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"Energy Community"

This OGEL special on the "*Energy Community*" was prepared by



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EDITORIAL

The Energy Community in three catch-words

Preface

If one would want to characterize the Energy Community in three words, the first coming to mind is the adjective "dynamic". Entered into force only some eight years on the postwar Balkan peninsula, the Community was mainly conceived as a pre-accession instrument. Its original rationale was to lead the countries of South East Europe into the European Union as one energy region. That gave the Community a natural expiry date. This date is even formally stipulated in Article 97 of the Treaty which limited the Community's original duration to ten years. And indeed, three of the original Contracting Parties - Bulgaria, Croatia and Romania - left the Community in the meantime. It was only a matter of time until the last Balkan country would have joined the EU. Two developments prevented that from happening. They ensured that the Energy Community still matters today, and matters more than before.

The first one is actually not dynamic at all. It is the reluctance on the side of the EU to swiftly admit countries from the region to the club, a phenomenon which has often been described as "enlargement fatigue". Given the economic, but also the identity crisis the Union is currently living through, this attitude may well last. As far as the Energy Community is concerned "*c'est le provisoire qui dure*". If there is one thing to learn from this development, it is the importance of a stable and well-designed Community which is more than just a waiting room for accession but is capable of satisfying genuine interest and needs of the participating third countries.

Secondly, and more evidently, the enlargement of the Community in 2010 and 2011 did not only change its geographical scope but also changed its nature in a more fundamental manner than what most expected. Moldova and Ukraine show that the Energy Community is about more than just re-integrating the energy sectors of former Yugoslavia. It showed its openness to accession by countries from beyond that region, most notably by Eastern Partnership countries. Another border country, Georgia is about to join this year and provide impetus for the Energy Community's dynamism. These countries come with their very own heritage and a different type of challenges. Their relation with Russia, the EU's largest gas supplier, obviously plays an important role. Membership in the Energy Community could be a bridge to the EU internal market but unfortunately is perceived by many simply as moving the borders eastwards. As we have recently seen in Ukraine, energy integration takes courage and deserves our full solidarity. Its potential in the future can only be fully tapped

if it remains open for partner countries sharing the same values. The Mediterranean may yet be another geographical area interested in the benefits of regional and pan-European integration.

The second term that comes to our mind when describing the Energy Community is the rule of law. The decision to build that Community on the same values as its European role model - an internal market created through the harmonization of laws and governed by institutions - was a wise one. Progress can be measured and benchmarked, deficiencies can be identified, and commitments can be enforced. This distinguishes the Energy Community from a lot of looser associations in the vicinity of Europe. The rule of law is not only a strong tie, it goes also deep beneath the surface of cross-border energy flows at least in the case of the Energy Community. Membership requires profound reforms of the way the markets are designed and operated. The rule of law, however, cannot thrive in a hostile environment. It needs institutions inside the countries which respect and nurse it. It also needs a layer of well-functioning institutions and procedures on the Community level, a second line of defense, to enforce the commitments where the domestic actors fail. The purpose of the rule of law is to protect market participants and individuals, the main beneficiaries of the Energy Community. Improving the present unsatisfactory situation was the reason in the first place to initiate a reform of the Energy Community Treaty. This process culminated in the report of 2 June 2014 of the High Level Reflection Group chaired by Jerzy Buzek, a strong boost not only for the rule of law in the Energy Community but yet another proof of its dynamism.

Number three in this subjective ranking of buzz-words describing the Energy Community is complexity. Its *acquis communautaire* and the activities developed by its institutions go way beyond what the Treaty describes lapidary as "network energy". They include sector governance issues, the promotion of infrastructure, the improvement of the environmental situation, competition and State aid enforcement as well as social and security aspects. In all areas, the Energy Community cannot be looked at and analyzed in isolation but is to be seen in the European and sometimes even global context of. This, after all, is the purpose of the present publication: to attest to that complexity by selecting individual aspects of the Energy Community. The large number of contributions shows how topical this approach is. Far away from providing a coherent account of where the Energy Community stands today, it provides numerous tie-ins for the future debate. It provides for an inspiring reading on the current issues and future options for the Energy Community.



Dr. Dirk Buschle
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OGEL SPECIAL ISSUE ON THE "ENERGY COMMUNITY"

Towards a European Energy Union

Janez Kopac
Energy Community Secretariat

Introduction

The Energy Community was conceived in the years 2002-2005, starting with the so-called Athens Memorandum. I signed the memorandum as Energy Minister of Slovenia, when the country was not yet in the EU and I did not have the slightest idea that this vague text would have such a major role in my future life. Originally it was designed as a provisional instrument for South East European countries, as a kind of waiting room to prepare these countries for full EU accession.

