



EPSU response

to the Consultation Paper on the Outline of the Social Strategy of the Energy Community

This response is on behalf of EPSU, the European Federation of Public Service Trade Unions. EPSU is a recognized European level social partner and a Member of ETUC.

Main points:

- The Memorandum of Understanding on the Social issues is to remain the backbone, and including the national social working groups, social plans and Social Forum, of the Social energy strategy. The binding character should be strengthened and the Energy Community Secretariat provided with more resources to monitor its implementation. The Ministerial Council should work with deadlines as is done with regard to the energy acquis.
- Ensure that the *regional energy strategy* and the selection of the *Projects of Energy Community Interest* is subject to regional democratic control as a counterweight to the Ministerial Council. Reinforce the control of the European Parliament over the regional strategy. A concrete way could be to establish an Energy Community parliamentary group with MEPs and MPs from the Energy Community countries. It is recommended that a socio-economic council for energy is established which will also contribute to the democratic control over the regional energy strategy and its implementation.
- The Ministerial Council committed to transparency and consultation of civil society over the *regional energy strategy*. It is important that the Energy Community works on concrete mechanisms for such consultation following EU rules and the Aarhus Convention. The consultations should be comprehensive and include all social actors.
- Keep the essential infrastructure for the electricity and gas industry in public hands
- The national consultation on the social strategy needs to be monitored by the Energy Secretariat to ensure that trade unions, employers and other social organisations are consulted.
- Elements of the regional social strategy are:
 - a. Protection of users and developing an anti-poverty strategy. Regulated prices are the best protection for small and domestic users in what will be a fluctuating market. The regulators should control this and have a role for the trade unions to advise.
 - b. Regional labour market and social dialogue;
 - c. Criteria and Consultation on the Projects of Energy Community Interests. Transparency, social and environmental obligations, oversight of selection and implementation involving representatives of civil society.
- These elements should be kept together in the social strategy. It should be considered to create social economic councils for energy based on the example of Slovenia.
- A social dialogue for the region on the basis of the European social dialogue should be promoted by the European Commission and the Energy Community Secretariat. This social dialogue would allow the employers and trade unions, and where required with the governments, to agree basic positions that would guide the development of the social dimension in the region.

Introduction

1. The consultation is the result of the discussions at the last (5th) Social Forum 10 and 11 October 2012. EPSU criticized the lack of a social dimension to the regional energy strategy on behalf of the European social partners (EPSU/IndustriAll for the unions and Eurelectric for the employers) and argued that the regional energy strategy should be accompanied by a social roadmap. This would consider the impact of the energy strategy on workers and citizens (especially the poor and vulnerable). It should detail the manner in which the governments would act to deal with the (negative) social impact of the energy strategy at national as well as regional level. We welcomed the inclusion in the conclusions from the Forum of the suggestion to do a consultation on a social strategy for the Energy Community. The Ministers and Commission subsequently agreed to do this. (Ministerial Council, October 2012).
2. EPSU has argued that the Energy Community needed a social pillar which resulted in the Memorandum of Understanding on the social aspects of the Energy Community, signed in October 2008, Vienna. EPSU has participated in the process of the implementation of the MoU. The history of our involvement can be followed at: www.epsu.org/r/239
3. Based on our and others involvement and experience it would have been worthwhile if the consultation paper was accompanied by:
 - An overview of what has been accomplished so far both at member state level as well as regional level;
 - An analysis what has not been realized and why not. This would assist in developing a next stage in the regional strategy.
4. As regards the *accomplishments* it is important to highlight:
 - The regular Social Forums which have allowed for unions, employers, government officials, regulators and others to consider and discuss the various issues and reach constructive conclusions. It further provided a platform for exchange of experience and best practice from which others could benefit.
 - That most countries have now established the social work groups and the social plans that provide a structure for the development of the social strategy at national level.
 - A focus on the social aspects of the energy community which otherwise would have been absent or weaker.
5. *More critically* we regard:
 - The long time it took many countries to set up the social working groups and establish the social plans. The social plans were and are still not complete and not pro-active especially regarding the restructuring of the sector and how to deal with the resulting consequences. The conclusions of the Social Forum have repeatedly been very critical.
 - EPSU has argued that this slow progress has been due to a lack of political will of certain governments as well as a lack of a more binding legal framework. We recall that the contracting parties have legal (contractual obligations) with regard to implementing the energy acquis but that this is not the case for the obligations arising out of the MoU on the social aspects even though as the consultation paper rightly points out there is a clear legal reference in the Treaty of the Energy Community to ensure that the social pillar is developed in parallel with and in an equal manner as the pillar of economic development. And this is in line with the Treaty of the European Union which sets the overall objectives for economic and social progress.
 - The social working groups have not been working well in all countries and in some countries have met irregular. Unions have pointed out that in some cases the governments did not actively engage with the unions and have ignored their positions

