



PUBLIC CONSULTATION ON AN ENERGY COMMUNITY FOR THE FUTURE QUESTIONNAIRE





QUESTIONNAIRE

Respondents to the public consultation are kindly invited to provide their contribution by filling out this questionnaire.

Agreement

Do you agree that your entire contribution (this survey) is published on the Energy Community's website among the responses to the public consultation? **YES**

Your Details

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Representation

For the purpose of this consultation, we have identified the following key stakeholder categories. Please, indicate, which category best describes your organization.

Governmental authorities

Industry

International Financial Institutions, Donors

Consultant

Academia

Non-governmental organization

Civil society

Others **European trade union federation**



Questions

I. GENERAL QUESTIONS

1 Key objectives of the Energy Community

The central question for any future reform of the Energy Community is the following: How can the key objectives of the Energy Community – reforming inefficient and unsustainable energy sectors and integrating them with the EU – be preserved and the instruments available to achieve them under the Treaty be made more effective?

One of the objectives of the Energy Treaty is that the Energy Community should contribute to social progress. This is one of the aspects of the Treaty that is least developed. It can be improved by integrating the Memorandum on Understanding on the Social Aspects of the Energy Community in the Treaty itself. EPSU has demanded this early in the negotiations on the Treaty but for practical-political reasons the Commission and governments thought this was not possible at that stage. It would be an issue to come back to when doing the review of the Treaty, We have made clear at the time that the Memorandum of Understanding was too weak an instrument to have a strong positive effect. We recognize that the MoU and the Social Forum have had some effect, but due to a lack of binding nature it is also easily ignored, changes of government have an impact on the commitment to implement it, national action plans are not binding and insufficient resources are devoted to it in the Energy Secretariat. Together with the European electricity employers we have argued that the Memorandum of Understanding on the Social issues is to remain the backbone of the Social energy strategy. The binding character should be strengthened and more resources devoted to its implementation. For the joint contribution: <http://www.epsu.org/a/9370>

The second element of concern is the very real democratic deficit of the Energy Community. Decisions of the Commission and the Ministerial Council do not receive the scrutiny in the national parliaments they deserve. There is no regional Parliament (of the Members of the Energy Community) which can function as a counter weight to the Ministerial Council and also the European Parliament does not function as a democratic counterweight. We have underlined these concerns in the EPSU contribution to the Social strategy of the energy community. <http://www.epsu.org/a/9254>

The third point of concern is that the Treaty does not make a reference to the European Treaty regarding the **social dialogue and the role of the social partners**. The role of the social partners is recognized by the European Union, and repeatedly stressed by the Commission, Council and the European parliament as an important part of the democratic process. It is high time this is then also made part and parcel of the Treaty. The Ministerial Council has refused a proposal of the European social partners (representing the social partners of the countries concerned) to consider how to make progress. The employers and the trade unions suggested to create a working group. <http://www.epsu.org/a/9810> We ask the High-level reflection group to support this.



2 How to strengthen the Energy Community

Back in 2010, Notre Europe's paper "Towards a European Energy Community: A Policy Proposal" referred to the Energy Community as follows: it "is innovative in its institutional approach and works well in achieving the main goals that have been set for it e.g. that is extending internal market norms to partner countries. However, when dealing with external matters, its goals and as a result, the instruments available to it are modest. It is unlikely that it can function as an effective mechanism when it comes to facing large suppliers, or that it can avoid that its members are exposed to divide and rule tactics."

What is needed for the Energy Community to be strong enough to face strategic challenges?

Procedural comment : Difficult to understand why there is a reference here to a policy paper of a think-tank which lacks any democratic, mass-based under-pinning and has no institutional role with regard to the Energy Community. It implies that you refer to a paper because it pleases the Energy Secretariat.

You ignore here the major contribution made by the European social partners for the electricity sector, to the discussion on the social dimension of the Energy Community and the comments we made to reinforce the social dimension as well as the democratic nature of the Community. It would have made more sense to include the demands of the social partners rather than of a think-tank that has no particular merit. To recall : we are European recognized European social partners, represented in the social dialogue, and as recognized partners of the Energy Community, representing a whole sector,

The Energy Community was not intended to be a negotiating partner vis-a-vis external suppliers. Its aim was to bring the countries concerned closer to the EU by adopting the energy acquis of the EU. If a stronger position were needed, then this should be together with the EU, and within the frame of the EU. This would furthermore make policy coherence and consistency more straight forward. We note that Member States (and especially its larger ones) continue to pursue independent policies vis-a-vis external suppliers.