Therefore it was established only for 10 years, till 2016. It still happens today that someone calls it the Energy Community for South East Europe, as this was its working title before formal establishment. But times have changed. Bulgaria, Romania and Croatia have left our family by becoming members of the EU. Moldova and Ukraine have entered the Energy Community and Georgia is just about to become a full-fledged member. Starting from electricity issues only, the Community widened its scope to gas, energy statistics, energy efficiency, renewables, oil stocks, certain environmental issues, competition etc. In 2013 the Ministerial Council prolonged its existence till 2026. Its changed geographical scope, competences and time horizon slowly changed the character of the institution.

But the institutional setting is still the same, with all its strengths that made the Community a success story in the past and all its weaknesses that hinder it from becoming more efficient.

[↪ Full article here](#)

Regulatory aspects of Energy Community

Energy Community Law Enforcement

*Dr. Josefine Kuhlmann
E-Control*

Introduction

In order to control the proper and timely implementation of Energy Community Law and to sanction possible breaches by the Parties, a dispute settlement procedure was implemented under the Energy Community framework. The Parties are responsible for any failure to comply with provisions or principles of Energy Community Law in the form of actions or omissions (Article 2 (1) RP-DS) of their public authorities and undertakings within the meaning of Article 19 of the Treaty Establishing the Energy Community (TEnC or the 'Treaty') to which the measure is attributable (Art 2 (2) RP-DS). Article 19 TEnC applies to public undertakings and undertakings to which special or exclusive rights have been granted. Hence, the Energy Community's dispute settlement procedure is limited to public authorities and those undertakings and is not intended to resolve disputes between private parties (Art 4 RP-DS). This limitation was challenged already at a MC meeting in June 2007 within the context of the enlargement of the EnC. Nevertheless, the RP-DS themselves, which entered into force a year later, provide only for a right for private parties to approach the Energy Community Secretariat (ECS) with a complaint against a Party.

Dispute settlement decisions on whether or not an alleged breach of Energy Community Law exists, lie within the sole responsibility of the Ministerial Council (MC). It needs to be stressed right up front that the nature of dispute settlement at Energy Community level is closer to political and diplomatic action than to any form of international jurisdiction. The final decision is not taken by judges and those who take the decision, namely the participants of the MC, are representatives of the Parties, and thus far from being independent as the next case could be an alleged violation of Energy Community Law by the Party they are representing.

The following contribution shall provide a detailed overview over the dispute settlement procedure, depict its successes and shortcomings assessed with the benefit of hindsight eight years after the signature of the TEnC, and conclude with an outlook and ideas on how to develop the dispute settlement procedure in the future.

Footnotes omitted from this introduction.

↪ [Full article here](#)

Competition Law Enforcement in the Contracting Parties of the Energy Community: Current Challenges and Future Perspectives

*Alexandr Svetlicinii
University of Macau*

Summary

The paper addresses the current state of affairs with antitrust enforcement in the energy markets of the selected Contracting Parties of the Energy Community: Albania, Bosnia and Herzegovina, Kosovo, Macedonia, Moldova, Montenegro and Serbia. While the EU competition rules were transposed into the national legislation of the Contracting Parties under the Energy Community Treaty, their practical enforcement by the national competition authorities (NCAs) remains scarce. The overview of the enforcement practice allows for the identification of certain tendencies in the enforcement priorities and technical capabilities of the NCAs that are likely to affect their involvement in the energy markets. The lack of coordination of the enforcement activity with the energy regulatory authorities, focus on exploitative abuses of dominant position and insufficient investigatory capacities continue to present serious obstacles for the prohibition of the anti-competitive practices that affect the trade of Network Energy between the Contracting Parties of the Energy Community.

↪ [Full article here](#)

Enforcement of State Aid Rules in the Energy Community: Going Beyond Formal Compliance?

*M. Marco Botta
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Vienna*

Abstract

The EU State aid rules are part of the Energy Community acquis. During the last years, most of the Contracting Parties have adopted a national State aid law and established national Monitoring Authorities. Limited research has been conducted to assess the degree of enforcement of State aid law in the Contracting Parties in the energy sector. By analyzing the decisions adopted by the State Aid Monitoring Authorities of the Contracting Parties and a number of international reports on this issue, this paper aims at filling this gap in the literature. The paper concludes that the enforcement of State aid rules in the Contracting Parties generally does not go beyond the formal adoption of the State aid rules. The State Aid Monitoring Authorities of the Contracting Parties usually are not notified by the granting authorities of new aid schemes in the energy sector.