- (which is something different as in a dialogue disagreeing with each other, explaining why, and seeking a joint view)
- Related to the above is that while we greatly appreciate the work that has been done by the staff of the Energy Secretariat and the European Commission (DG Employment and especially its social dialogue unit) to assist with the implementation of the MoU and finding financial resources to organise a number of workshops addressing specific issues, we do note the overall lack of resources which has been devoted to the MoU compared to the implementation of the energy acquis.
 - Another aspect we have noted is that the social dimension and especially with regard to the aspects that concern workers (restructuring, training, social dialogue on energy policy...) is not integrated in the overall work of the European Commission's DG Energy and the energy ministries. As the energy acquis is based on a legal basis and has strict deadlines to be respected, this has created a disparity and impression in contracting parties that the social dimension is less important.
6. The consultation paper would have benefitted from an overview of the progress or lack thereof with addressing the issues of the MoU (see box) and why this has been so.
7. It is often argued that there are legal complications as the *EU social acquis* applies to other sectors as well and is more general compared to the energy acquis, it appears that no efforts have been made to consider ways in which it could have been made applicable in the energy sector. An example: the Directives on information and consultation and including the European Works Council Directive are cross-sectoral in nature. Governments, and in consultation and agreement with the social partners, could have ruled that these directives apply in the energy sector and that their basic principles should be respected. As all members of the Energy Community have the clear intention of becoming members of the European Union and several countries have candidate status this should not be a problem. It prevents a situation in which domestic and other companies can take advantage of the benefits of the implementation of the energy acquis which provide a common basis of rules in the EU and Energy Community but would not be faced with a similar situation in the social area. The EU and Energy Community countries sought to prevent this disparity through the MoU. This has not been successful.
8. The Memorandum of Understanding on the Social issues is to remain the backbone of the social strategy. This includes the national social working groups, social plans and Social Forum. The binding character should be strengthened and the Energy Community Secretariat provided with more resources to monitor its implementation. The Ministerial Council should work with deadlines as is done with regard to the energy acquis.

Memorandum of Understanding – The issues

The memorandum covers a number of important areas. To recall:

Social dialogue

The MoU states "The Signatories note that addressing the likely social impacts of the Energy Community requires effective governance of the process encompassing the involvement and participation of the various actors, in particular of the social partners at national level. Therefore, they recognise the need to involve the social partners at all appropriate level by promoting the social dialogue in relation to the monitoring of the implementation of the Energy Community and its effects. This refers in particular, but not only, to market opening, increased competition and restructuring. Thus, each Signatory should introduce effective mechanisms for information and consultation of the social partners on any of these issues."

EPSU comment - The process of developing the regional energy strategy did not follow this process. It has not been considered with the national nor European social partners. It reinforces our point that a structural manner needs to be developed to ensure such consultations do take place.

Management of Change

The MoU states: “The Signatories note that the Energy Community and the process of opening-up of the electricity and gas energy markets offer new economic and employment opportunities. However at the same time, it may lead to restructuring and changes for the enterprises and employees concerned, which would primarily affect low-skilled and vulnerable groups of workers or geographically concentrated areas. In order to address short-term transition challenges, particular attention will be given to anticipating and managing the social consequences that arise from the implementation of the Treaty establishing the Energy Community. Thus, the Signatories should aim at improving the adaptability of workers – particularly those who are low-skilled, and/or older workers, supporting investment in human capital and life-long learning geared to local needs, fostering mobility, promoting the development of specific employment, training and support services.”

EPSU comment: we have addressed restructuring and the importance of the management of change on several occasions in workshops and the Social Forum. It was noted that this needed to be part of the social action plans and in particular the investment in training and education. Very few countries have presented a strategy which looks to train and educate the work force concerned with the changes that are and will be taking place.

The European social partners have repeatedly drawn attention to our toolkit on restructuring¹. It was developed based on examples of unions and employers addressing the changes liberalization has brought for the industry. That toolkit stressed the importance of social dialogue and the need to take a long term view of the changes taking place. This has not been done.

Social Dimension

- The MoU sets out a number of key areas that are considered to be part of the social dimension. It states that these should be developed “in consultation with the relevant social partners.” This approach should take into account the existing European social „acquis communautaire“. These areas are:
- Workers’ fundamental rights according to European Convention for the Protection of Human Rights and Fundamental Freedoms, the European Social Charter, the Community Charter of the Fundamental Social Rights of Workers and the EU Charter of fundamental Rights;
- Labour laws – in relation to the promotion of improved working conditions and standards of living;
- Health and safety at work – in relation to improvements in the working environment concerning the health and safety of workers in the energy sector;
- Equal opportunities – with a focus on the introduction, where necessary, of the principle that men and women ought to receive equal pay for equal work

The findings and the appropriate follow-up should be summarized in the form of social action plans to address the issues indicated in the previous sections of this Memorandum. The social plans should be drawn up with close cooperation of social partners.

EPSU comment: This part of the implementation of the MoU has been the most disappointing. It has been addressed scantily by the members of the Energy Community. No policies have been presented how the social partners and the government will address the improvement of any of these items. Governments have focused on legislative measures (sometimes linked to the implementation of the social acquis –which is important) and not on taking concrete steps to address inequalities, improve health and safety or trade union rights for example.