3 Development of an internal energy market in wider Europe

One of the objectives of the Energy Community is the development of an internal energy market in wider Europe, i.e. encompassing both European Union Member States and Energy Community Contracting Parties.

Has this objective been achieved? How can the Contracting Parties be more effectively integrated in the EU internal energy market? Should the Energy Community have (more comprehensive) common internal market rules and/or an external foreign policy as envisaged by Title IV of the current Treaty?

Like in the EU the objective of a internal energy market is an elusive one, and not really very clear what should be its end goal, and especially in relation to the responsibilities of governments towards their people.

For EPSU there can be no question of extending the goals of the Energy Community towards more internal market, or to have an extended foreign policy role for the Energy Community. There is no link with strengthening the social dimension, respect for social rights and environmental responsibilities. The Energy Community should first focus on getting its house in order as described in 1.

- Integrate the social dimension through the MoU on the social aspects
- Strengthen the role of a Parliament linked with the Energy Community, using the European Parliament as a model
- Establish a role for the social dialogue as demanded by the social partners

A fourth point in this connection, before extending the energy community with more internal market responsibilities and a role in foreign policies is that the role of civil society needs to be made clear, that access to documents and participation in decision-making needs to be following the rules of the EU, and for example the Aarhus Convention.



4 Two main shortcomings

The Commission's report on the Energy Community identified two main shortcomings: (1) lack of implementation (gap between legal commitments and implementation in practice); (2) little impact on investments. Both may be two sides of the same coin.

How can the Energy Community solve these two shortcomings in a realistic way? Will this task be possible without addressing systemic failures, e.g. corruption, rule of law, political governance, etc. not directly linked to the energy policy / decision making? What would you advise to address effectively those shortcomings?

We already commented that **the lack of implementation of the social dimension is due to a lack of its binding nature**. This can be significantly improved by integrating the MoU in the Treaty.

A major problem for the implementation is **the missing link with democratic control and decision-making** as Members might be reluctant to implement those decisions that are not really discussed and debated in a parliamentary setting and lack legitimacy and support. There needs to be a regional democratic counter-part to the Ministerial Council. (See also our earlier comments)

The **lack of investment** is not something that can be solved by amending the Treaty. The EU has the same problem. The lack of investment hangs together with the vagaries of the market that is encouraged with the process of liberalization and competition. As in the EU it is difficult for investors to decide in which resources and infrastructure to invest in, as the market is a «poor judge» of long-term needs and responsibilities which are needed in the electricity sector. EPSU has advocated the importance of democratic processes as well as public ownership of networks and production companies as an expression of democratic influence in the electricity and gas sector. We see this as delivering improved results as well as allowing for a better capacity to mobilize resources at lower prices (government bonds have lower interest rates in general)

As regards the issue of **systemic failure such as corruption and governance** EPSU has addressed this extensively and commissioned a report from the University of Greenwich <http://www.epsu.org/a/9406>

Corruption matters not just as a moral issue. It undermines public services and democratic principles, if citizens have to pay bribes to get healthcare or fair policing that they are entitled to as citizens, or if contracts are awarded to those who pay bribes. It wastes public money by diverting it into the hands of corrupt politicians, businesses and their agents. It perverts public policy decisions, by buying decisions which suit the interests of the rich and powerful elite. Corruption steals wealth from countries and places it in tax havens for the benefit of corrupt individuals. Corruption undermines public support for quality public services.



So yes it is important to address this.

One set of problems concerns the extent to which individual public employees demand bribes from the public to provide the service they are entitled to. This undermines public services and needs to be eradicated, by providing the employment practices, including pay, which minimize the temptations to corruption and maximize the incentives to ethical behaviour. The Energy Community should encourage therefore collective bargaining and social dialogue ensuring workers get decent pay and conditions.

But the bigger problems concern the corrupt networks of senior officials, politicians and domestic and foreign businesses. Government contracts and privatizations are at the heart of these systems. Policies which favour privatization also create the conditions which are most favourable to corruption.

Donors and international institutions like the World Bank, like to portray themselves as bringing 'anti-corruption' initiatives. But in practice their policies favouring privatization provide greater incentives and opportunities for corruption. Moreover, donor countries and the World Bank have actively discouraged developing countries from prosecuting multinational companies for corruption.