Even when notified, the Monitoring Authorities have generally followed a non-interventionist approach vis a vis the subsidies schemes granted by the Contracting Parties in the energy sector. In particular, they have approved State aids without due regard to the case law of Court of Justice of the European Union (CJEU) and the Decisions of the EU Commission in this area. The paper argues in favor of a reform of the current system of enforcement of State aid rules in the Energy Community: similarly to the EU Commission vis a vis the EU Member States, the Secretariat of the Energy Community should be empowered to review ex-ante new aid schemes that the Contracting Parties intend to grant in the energy sector. Alternatively, the Contracting Parties should be legally required to notify to the Secretariat any new aid scheme and every decision adopted by the Monitoring Authority in the field of energy.

[↪ Full article here](#)

Unbundling and Privatisation of the State Owned Vertically Integrated Companies in the Energy Community

*Mira Todorovic Symeonides
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Summary

This paper provides an analysis of the unbundling and privatisation of vertically integrated State owned electricity companies in Albania, Bosnia and Herzegovina, FYR of Macedonia, Montenegro, Serbia and Ukraine, from the beginning of their electricity markets' liberalisation in the 1990s up to-date, within the framework of these countries' cooperation in the Energy Community and their consequent undertaking of obligation to implement the Directive 2009/72/EC into their legal systems. In this regard, it also refers to the establishment and goals of the Energy Community, examines in particular the developments with respect to unbundling, in general and in these six countries, specifies the meaning and legal requirement of unbundling, describes briefly the role of the Energy Community in the harmonisation of the Acquis Communautaire while taking into account the specific situation of each of the Contracting Parties to the Energy Community.

[↪ Full article here](#)

The Concept of Interconnector in the Context of The Energy Community Treaty

Aleksandar Kovacevic

Dr. Branislava Lepotic Kovacevic

Abstract

The Energy Community Treaty establishes that Contracting Parties to this Treaty shall achieve compliance of their legislation with the EU acquis on energy infrastructure, followed by implementation of the EU acquis on energy, competition and environment. This will result in making the Energy Community energy market an integral part of the EU energy market.

The EU acquis on electricity includes two definitions for the concept of an interconnector. Directive 2009/72/EC establishes that the 'interconnector' is equipment used to link electricity systems. Simultaneously, Regulation (EC) 714/2009 states that an 'interconnector' means a transmission line which crosses or spans a border between Member States and which connects the national transmission systems of the Member States.

We argue that the electricity system of the Energy Community has certain specific technical and technological aspects that should be taken into account when implementing the EU acquis.

Specifically, the term interconnector should include any means or equipment used to link electricity systems and facilitate electricity transfer between them including a generating plant, such as Iron Gates power plant and / or overhead transmission line. This broader definition and improved understanding would lead to increased transmission and cross-border capacity, more effective opening of the electricity market, greater electricity supply security, smaller required investments into additional network capacity, greater efficiency of the electricity system and savings; as well as an increase in the investment potential of both conventional and renewable energy.

[↪ Full article here](#)

Analysis of the Term 'transit' in Cross-Border Energy Transport: A Comparative Study of Regulatory Frameworks in the Eurasian Context

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Abstract

There are multilateral and regional efforts to control and regulate transit aspects of cross-border oil and gas transport activities. These are supported by a multitude of transit-related principles adopted under existing multilateral legal instruments dealing with trade and energy. Some of these, especially those devised to be implemented within the Eurasian region, such as the Energy Charter Treaty (ECT), directives and regulations of the European Union on energy and the Energy Community Treaty, introduce rules and principles tailored for energy exchange and transit between territories. In the context of petroleum transport, certain transit provisions of the GATT/WTO rules are also relevant. However, in each instrument, substance of the term 'transit' varies considerably. As these instruments are concurrently applicable in several Eurasian States, one should question whether they supplement or contradict one another.

This paper undertakes a comparative analysis of the applicable norms of these instruments using various variables including, inter alia, transit-related definitions; security of uninterrupted transit flow; construction and operation of infrastructure; access regime; tariffs, fees and other charges; capacity allocation and congestion management mechanisms; impact on non-members; enforcement mechanisms and; remedies for breach. Potential amendments to these instruments are also taken into consideration. It finds that the current 'transit regimes' of the ECT and the GATT/WTO are complementary and that both are compatible with EU legislations and the Energy Community Treaty. However, this paper points out that there may be inconsistencies in the future, for instance, the new Transit Protocol of the ECT may not be in line with the Third Energy Package.