¹ <http://www.epsu.org/a/4761>

Democracy

9. An issue EPSU raised in the run up to the Energy Community was the democratic deficit. There is hardly any parliamentary control of the work of the Energy Secretariat, Permanent high-level group and Ministerial Council at national or EU (European Parliament) level. There are no regular reports to the EP that are considered in debate. The democratic control is absent at regional level. There is not a regional energy parliament. This is not solved in the regional energy strategy paper. EPSU suggest therefore that the Energy Community needs to ensure that the regional strategy and the selection of the Projects of Energy Community Interest is subject to regional democratic control as a counterweight to the Ministerial Council. Reinforce the control of the European Parliament over the regional strategy. A concrete way could be to establish an Energy Community parliamentary group with MEPs and MPs from the Energy Community countries. Another suggestion is that a social economic council for energy is created between employers, trade unions and governments.
10. The Ministerial Council (18 October 2012)² committed to transparency and consultation of civil society over the *regional energy strategy*. It is important that the Energy Community works on concrete mechanisms for such consultation following EU rules and the Aarhus Convention (on access to information, public participation in decision-making and access to justice in environmental matters. EPSU notes that the consultations should be comprehensive and include also the trade unions, anti-poverty groups (for example via the European Anti-poverty Network) as well as environmental organisations. While unions have a specific role regarding the *social* strategy, they will also have positions on the *energy* strategy.

Privatisation

11. EPSU has argued for a moratorium on the privatisation of the energy companies (electricity and gas) as the evidence suggests that introducing the opening of the market at the same time as privatising the energy companies would be a foolish policy both for workers and citizens. For workers as the opening of the markets has a negative impact on jobs and working conditions based on the experience of the European Union countries. EPSU's own research as well as research of EcoTec on behalf of the Commission have stressed this. It has been substantiated with research of others³. In practice the privatisation of companies, especially in the electricity sector, has not progressed significantly in the region. We welcome this. In those cases where it has, problems have occurred such as with EVN in Macedonia (although solutions were found) or could lead to a reversal (see the ongoing discussion on the role of CEZ in Albania.) For citizens as privatisation would drive prices up. Energy professor Steve Thomas (University of Greenwich) has shown that statements that claim that prices went down lack rigor.⁴
12. The Energy Community did not agree with our position and also the regional energy strategy favours a withdrawal of the state from the energy sector in favour of leaving more (investment, price setting) to the market. We consider this a mistake and argue that

² <http://www.energy-community.org/pls/portal/docs/1766216.PDF> (point 14 reads: The Ministerial Council adopted the Energy Strategy of the Energy Community, and welcomed the interest of the civil society towards the development of the Energy Community Strategy as reported by the Presidency in Office, the EU and the Secretariat. The ministers emphasized on the importance of transparency and agreed that the civil society representatives should be appropriately consulted in the follow-up work)

³ Privatisation of Public Services and the Impact on Quality, Employment and Productivity (PIQUE) – Final Report 2009 <http://cordis.europa.eu/documents/documentlibrary/122489371EN6.pdf> See also the research available at www.psir.org

⁴ <http://www.epsu.org/r/324> and the Impact on small consumers of retail electricity competition (2002) <http://www.psir.org/reports/impact-small-consumers-retail-electricity-competition>

the state should continue to have an important role to play – not only as regulator, but as operator of and investor in the services. The regional energy strategy scenarios underline the enormous need for investment to meet future demands. It appears wholly unrealistic to consider that this investment will come from the private sector. It further raises the issue if the institutions are strong enough to cope with such private operators. Electricity and gas remain public services without which societies come to a standstill. Whatever the possible benefits of competition, they do not outweigh the risks of a failure due to competition. The liberalization of electricity means also the freedom not to invest or to “exit” from the market altogether. It will be for the state to pick up the pieces. EPSU repeats therefore its demand that the electricity and gas infrastructure such as networks and production (and including renewables) is owned by the public authorities (state, regional, local or a mix). Especially with regard to renewable energy it could be considered to promote local public initiatives.

The conceptual error in the regional energy strategy as well as in the EU design of the internal market for electricity and gas.

13. The regional energy strategy is based on an ideological belief and a conceptual error. As is the effort of the European Union to create the internal market for electricity and gas. The belief is that markets will deliver a number of outcomes better than will do cooperation and public policies. No evidence has been presented that this would indeed be the case. The conceptual error is that the Commission and now also the Ministerial Council state that the ideal situation is one of full competition and functioning markets. It is not defined what the end stage will be, nor is it taken into account that the economist's concept of markets and competition is a theoretical construct for the ease of argument. It is not the natural state of the economy. Both in the EU and in the region errors derive from this.

The conceptual error as explained by John Maynard Keynes

John Maynard Keynes identified in the 1920s cost and demand conditions under which competition doesn't emerge. This seems largely forgotten. Keynes goes further, to explain how economists move from simplifying assumptions to abandonment of the actual facts, and to conclude that reality is what their model says it is.

