and fauna. They help ensure that energy installations are not built at the expense of natural heritage. And the Water Framework Directive is crucial in minimising the impact of thermal power plants or hydropower plants on water quality and aquatic ecosystems.

Implementation of these Directives is an essential precondition for the development of the energy sector in the Energy Community countries. Clear and well-balanced rules benefit everyone, including investors, who need predictability and clarity in order to plan projects that have a high chance of succeeding.

Including the Directives in the Energy Community Treaty will provide a fresh impetus for them to move forward by providing clear timelines and allowing the governments of the Contracting Parties to benefit from the expertise of the Secretariat in transposition and implementation.

It is essential that no further delays are allowed to occur in this process and that the inclusion of the Directives is approved at the Energy Community Ministerial Council in December 2025.



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