↪ [Full article here](#)

The Energy Infrastructure Package and the New TEN-E Regulation - Scope and Impact on the Energy Community

Dr. Olaf Däuper
Christian Thole
Becker Büttner Held

Introduction

The internal energy market - this is what lies at the core of the objectives of the EU Energy Infrastructure Package (EEIP). Today, many Member States and States of the Energy Community still tend to prioritise infrastructure projects of primary national relevance. In the aftermath of the financial crisis and the corresponding difficulties in lending money from banks, there is more hesitation with regard to making large, multi-national investments than before. This situation bears the risk of becoming a downward spiral and it is argued by many that Europe needs economic stimuli. This viewpoint is also reflected by the objectives of current EU infrastructure policies, especially the EEIP.

The goals of the EEIP will, to a great extent, be introduced by the TEN-E Regulation concerning the selection and implementation of major European energy infrastructure projects, the so-called Projects of Common Interest (PCI). Those mechanisms are also of a great relevance for the Energy Community which on various occasions expressed its will to adopt the TEN-E. It had already made a great step towards TEN-E adoption when the first Energy Community list of Projects of Common Interest was published on 24 October 2013. The criteria and determination process related to the projects correspond to its EU equivalent, which this article gives an overview on.

The article presents the content and objectives of the EEIP (see chapter B.) as well as the legal framework, which the EEIP is based upon and the process of its adoption (see Chapter C.). Furthermore, the attention will be drawn to the TEN-E Regulation (see Chapter D.). In this context, the impact of the TEN-E Regulation on investments with reference to non-EU members will be evaluated (see Chapter E.). Finally, the effects of the possible implementation of the TEN-E in the Energy Community will be highlighted (see Chapter F.).

Footnotes omitted from this introduction.

↪ [Full article here](#)

The Trans-Adriatic Pipeline - A Use Case of the Acquis Communautaire on Energy

*Christopher Bremme
Julia Sack
Linklaters*

Introduction

The successful cooperation of the regulatory authorities of Albania, Greece and Italy as well as the Energy Community Secretariat (the "Secretariat") and the European Commission in the case of the Trans-Adriatic Pipeline ("TAP") is appreciated as a milestone for the Energy Community. The national regulators had developed a Joint Opinion on the exemption of the TAP project from certain regulatory requirements under the Gas Directive, such as unbundling, third party access and tariff regulation, and notified their corresponding exemption decisions to the European Commission and the Energy Community Secretariat respectively. In regard to the decisions of the Greek and Italian regulators, the competence to issue a decision was with the European Commission, whereas the Secretariat was required to issue its first Opinion under the Third Energy Package on the Albanian regulator's decision.

Against this interesting background, we have chosen the case of TAP to illustrate the legal framework for the exemption of new gas interconnectors from regulatory requirements in the European Union and the Energy Community. The case is also suitable to exemplify the impact of the *acquis communautaire* on energy.

[Full article here](#)

The Access Exemptions Regime for the Trans Adriatic Pipeline (TAP): Regulatory Cooperation and the Role of the Energy Community

*Ioanna Despina Mersinia
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Abstract

The Trans Adriatic Pipeline (TAP), as one of the two potential routes to deliver Azeri gas to Europe, along Nabucco West, is an infrastructural project serving one of the priorities of EU, namely the Southern Gas Corridor, which aims to provide Europe with direct access to substantial gas reserves in the Caspian, the Eastern Mediterranean Basin and the Middle East Region.

This paper examines the regulatory access exemptions regime for TAP and the requirements set by the European Commission in order to grant the exemption. Furthermore, in parallel with an

assessment of the legal background and the coordination of the National Regulatory Authorities of Albania, Greece and Italy, being the countries to be transited by TAP, special focus is set on the role of the Energy Community and the cooperation between EU Member States) and Contracting Parties of the Energy Community under the Third Energy Package and in particular Directive 2009/73/EC.

[Full article here](#)

Regulatory Aspects Behind a Realization of the South Stream

*Dr. Nijaz Dizdarevic
Energy Institute Hrvoje Pozar*

Abstract

In the context of the EU legislation and the Energy Community *acquis*, a very particular legal and regulatory problem has appeared relating to the South Stream pipeline project - Gazprom's (and other project partners') preferential access to the natural gas transport system of the South Stream for long term contracts on delivery of natural gas at unequal prices and other terms and conditions. That problem appears not only in the EU Member States but also in the Energy Community Contracting Parties where the South Stream has been planned to run through. The problem has also another context - the regulatory certification of gas transport system operators (TSOs) in these countries, including for third countries participation.

The South Stream is here first discussed with respect to these two contexts, having in mind a real alternative to Russia's natural gas - the Caspian gas. The Commission's attitudes are shown next, focusing particularly to the EU internal energy market rules and the EU competition law, which are also reflected in the Energy Community *acquis*. Then, the South Stream is viewed in the light of the Third Package and the EU competition law, comparing it to a case from the EU Court of Justice and introducing a perspective of infringements in the EU and the Energy Community. Issues of the gas supply pricing and the Russia's natural gas pricing are later assessed regarding the EU legislation. Two characteristic country-cases are presented.