The Energy Community could :

- a. adopt a stringent set of rules that would sanction companies engaged in corruption effectively blacklisting them for any contracts in the Energy Community.
- b. improve transparency, accountability and public participation in its policies and especially when developing projects of common interest for the Energy Community. Having representation of trade unions, environmental and civil society organizations when developing and deciding such projects and the resulting contracts would go a long way to avoid corruption.
- c. establish or encourage a strong and independent systems of audit and courts prepared to impose fines and bans on corrupt companies, and to prosecute individual officials



The **Energy Community** can be active

- d. to foster transparent, well-resourced administrations, and fair public sector recruitment procedures in the energy ministries and regulators
- e. To demand sustainable social procurement. A first step would be to promote that the governments use the new public procurement directives of the European Union.
- f. To better working conditions and pay based on trade union rights including information, consultation and negotiations rights. This is an important point also of the MoU which the Energy Secretariat has not promoted actively.
- g. to agree legal protection for whistle blowers at the Energy Community with regard to projects developed and promoted by it. Trade unions and their workplace representatives can also play a role in denouncing abuse of power and such workers would require this protection as would public servants.

As we mention under point b. 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 privatization 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. 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. For more information on the work of EPSU on corruption. <http://www.epsu.org/a/8206>



5 Balance between liberalization and public services

How can a sensible balance between liberalization on the one hand and public services on the other hand be drawn or recalibrated?

EPSU has on several occasions argued that liberalization itself and the promotion of the internal market in the electricity and gas sector has a negative effect on public services, public values and democratic processes essential to public services. Research of the University of Greenwich (www.psiru.org) supports this view.

Liberalization needs to be accompanied with democratic regulation. This means that the people need to be in a position to debate and discuss on the proposals for legislation and accompanying rules (we already referred to the lack of democratic control earlier) Second, in most countries a regulator is established. There are mostly no advisory boards established in which civil society organizations (trade unions, environmental, anti-poverty) can participate and express their views, supported by their experts. This needs to change.

Third, the Energy Community could integrate in the Treaty a principle that public ownership of public services is important linked to the right to energy; to introduce a presumption in favour of service provision by public sector and not for profit entities; and to put in place mechanisms to increase the accountability, transparency and public control of public services including those operated by private companies. Concretely:

- **Make public ownership the default option before any services, national or local, are contracted out to the private sector ;**
- **Require there to be a realistic and thorough in-house bid whenever a service is put out to tender**
- **Ensure there is full consideration of public opinion before any service is privatized or outsourced**
- **The public is to have a right to recall private companies running public services poorly**
- **Require private companies running public services to be transparent about their performance and financial data (as in the public sector)**
- **Make private companies running public services subject to Freedom of Information requests (as in the public sector)**
- **Give social enterprises as well as public sector organizations, priority in tendering processes**

Such measures will assist in ensuring a balance between liberalization and public service objectives.



6 Defining the real added value of the Energy Community

What is the real added value of the Energy Community compared with other initiatives and programs? What has this organization to offer to present and future potential Contracting Parties, compared with the key motivations at the origin of this organization? Which lessons could be learned for and from the Energy Community?

The value of the Energy Community has been to assist and prepare contracting parties in the integration of potential members in the EU (Romania, Bulgaria, Croatia and now Serbia, Macedonia, Montenegro and potentially Kosovo, Bosnia-Herzegovina and Albania). The value was that the final prospects and obligations were clear. While Turkey is a candidate Member of the EU it is not a member of the Energy Community (hence does not see it as preparation to EU Membership) countries like Moldova, Ukraine, and Georgia are not offered the prospect of Membership of the EU.

In terms of linking Turkey to the EU it has been a distinct failure so far.

The nature of the Energy Community has changed as have the relations between its contracting parties with the Ukraine (and Turkey) having distinct interests, and in terms of size far out-weighting the rest of the Community countries.

As regards the social dimension the MoU was an element in the development of the Energy Community allowing for a shared understanding of the direction to go. That is not getting sufficient attention whereas it has the potential to do more for the development and integration of the countries into the Energy Community as employers and unions work together anchoring important values in the fabric of the Community.



7 Investment promotions

Some progress was made over the past months on "investment promotion", through the elaboration of the Regional Strategy and selection of Projects of Energy Community Interest. The Energy Community Secretariat has moreover become an important actor on public investments, by coordinating requests from Contracting Parties and contributing to the assessment of projects in the context of the Western Balkans Investment Framework.