"The beauty and the simplicity of such a theory [competition producing economic efficiency] are so great that it is easy to forget that it follows not from the actual facts, but from an incomplete hypothesis introduced for the sake of simplicity. Apart from other objections to be mentioned later, the conclusion that individuals acting independently for their own advantage will produce the greatest aggregate of wealth, depends on a variety of unreal assumptions to the effect that the processes of production and consumption are in no way organic, that there exists a sufficient foreknowledge of conditions and requirements, and that there are adequate opportunities of obtaining this foreknowledge. For economists generally reserve for a later stage of their arguments the complications which arise -- (1) when the efficient units of production are large relatively to the units of consumption, (2) when overhead costs or joint costs are present, (3) when internal economies tend to the aggregation of production, (4) when the time required for adjustments is long, (5) when ignorance prevails over knowledge, and (6) when monopolies and combinations interfere with equality in bargaining -- they reserve, that is to say, for a later stage their analysis of the actual facts. Moreover, many of those who recognise that the simplified hypothesis does not accurately correspond to fact conclude nevertheless that it does represent what is 'natural' and therefore ideal. They regard the simplified hypothesis as health, and the further complications as disease." (Keynes, 1972)^[1]
Keynes, J. M. "The End of Laissez-faire" in The Collected Writings of John Maynard Keynes, Vol. 9, Essays in Persuasion, London, The Macmillan Press, 1972

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On the *Social Strategy*

14. We recall that “The Ministers noted the information on the outcome of the Social Forum and welcomed the Secretariat's initiative for developing a Social Strategy of the Energy Community. They invited the Secretariat, in cooperation with the social partners, to prepare an outline of a Social Strategy for discussion and eventual adoption at the Ministerial Council meeting in 2013 upon debate at the PHLG.”⁵ EPSU and our trade union colleagues will seek a discussion with Eurelectric (employers side) to consider the possibility of a joint opinion.
15. The consultation paper addresses many issues that are for the most part to be responded to by the national social partners and governments. We do underline that “the elaboration of the outline of the Social Strategy needs to involve intensively all stakeholders, including governments, regulatory authorities, social partners, NGOs, and in line with Article 3 of the Social Memorandum.” We ask the Energy Secretariat to verify that governments have organised a broad based consultation.
16. We do note that many of the questions do not address the social dimension of the *regional* energy strategy. While that strategy will have national effects there is also a *regional* dimension. The regional strategy argues that the region will benefit regarding energy investment from strengthened regional cooperation. But it does not make suggestions or proposals regarding the regional social dimension.
17. EPSU considers there are the following parts of the regional social strategy:
 - a. Protection of users and developing an anti-poverty strategy;
 - b. Regional labour market and social dialogue;
 - c. Selection and criteria for Projects of Energy Community Interest
18. The consultation paper suggests that discussion on Public Service Obligations and addressing fuel/energy poverty should have a distinctive approach from the rest of the social strategy. We do not agree and wish to continue to see a comprehensive approach to the social dimension. The MoU has allowed for sufficient flexibility of addressing certain issues when needed.

Protection of users and anti-poverty strategy

19. EPSU is concerned about the clear intention of the Ministers to abolish price regulation and including for small users. We recall that it has taken EU Members 17 years to arrive at a situation that regulated prices for small users could be changed after the legislative and institutional mechanisms were set up. And still not all EU Member States have relinquished control of regulated prices. The recent *Communication on Making the Internal Energy Market Work*⁶ emphasizes this.
20. Abolishing price regulation should also be seen in the context of the position taken by DG Energy in the Energy Roadmap 2050 which argues electricity prices should be able to go up to pay for the full costs of energy. The increase in prices will have an impact on industries and domestic users. The regional energy strategy argues that an increase in prices is needed to finance investment in infrastructures. We note that financing infrastructures via public debt might be the cheapest option rather than relying on private finance. It will allow governments to deliver infrastructure in a targeted way whereas it is not sure that private investors will be interested to invest, or invest in the infrastructure needed. In general investors are wary of investing in utilities currently and will demand too high risk premiums/ rate of returns. Investors might further be scared off by continuing stories about corruption (see box for the EPSU position on corruption).

⁵ <http://www.energy-community.org/pls/portal/docs/1766216.PDF> (point 18)

⁶ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52012DC0663:EN:NOT>

21. We recommend that the Energy Community does not push to open markets for small and domestic users. The best protection for small and domestic users is regulated prices.
22. We agree that the Members of the Energy Community should define how low-income users would benefit from government support and including for programmes to address energy efficiency and home insulation. Such measures are also foreseen in the recently adopted Energy Efficiency Directive. These measures should be part of overall strategies to reduce fuel (or energy-) poverty and embedded in the countries' effort to reduce poverty in line with the EU targets to reduce poverty. Trade unions (often at cross-sectoral level) do represent and protect the interests of domestic users (households) and are often involved in price-setting given that trade unions represent a broad range of interests of workers in industries and services both public and private, as well as their families and communities. This role should be strengthened in the regulatory or other relevant government bodies.