Conclusions are given at the end.

[Full article here](#)

A New Dimension in the Legitimacy Debate - Network Codes in the Energy Community

*Andreas Pointvogel
Energy Community Secretariat*

Abstract

This paper examines a new legislative procedure, the development and adoption of Network Codes in the European Union and the Energy Community, in the light of the legitimacy debate. It argues that for the Energy Community, this rule-setting method can be defended on grounds of legitimacy, despite its significant lack of majoritarian elements, given the future improvement of certain elements. It is shown that the processes related to Network Codes need to be more transparent and stakeholder involvement continuously ensured, and that they can only deliver, if implementation follows. The topic of perception of legitimacy is revisited in this context and a pragmatic approach to the assessment of legitimacy of international institution's decision-making is advocated.

[Full article here](#)

Persistent Energy Poverty in Western Balkans

Aleksandar Kovacevic

Aleksandar Macura

Abstract

Seven years after the ratification of the Energy Community Treaty (EnCT), energy poverty persists in most of contracting parties countries. That prevents a more effective use of the available energy assets and puts the security of supply at risk. Energy supply crises - including the crisis from January 2009 - and vulnerability of contracting parties to supply shocks are signals of serious policy failure. We argue that persistent energy poverty is the impediment for implementation of the EnCT, while its eradication is necessary - although not a sufficient - prerequisite for reforms envisaged in context of the EnCT. We provide a basic understanding of the energy poverty and distinguish it from less comprehensive concepts of "energy affordability" or "vulnerable customers". EU institutions and EU public recognize elimination of the energy poverty throughout Western Balkans as a least cost path toward sustainable energy markets that is needed for further progress in EU accession.

[Full article here](#)

Sustainability aspects of Energy Community

Environment in the Energy Community Contracting Parties - A quest for the Holy Grail of balance

*Peter Vajda
Energy Community Secretariat*

Introduction

This paper discusses implementation issues of certain pieces of EU environmental acquis in the Energy Community Contracting Parties. It takes into account the social, economic, political and environmental conditions that may significantly differ from those of the EU Member States and it calls for joint increased efforts from the Contracting Parties, the EU and the international financial institutions. It provides an outline on the recent developments in the field of large combustion plants and it assesses the related health and environmental benefits the implementation of these environmental norms could bring to the Contracting Parties. It also provides a quick glance on the issues of energy efficiency, renewable energy and the synergies between these two subjects and environmental compliance. Finally, it takes a glimpse into the future in the context of the currently ongoing revision of the Energy Community Treaty.

[Full article here](#)

Energy Community Treaty and the EU Emissions Trading System: Evidence of an Unrecognized Policy Conflict

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*Sami Madani
The Advisory House*

Introduction

The European Greenhouse Gas (GHG) Emission Trading System (EU ETS) is oversupplied and allowance prices are low (4.5 Euros). Given the EU's ambitious GHG reduction goals (minus 80 to 95% by 2050 below 1990 levels) and the current EU ETS structural reform discussions, it is to be expected that allowance prices will increase. This brings the EU ETS in conflict with energy market integration and the Energy Community Treaty that serve the proliferation of the energy acquis but does not include rules on emissions trading.

This paper analyses this policy conflict and provides evidence in the form of investment scenarios showing that energy leakage is an inherent danger for the environmental effectiveness of the EU ETS. Energy leakage is not only an issue for Member States bordering non-EU countries but also for the German market if allowance prices exceed 13 Euros in case of low electricity generation costs in third countries or 24 Euros in case of high electricity generation costs. This paper calls for a closer examination of the policy and regulatory framework of the Energy Community Treaty, energy market integration and the EU ETS.

↳ [Full article here](#)

Decarbonisation of Energy Systems. EU Reality Knocking on the Balkans' Doors

*Piotr Trzaskowski
European Climate Foundation*

Introduction

The European Union is undergoing a dramatic shift in the way it plans and develops energy systems. The growing share of renewables is driven by decreasing costs of clean types of energy, climate considerations, the need for independence from foreign energy sources and the ambition of citizens to take control of energy supplies. This revolution will not bypass countries of the Western Balkans aspiring to join the EU.

This essay does not aim at describing all the aspects of this landmark shift. It rather sketches a few important aspects of the transformation, which are often overlooked in the discussions about the energy systems in the Western Balkans driven by short-term considerations. It starts with explaining why choosing the EU future means choosing an energy system which does not emit carbon dioxide. Then it moves to outlining specific regional assets being able to contribute to the EU scene: hydro and solar resources. Their potential can be fully harvested only if the role of international grids will be reconsidered in the region. T

he article finishes with consideration of risks for governments and investors if they cling to the conventional thinking about the energy system for too long.

Footnotes omitted from this introduction.

↳ [Full article here](#)

Energy Efficiency Versus New Generation Capacity: Would it be Enough for "Keeping the Lights On"?

*Violeta Kogalniceanu
Energy Community Secretariat*

Introduction

The present article argues the case of building new generation capacity and increasing energy efficiency on the demand side, as two non - mutually exclusive options to meet the energy demand.

The paper strives to demonstrate that we need to pay equal attention to both developing new and modern energy infrastructure to replace the "old and ugly", a decision that in it should bring an efficiency gain at the supply side, as well as to invest significantly in demand side energy efficiency.

Therefore, in order to build the case, I will try to answer some of the below questions, without pretending to have all the data for an academic study. I will use both statistical data and project information, to support my analysis.

The first question that comes to one's mind, is do we know how much energy we would need in the Energy Community (in the current countries' configuration) by 2020, 2025 and 2030?

Other questions include:

1. Where are we with energy efficiency in the Energy Community?
2. Even if the untapped potential is substantial, is it enough to substitute for the "old and ugly" generation and fuel the growth?
3. How much would we have to retire from the "old and ugly" generation and how much additional capacity we would need?
4. What are our chances to make significant progress by 2020?

↳ [Full article here](#)

Improvement of Energy Efficiency Policies in the Western Balkans Initiated Through Capacity Development in Impact Orientated Planning and Monitoring

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GIZ

Abstract

"How to realize a policy framework which successfully enables the implementation of the European energy efficiency targets?" - this is a crucial question that European Union member countries and the contracting parties of the Energy Community (EnC) are facing. A significant part of the answer is in the sphere of the systematic monitoring and verification of policies: understanding the initial situation, pre-assessing the impacts of policy options, and evaluating the effects of realized policies. These abilities are essential for evidence-based policy approaches. And this is the main area of support given by the German Technical Cooperation, which is provided via the GIZ-implemented Open Regional Fund for South East Europe on Energy Efficiency (ORF-EE) towards the Energy Community since 2010. The text at hand gives a practical and compact perspective about "what has been done" and "how was it done". Special emphasis is given to the issue of regional cooperation within the Energy Efficiency Task Force / Coordination Group of the EnC and its benefits in the policy creation processes at a national level.

[Full article here](#)

Capital Cities towards Sustainable Energy

*Johannes Elle
Dubravka Bosnjak
GIZ*

*Klaus Hoppe
Klaus Hoppe Consulting*

Abstract

To achieve progress in the field of Sustainable Energy, the involvement and engagement of several Governmental levels is crucial. Additionally, as demonstrated within several formats within the Energy Community, the regional exchange of experiences and joint learning can stimulate progress in a crucial manner. In this context the description at hand explores the cooperation of the Capital Cities in South East Europe on Sustainable Energy.

In its introductory chapters, this paper points out the importance of Local Governments for the implementation of Sustainable Energy policies and the approach of the Covenant of Mayors. The major focus is given to the engagement of a special group of Local Governments in South East Europe: The capital cities Zagreb, Sarajevo, Podgorica, Skopje, and Tirana. The steps in the development, strengthening and expanding of their cooperation are described, and the Network of Energy Efficient Capital Cities in South East Europe, as a result of their fruitful cooperation on their way towards the goals of the EU Covenant of Mayors Initiative. Throughout their efforts, they benefited from technical support of the GIZ - Open Regional Fund for South East Europe - Energy Efficiency (commissioned by the German Government). They have realized significant progress so far, but at the same time opportunities and challenges lie ahead. The efforts of the capitals might contribute towards giving impetus to other Local Governments, but also to the European Integration process of their countries.

[Full article here](#)

Membership in the Energy Community

Energy Community and Energy Resource Rich Countries: An Introduction to the Topic

*Dr. Kim Talus
University of Eastern Finland*

Introduction

This article will discuss the extension of the geographical scope of Energy Community to areas like the Caspian region and Eastern Mediterranean. Unlike the current membership of the Energy Community, these areas are characterised by presence of significant hydrocarbon resources.

The central argument of the article is that given the material scope of the Energy Community Treaty, it will allow the accession of hydrocarbon rich countries without compromising fundamental aspects of their hydrocarbon policies or sovereignty. This argument rests on certain premises: First, there is a difference between energy policy and resource policy. These are two separate but interrelated areas of national policy making. Energy Community is about energy law and policy, not resources law and policy. Second, the Energy Community Treaty is not extended away from network energy and will not include EU energy instruments like the Hydrocarbon Directive, nor will it extend the free movement of capital, services and goods principles away and beyond the area of network energy.