EPSU Unions addressing corruption

(...) It is the strong view of trade unions that corruption is a threat to democracy and stability, it curbs economic growth, it erodes the availability and quality of public services and trust in officials and ultimately public sector workers. Corruption takes different forms and operates at different levels of society both in the public and private sectors and appears to getting worse in a number of countries. Public service trade unions alone cannot eradicate corruption but there are many ways in which they can contribute to its prevention and reduction building upon EPSU policy for:

- transparent, well-resourced administrations, and fair public sector recruitment procedures, sustainable social procurement,
- better working conditions and pay based on trade union rights including information, consultation and negotiations rights.

Trade unions also play a role in denouncing abuse of power which require legal protection for whistle blowers.

The fight against corruption also rests on better involvement of citizens in the public budgets and key decisions on public services and public policy. Compliance with the state of law and implementation of sanctions together with strong rules to avoid conflicts of interests between the public and commercial sectors and on the funding of political parties are also essential.

The privatisation of public goods and services and lax public procurement rules are major concerns as they have been and continue to be subject to many cases of corruption. It was much stressed that fighting corruption is about defending the good use of tax payers' money that should serve the general interest not the private interest of the few. In this respect, sustainable public services need more than ever progressive and fair taxation regimes and the fight against tax fraud is central to the fight against corruption.

www.epsu.org/a/8206

Regional labour market and social dialogue

23. The regional strategy paper notes that a large part of the infrastructure is older and sometimes beyond its retirement age. We note that it is expected that a significant part of the work force will retire as well. And at the same moment countries have committed to reduce emissions and to develop renewable energy sources. This can pose problems for the availability of workers as well as the level of training and expertise. The regional social strategy should take this into account and:
- Monitor employment developments (gender balance, perspectives, young/ elder workers...) in the sector in the different countries and discuss this at national as well as regional level with the social partners;
 - Consider to develop jointly the skills and qualification levels for workers on renewables (in accordance with the directive on renewables e.g) and energy efficiency in consultation with the social partners. Joint training programmes can be considered.

- The European social partners have stressed the importance of addressing restructuring as well as demographic change and age management. We repeat that the national social work plans should address these issues.
- Discuss with the social partners what steps are required to create a labour market for the energy sector (recognition of qualifications, labour legislation, collective agreements, licenses of companies, pensions, right to strike etc.) in the Energy Community, possibly starting with the Western Balkan countries. One area of urgent work is to recognise that the EU social acquis especially in the area of information and consultation at national and European level (European Works Council Directive) and collective redundancies needs implementation. We recommend that the European Commission considers a sectoral agreement at regional level between employers, unions and possibly governments to this effect.
- Most countries will become part of the EU and will experience free movement of labour. Trade unions will not contribute to the opening of a labour market that is intended to seek more flexibility and increases insecurity for workers. Or which would stimulate social dumping, undermines collective agreements and increases precarious jobs.
- The regional energy strategy refers to the transition to a more sustainable energy system which is taking place in the EU and which will also affect the Energy Community. The energy community countries should therefore develop a policy that allows for a “just transition” as the Cancun agreement (UNFCCC)⁷ defines and is taken up by the European social partners as well as the European Commission in its Energy Roadmap 2050. “Just transition” should be one of the guiding principles of the regional social strategy linked to the regional energy strategy.
- Promote national social economic councils for energy agreed by the employers, trade unions and governments following the example of Slovenia. (see box) This should further allow for a structured and continual organisation of the social dialogue concerning energy dossiers.
- We recommend that based on the social economic councils for energy we consider a social economic council for energy for the region which is consulted regarding energy decisions to be considered and taken by the Ministerial Council. This would be a further development of the Social Forum.
- Separate from the above points we urge the European Commission to find a solution that allows the representatives of the trade unions and the employers of the Energy Community countries to participate in the European social dialogue committees and in particular that for the electricity sector. Related to this it should be considered in which way the Energy Community and the European Commission can assist in establishing a regional social dialogue committee modeled on the experience with the European social dialogue committees.

⁷ From the Cancun Agreement

http://unfccc.int/files/meetings/cop_16/application/pdf/cop16_lca.pdf

10. (...) *addressing climate change requires a paradigm shift towards building a low-carbon society that offers substantial opportunities and ensures continued high growth and sustainable development, based on innovative technologies and more sustainable production and consumption and lifestyles, while ensuring a just transition of the workforce that creates decent work and quality jobs;*

Further in the agreement the governments say that they recognize

“the importance of avoiding or minimizing negative impacts of response measures on social and economic sectors, promoting a just transition of the workforce, the creation of decent work and quality jobs in accordance with nationally defined development priorities and strategies and contributing to building new capacity for both production and service-related jobs in all sectors, promoting economic growth and sustainable development

Selection and criteria for Projects of Energy Community Interest

24. The Energy Community is working on criteria for Projects of Energy Community Interest (PECI). These criteria should assist in selecting the appropriate projects for (common) investment. EPSU has the following comments:

- It is not clear to what extent national parliaments will be consulted. Even less clear is to what extent trade unions, environmental organisations and others (civil society) will be consulted over the selected projects and how they could feed in their positions. Some projects could have an impact on employment in other countries for example. We suggest the Energy Community establishes clear procedures for this. To ensure that various interests are taken into account EPSU suggests that a civil society advisory board is established to be consulted on the projects.
- The list of criteria for selection does lack specific ones to evaluate the social impact of projects. Building interconnectors between countries or with EU Member States might impact on the need or not to build, renew or refurbish power plants. This has employment consequences (as the building of the lines itself has positive aspects). An impact assessment board should address such issues as well and consult with the trade unions on the selection and if a project is perceived to have certain consequences.
- The framework for the projects should address that:
 - The implementation (and hence selection of constructors and providers e.g) should respect the collective agreements in force at the place of work as provided for in the ILO Convention 94, unless otherwise agreed with the trade unions at the place of work. There is no need for cowboy companies that wish to operate outside of collective agreements. This should be part of the framework.
 - Consultation is to take place with the trade unions over the practical implementation to ensure health and safety, quality and working conditions are respected. When projects are selected the companies that participate in the building and operation of the infrastructure (PECI) should be licensed so training and qualifications are ensured contributing to the quality of the project.
 - We suggest that there is a formal as well as a content check on these criteria which involves a board whose members can be selected from candidates proposed by different groups and including the trade unions.
 - The EU framework for public procurement does foresee the possibility for the use of social and environmental criteria. This should be integrated in the criteria.
 - The full transparency of the contracts is needed so citizens can evaluate the value for money, if the projects contribute to sustainable development and just transition, social and economic progress, will respect working conditions and social rights of working people. It is one of the best guarantees to prevent corruption and cronyism and that tax payers money is misused and abused.

Parts of the agreement between employers, trade unions and government for a Social Economic Council for Energy in Slovenia

**Article 1
(Purpose)**

The social partners in the framework of the Economic and Social Committee in the field of energy (hereinafter referred to as ESOE) conclude that the listed rules for determining the framework content and procedure of accepting opinions, proposals and decisions relating to specific fields of the social partners in the Republic of Slovenia for companies in the field of energy-related activities.

Article 2

(Scope of action) ESOE monitors the situation on the economic and social spheres, which it addresses and forms views, opinions and suggestions in relation to these areas that are of importance to all social partners.

Areas of ESOE's functioning are mainly the following:

- social rights and rights under compulsory insurance, such as such as pensions, disability benefits, social assistance, compensations and other;
- problems of employment and labour relations;
- the system of collective dialogue;
- the economic system and economic policy in the field of operation of companies in the area of energy-related activities;
- legal safety of employees in the energy sector;
- cooperation with the International Labour Organisation;
- trade union rights and freedoms.

(1) In addition to these tasks _ ESOE's functioning also deals with other matters proposed by the partners to be dealt with the ESOE's functioning and relate to the field of social economic issues in the energy sector.

**Article 3
(Formulation of positions)**

Pursuant to the procedure referred to in Article 8 of these Rules ESOE within the framework of its functioning:

- participates in the preparation of legislation and provides advice and recommendations in relation thereto;
- provides incentives for the adoption of new or modification of the applicable regulations and other acts.

Annex

Answers to the specific questions

a) Public Service Obligations

(Consultation paper: The notion of Public Service Obligation is very broad. Their definition falls, within the limitations of the Treaties and the Electricity and Gas Directives, in the prerogative of the Contracting Parties. Under the Directives, Contracting Parties are obliged to ensure that adequate safeguards are in place to protect vulnerable customers. The so-called Third Package comes with an additional obligation for each Contracting party, by 2015, to define the concept of vulnerable customers within their legislation. The Secretariat assists the Contracting Parties in complying with these obligations, monitors their achievement and will enforce any case of non-compliance, if necessary. It recently adopted a view on regulated prices and tariffs and a proposal for price reform¹ following extensive public consultation. Besides, the ECRB's Customers' Working Group regularly discusses issues of relevance for the protection of vulnerable customers. In order to generate an added value for this work and to avoid overlaps, the Secretariat requests the stakeholders' opinions on four specific questions in this context:

- What should be the considerations in defining the notion of vulnerable energy customers?

EPSU comments: The basis of the approach should be to start from the right to energy⁸. We do prefer to speak of low-income households that might be impacted by energy poverty.

- How and through which schemes are vulnerable energy consumers best protected from energy poverty in a way least distorting markets and incentivizing energy efficiency?

The best protection for domestic users in an insecure, changing and volatile market is to continue with regulated prices for domestic households under the control of the regulators and with an advisory role for trade unions (who represent the interests of a broad range of sectors, private and public, as well as their families and communities) and the organisations which fight against poverty.

Governments should develop programmes for energy efficiency and targeting the housing of low-income households ensuring that insulation and other fuel savings measures are within reach of such households.

Questions

- Are the dispute settlement mechanisms as a means of effective recourse of (also) vulnerable customers working properly in your Contracting Party?

No comment from EPSU, a national issue.

- To Contracting Parties only: What kind of existing or proposed new programs on protection of vulnerable energy customers do you apply? How do you ensure that the resources available go to the target group rather than leaking to other groups?