[Full article here](#)

Applying the European Union's 'Energy Acquis' in Eastern Neighbouring Countries: The Cases of Ukraine and Moldova

*Dr. Roman Petrov
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Abstract

The Treaty of Lisbon paved the way for legal formalization of new European Union policies and significantly enhanced the external dimension of the European Union Internal Market. The newly emerged European Union energy policy is a good example of this. External objectives of the European Union energy policy are being fulfilled through the Energy Community which embraces not only European Union Member States and candidate countries but also third countries without any perspective of membership in the EU.

The Energy Community is designed as a perfect example of the 'integration without membership' model which gives a stake for third countries in the European Union Internal Market and promotes European Union's sectoral acquis beyond the EU borders and plays a role of a laboratory working on better and deeper engagement of third countries into expanding the European Legal Space. This article focuses on challenges of the process of the application of the EU 'energy acquis' in Ukraine and Moldova.

[↪ Full article here](#)

Energy Community - What Does it Mean for Ukraine?

*Elena Rybak
iC consulente Ukraine*

Introduction

It is just over three years since Ukraine became a full member of Energy Community (EnC) with the Treaty being ratified in February 2011. What did joining EnC mean for Ukraine? If I had to answer this question before November 21, 2013, when a handful of Ukrainians first went to the central square outraged at the governments statement of suspending the process of signing EU Association agreement just the day before the Vilnius summit... my answer would probably be very different.

[↪ Full article here](#)

Accession of Serbia to the European Union - Importance of Material Requirements - in the Energy Sector

Aleksandar Kovacevic

Abstract

Material requirements in the energy sector are the key determinant of the accession process for the Accession of Serbia to the European Union. They connect the process of Accession of Serbia to the European Union with an improvement of living conditions and achievement of basic rights for the population. Implementation of the material requirements in the energy sector proves the readiness and capability of the public administration to act in the public interest. Actually, a faster and more complete implementation of these material requirements is in the best interest of the majority of the Serbian population, as well as the population of the neighbouring countries, some of which are members of the European Union. Fulfillment of these requirements would be necessary even if they were not envisaged in the process of Accession of Serbia to the European Union.

This text describes material requirements where the implementation has already been agreed on, and it also explains the importance of implementation of these requirements for the accession process, for greater employment and economic development. Implementation of material requirements in the energy sector is a measurable category, and the impact of implementation of these requirements may also be measured in respect of the quality of life and basic human rights. The future of the Serbian population, in terms of the economy and all other aspects, depends on the way of implementing the agreed material liabilities. The text includes tables with a summary of material liabilities and cross-line mutual inter-connections as well as corresponding recommendations regarding the fulfillment of such liabilities.

[↪ Full article here](#)

The Energy Community in an international context

Energy Security and Intergovernmental Organizations

*Richard Wheeler
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Introduction

Energy security has been a hot topic of discussion in global capitals and amongst many influential intergovernmental organizations for at least a decade. However, despite these extensive discussions, there does not seem to be a consensus for a common understanding of energy security. Adding to the complicated nature of the issue, many international and intergovernmental organizations have very different approaches in their treatment of the energy security topic; each of these organizations has its own goals and *raison d'être* in relation to the energy issue, and is therefore likely to have developed its own definition of energy security. Not surprisingly, governments have also widely divergent views on energy security.

Given the diverse and often competing views about energy security, and the resulting complex relations that many energy-related intergovernmental organizations have with each other, it would seem an insurmountable task for these organizations to achieve meaningful coordination or cooperation with each other. As a result, it would seem difficult to realize even a semblance of global energy governance, or to predict which organizations are likely to rise to prominence out of this perceived disorder.

This contribution will argue that as the world becomes more globally interdependent, and as aspects of energy security such as its physical security, economic security and environmental security become increasingly intertwined, the intergovernmental organizations of the 21st century which will remain relevant in the energy security area will be those organizations which succeed in cooperating with each other by finding common and cross-disciplinary ways to collectively improve global energy security. Relevancy for intergovernmental organizations can mean either gaining wide influence by having a comprehensive, leading role, or alternatively establishing for themselves an indispensable role as an important niche actor. In either case, this contribution will argue that cooperation will be the most effective way to create an "organizational ecosystem" necessary for this to happen.

In order to do this, this article will start by examining many differing definitions of energy security. Following an attempt to settle upon a comprehensive definition, this paper will examine the roles that leading international and intergovernmental organizations have undertaken in relation to the energy issue, and will suggest ways forward for their activities and interactions with each other. Throughout the article, the relevance of historical processes upon the formation of energy-related intergovernmental organizations will be considered; namely, attempts to adjust to the realities of the post-WWII and post Cold War eras will be examined, and possible ways that these organizations might adapt to 21st century realities will be considered. The range of organizations included into this contribution is not meant to be exhaustive; organizations were chosen for inclusion on the basis of their suitability to illustrate this article's main thesis.

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Institutional Building in Energy Regulation - Comparison between the Cases of the Energy Community and MEDREG

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Abstract

The institutional and rule-building efforts of the European Union with regard to its external energy policy have been referred to as integration without membership model. In this capacity, the EU played a major role in the creation of the Energy Community in the Balkans.

The EU also played an important, yet considerably less evident role in the establishment of MEDREG in the Mediterranean region. While both organizations have been in existence for similar periods of time, their degree of success differs substantially. The Energy Community has succeeded in establishing a mutually influencing relationship with the EU, while MEDREG struggles to establish a lasting influence in the Mediterranean basin. The reasons for this difference in outcome can directly be attributed to the different processes used to create the two organizations, as well as the dissimilar degree of involvement of the European Union.

The European Union should engage with the Mediterranean region as a whole and invest in MEDREG to create an organization that, like the Energy Community, can also take advantage of a top-down approach to dealing with domestic energy regulatory agencies.

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The Energy Community, the Energy Charter Treaty and the Promotion of EU Energy Security

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Introduction

This chapter relates to European Union (EU) energy security and two special and important multilateral regimes (namely the Energy Charter Treaty (ECT) and the Energy Community (EnC)) regarding the promotion of EU energy security interests at the extra-EU level. EU energy security often takes place through the propagation of energy-related norms among third-party states via, among other things, hard-law means (e.g., international legal agreements). In this context, we hone in on the normative frameworks in relation to the ECT and the Energy Community Treaty (EnCT), examine their systemic relationship to the EU, and offer an account of their respective dispute settlement arrangements.

After this introduction, Section II provides some background information on EU energy policy. Section III deals with EU external energy relations, while Section IV provides an overview of the systemic links between the EU and the two multilateral systems within scope (the ECT and the EnC). Section V examines the dispute settlement arrangements of the ECT and the EnC. Section VI comments on issues concerning concurrent legal obligations in order to further situate the topic within the broader international legal system. Section VII concludes the chapter.

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Energy Community Treaty and Energy Charter Treaty: Working towards efficient international energy markets

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Introduction

Fourteen years before the Energy Community Treaty was adopted in Athens in 2005, the international community launched an earlier ambitious initiative aimed at establishing long-term East-West energy cooperation. When the centrally planned economies started dissolving, the need to work towards market-based cooperation became evident. In particular, a tool was needed to create Western investor confidence for the exploration of energy resources in the East. In this process, the European Energy Charter was signed as a political declaration by 48 countries and two international

organisations in the Hague in 1991. Three years later, the Energy Charter Treaty (ECT) was adopted in Lisbon. From the start it was complemented by a Protocol on Energy Efficiency and Related Environmental Aspects, which at that time was a major novelty. Today the Treaty has 54 signatories, including the EU and its member states, and 25 countries and organisations with an observer status. Accession to the ECT is open to any country: developed, developing and transition; producer, consumer and transit countries. Investor confidence and regulatory stability is no longer a concern of a specific region, but rather a global issue that all countries need to address.

The ECT provides for a legal framework for governmental market-based energy measures and policies and thus creates an international level playing field. The Treaty is the first intergovernmental agreement that is applicable to all energy forms (oil, gas, electricity, nuclear, renewables) and to all stages of the supply chain (resources, production, transport, trade, consumption, energy efficiency). Any substantial (additional norms) and geographical developments (new members) require unanimity. Although this confidence-building provision may slow down the process, it also guarantees the internal coherence of the process and the global vocation of the ECT.

The EU internal energy market started developing in 1996, two years after the adoption of the ECT, and included an important part of its geographical area. By contrast to the unanimity rule, the supra-national feature of the EU has allowed it to go deeper and faster in terms of energy market integration. The Energy Community Treaty adopted in 2005 was an extension of the *acquis communautaire* to South East Europe. Arguably, the EU internal energy market and the Energy Community have developed as regional markets under the umbrella of the ECT, which may act as the legal bridge to share principles and rules with other regions across the world.

Interactions at the regional and global levels are inevitable. Indeed the ECT and the Energy Community Treaty do not only have similar names but also share a great part of their membership. This article deals with some complementarities and also some distinct aspects of the two Treaties, addressing in the first section the regulatory scope and in the second one the added value that the two Treaties may bring to a particular region, North Africa and Middle East.

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