No comment from EPSU, a national issue.

b) Social Dialogue

The consultation paper reads "The implementation of the *acquis communautaire* under the *Treaty* requires reform of the energy sector in the Contracting Parties. This does, and will

⁸ http://www.energiesofutur.org/?page_id=39 and http://www.energiesofutur.org/?page_id=43

continue to affect societies as a whole. Some groups of citizens and individuals will be affected in a more direct way. Market opening will improve efficiency, offer choice and ideally lead to the most adequate prices, and new investments will offer new economic benefits and employment opportunities.

EPSU comment: We contest this point of view and have explained in the earlier parts of the response the reasons for this. The view that market opening will improve efficiency and lead to adequate process is a fallacy and based on an ideological position. Actual developments in an insecure market demonstrate that investors have difficulties determining their priorities.

However, liberalization will also affect existing workforce structures and expose the low-skilled and vulnerable groups of workers to higher social risk.

EPSU comment: There is not only borne out by the experience of workers and their trade unions. There is a body of research of EPSU, EcoTec (for the European Commission) and others which underlines this.

In this context, the cooperation between all stakeholders (in particular governments of the Contracting Parties, employers' and workers' organizations) in fostering the outline of the Social Strategy will be vital. In this regard, the Secretariat would like to receive the stakeholders' views on the following questions:

- What is the current mechanism of social dialogue (bipartite or tripartite) in the energy sector, what should be improved and how?

EPSU comment: There will be national level comments. The secretariat should verify if the responses are made jointly (employers, trade unions, and governments) or not.

Earlier in the paper we have recommended that:

- *The social working groups, the social action plans and the Social Forum continue.*
- *We recommend that it would be preferable this is structured in social-economic councils for energy following the example of Slovenia and with a social-economic council at the level of the Energy Community which can be consulted on decisions and policies which are proposed to the Ministerial Council. This will also improve the democratic control of the decisions. We referred earlier to the democratic deficit.*
- What is the role of governments in the Contracting Parties as owners of energy companies vis-a-vis their responsibility for providing the legal framework for social dialogue? What should be improved and how?

EPSU comment: This is a strange question and suggests that there is a conflict of interests. One could pose similar questions of private companies: what is the responsibility of the company towards its workers, households (users), municipalities versus its shareholders (payment of dividend)

The practice from other countries demonstrates very well that governments can separate the setting of the framework for social dialogue, collective bargaining and trade unions from their role as employers. In many cases the publicly owned companies adopt progressive policies and would be among the first to promote equality, corporate social responsibility, improve health and safety etc.

We stress that we expect public companies to be good examples of social dialogue, proper industrial relations and collective bargaining and become examples of good practice.

- What is the role of governments in the Contracting Parties as participants in tripartite social dialogue and supporter of social dialogue in the energy sector? Is the autonomy of energy sector social partners ensured? What should be improved and how?

EPSU comment: This is a question more targeted at the national level social partners. The autonomy of the social partners should be established in law following the relevant ILO conventions, the European Social Charter and the EU Charter on Fundamental Rights part of the Treaty.

From a European perspective we have suggested to look at the experience of the Slovenian social economic council for energy as a model at national level, and to create a social economic council for energy for the region.

We suggest to ensure representatives of trade unions and employers of the respective countries can participate in the European level social dialogue. This will allow representatives of the Energy Community to be active and participate in the work of the European level social partners. As the aim of the Energy Community is to take over the rules and regulations of the Energy Acquis of the EU, and most countries of the Energy Community want to join the EU it will allow employers and trade union representatives to gain valuable knowledge. An alternative is that the Energy Community Secretariat and DG Employment's social dialogue unit together with the European Social partners develop a Regional social dialogue that brings employers and unions together (based on the EU Format of the social dialogue committees)

- What has been the role of the social partners in the cases of non-application of provisions of labour laws and collective agreements in the energy sector? Are labour conflicts and insolvencies in the energy sector settled in a satisfactory manner? What should be improved and how?

EPSU comment: This is a question more targeted at the national level social partners.

From a European and international perspective – the right to strike and including in electricity and gas – should be guaranteed and respected. This is in accordance with cases that have been before the ILO and the European Court of Human Rights.

Our affiliates have often experienced problems with the employers and the refusal to work towards a proper dialogue, negotiations and information and consultation. The social strategy might benefit if a list of such violations is compiled (as well as their solutions)

The labour courts should be independent when requested to rule on conflicts.

- What is the current role of the social partners in improving working conditions and living standards, worker's rights and safety in energy sector? What should be improved and how?

EPSU comment: this is a question more targeted at national level social partners and governments.

We suggest that part of the regional social strategy for the energy sector are clear benchmarks to improve working conditions, workers' rights and safety. These benchmarks can be:

- *Agreeing on the approach to restructuring, demographic change/age management as well as equality (see toolkits of the European social partners electricity),*
- *Agreeing at national level as well as European level on a plan of action with priorities around for example on Information and Consultation, Insolvency etc. The social partners from the region could do this using the experience of the European Social partners. A*

specific seminar for the trade unions and employers only could assist in developing the expertise

- What are the current relations between the European Social Partners and respective national social partner's organisations? What should be improved and how?

EPSU comment: EPSU has affiliated unions in gas and electricity (as well as in other sectors) in all Energy Community countries including Ukraine and Moldova as well as observers Georgia and Armenia. These participate in the work of EPSU when determining positions and actions.

What would greatly enhance the capacity to act of the European social partners (Employers and unions) and their regional members if their possibilities to coordinate would be enhanced. This could be done in the context of a regional social dialogue, or a regional social-economic council or the Commission and Energy Community could provide for dedicated funding for this.

- Is there a role of the social partners in ensuring appropriate social protection systems for vulnerable customers? What should be improved and how?

EPSU Comment: We have addressed this earlier in our contribution. In many countries unions and confederations are the most representative organisations given their broad membership basis, and that union members also have families and live in communities.

The trade unions should therefore be involved in discussions about social protection systems and which set the framework for low-income users and people experiencing (energy) poverty (We refer to the discussion at the level of the ILO on the social protection floor for example). Further unions should be involved in the discussions about the rate setting at the level of the regulators in a direct or at least advisory capacity.

- Is there a role of the social partners in promoting access to energy savings measures? What should be improved and how?

EPSU comment. Trade unions have taken a great interest in energy saving and energy efficiency measures. It is an important area of job growth. Energy savings measures for insulation of private and public buildings create employment e.g. When focused on low-income households these measures help in addressing their energy costs. And they reduce the dependence on energy (and - imports) of a country. EPSU (and ETUC) has supported binding energy savings targets⁹ as otherwise many governments will not be serious.

The workplace is the primary site for the development and implementation of energy measures. Social dialogue and information & consultation are hence also important to realize the full potential. Worker engagement and participation in energy efficiency programmes are crucial for success. We expect that employers consider these policies with the unions, establish education programmes and contribute to the development of skills. Unions have been engaged in such programmes and examples are given in a toolkit EPSU and EPSU affiliated unions contributed to.¹⁰

- How are privatisation/restructuring procedures in the energy sector handled in practical terms? Are the social partners involved in consultation before and during these privatizations/restructuring processes, especially if they lead to a reduction of employment? What should be improved and how?

⁹ <http://www.etuc.org/a/9157>

¹⁰ http://www.etuc.org/IMG/pdf/ETUC_greenworkplaces_guide_GB_NET_-2.pdf

EPSU comment: Concrete examples of how employers, unions and governments have handled privatisation can be collected from the experience of EVN (Macedonia), CEZ (Albania) as well as in other countries (e.g. with EON, ENEL in Roumania, CEZ, ENEL, EON in Bulgaria and other countries) Mostly the privatisation guarantees employment protection, respect for collective agreements and other working conditions. We understand that the process has been difficult for the unions. Sometime the agreements have not been respected resulting in industrial action. Also the handling of dismissals/collective redundancies, negotiation collective agreements and social plans and often with limited experience of handling such situations, was a challenge.

Based on the existing experience and the expectations, also when reading the regional energy strategy, is that privatisation of energy companies will continue. Earlier we have already indicated our position that we do not regard this to be in the best interest of the economy or society. As the political pressure to privatise will be there, and to prevent “no regret” situations, privatisation has to be handled carefully and advantages and disadvantages carefully considered. Ultimately citizens of a town in the case of a municipal company or the state (state owned companies) should have a chance to express themselves through elections or referenda.

Apart from the broader societal questions, privatisation can often be compared to a process of outsourcing. To handle such processes EPSU and affiliated unions have developed a checklist¹¹ which runs through the basic questions that need to be asked and the basic issues that should be addressed. (See in Annex 2)

The European social partners have developed a toolkit on restructuring (referred to earlier). It contains a chapter on outsourcing.¹²

We recommend that the employers and unions as well as the governments commit to use and respect the EPSU checklist and European social partner chapter on outsourcing as a basis when considering privatisation. This could be an outcome of the regional social dialogue or agreed at the Social Forum and endorsed by the Ministerial Council.

On EPSU

This response is on behalf of EPSU, the European Federation of Public Services Trade Unions and affiliated unions.

Our members understand the importance for the economy and society of affordable, secure and sustainable energy. Our members are not only workers in energy, but many different sectors. Our members have families and live in communities, work in public and private companies and services and have a good understanding how important the issues are to them.

EPSU affiliated unions organise workers in energy, water and waste sectors, health and social services and local and national administration. It is the largest federation of the ETUC with 8 million public service workers from over 275 trade unions; EPSU organizes workers in all European countries, the countries of the Energy Community and including Ukraine and Moldova, and the EU's Eastern Neighborhood such as Georgia and Armenia.

In the energy sector EPSU unions organise workers in the gas and electricity branches, public and private companies, small municipal companies as well as large multinational ones and the state dominated ones.

EPSU is a recognized European level social partner and a Member of ETUC. EPSU workers together with PSI (Public Services International) which represents the same areas of work at global level.

¹¹ <http://www.epsu.org/a/2020>

¹² <http://www.epsu.org/a/4934>