Is that only regional or also EU interest to strengthen energy infrastructure from and to the EU?

How could the Energy Community promote best investments, especially from private sources?

EPSU has argued in its contribution to the regional social strategy <http://www.epsu.org/a/9255> that there is an important role for the governments to promote investment, and including for the public banks such as the EBRD and the EIB. In that paper we have made the argument that in a liberalized market the private sector will not invest without sufficient guarantees and securing their investment by public funds. The experience of the EU is very revealing in this regard with many new schemes to support the companies. Therefore we suggest as we have on many occasions to issue a moratorium on privatization, to support public investment and develop the public service companies further.

Should/could there be specific Energy Community Fund(s) financed from public money?

Yes but only available for investment in publicly owned companies. If the private sector is supposed to be so good it can finance itself.

What kind of advantages should be granted to the Projects of Energy Community Interest?

A precondition should be that they are broadly supported by civil society and backed by democratic decisions.

What indicators can be used to measure success in this area? How can the incentives be conditioned upon/linked to implementation of the acquis?

- All contracts should include clear social and environmental clauses. Such contracts should get preferential treatment.
- Indicators are: does the scheme call for respect of collective agreements, and actually says that no fund will be provided unless there is a collective agreement between the employer and recognized and representative trade unions.
- Clear chain responsibility to be established for subcontractors.



II. INSTITUTIONAL SCOPE

8 The Energy Community's institutional setup

The Energy Community's institutional setup is made up of the Ministerial Council, the Permanent High Level Group, the Regulatory Board, the Fora (for electricity, gas, oil and social issues) and the Secretariat. Only the latter has staff and is the only "permanent" institution and main actor in this process, which creates some imbalance among institutions.

Is this institutional setup well adapted to the Energy Community's needs? **NO**

If so, what is needed to make the other Energy Community institutions have real weight in the region? Should the institutions of the Energy Community receive stronger powers to address the shortcomings identified in the previous point?

NO unless conditions are fulfilled that ensure a real democratic and social development

If not, how would an ideal institutional setup look like?

As argued earlier

- integration of the MoU on the social aspects in the Treaty itself to ensure that any future development of the Energy Community has a social dimension
- The establishment of a regional parliament that can control the decisions of the Ministerial Council.
- As EPSU argued in the contribution to the Regional Social Strategy a social and economic council focused on energy issues, using the example of Slovenia to develop this also at the regional level.

Without these conditions the Energy Community should not get new powers.



9 Support of the Secretariat's experts

The support of the Secretariat's experts is highly appreciated by the Contracting Parties. Its staff members travel throughout the region and enjoy some moral authority derived from their high level of expertise and from the investigation powers granted to the Secretariat by the Treaty, as developed in the Ministerial Council Decision on the dispute settlement procedure.

How can we reach a balance between this proactive activity of the Secretariat and reaching the necessary ownership of the process by the Contracting Parties (how to build the necessary capacity and knowledge)?

As regards **the social dimension** this aspect is a failure. EPSU has always appreciated the support of the Secretariat as well as the European Commission DG Employment but to develop and support the social dimension the resources devoted have not been enough. The Work of the Secretariat needs to be backed up by the legal obligations the Treaty would provide, like in the other domains.



10 Integration of the Energy Community institutions into that of the EU

The EU Council conclusions on strengthening the external dimension of the EU energy policy (3127th Transport, Telecommunications and Energy Council meeting) called upon "continuing the analysis of the functioning of the Energy Community Treaty as well as establishing an operational roadmap allowing the accelerated modernization of energy sectors in Energy Community contracting parties, further enhancement of the Energy Community integration with the EU as well as adapting the decision-making and organizational structures of the Energy Community to future challenges".

Concerning in particular the "EU integration", to what extent can and/or should the Energy Community institutions be integrated in the EU institutions and bodies active on energy, e.g. ACER, ENTSO-E and ENTSOG?

It makes sense to integrate especially the organizations of the countries concerned that have the prospect of becoming members of the EU already in its institutions. As regards the institutions of the Energy Community this is less straightforward.



III. LEGAL SCOPE

11 Limitations of the enforcement mechanisms

The limitations of the enforcement mechanisms have been highlighted, and they are essential to improve the compliance with the Energy Community acquis. The Energy Community Treaty provides a dispute settlement mechanism whereby the final decision corresponds to a political body, the Ministerial Council. In case of a “serious and persistent breach”, the Ministerial Council might decide on the “suspension of certain rights” under the Treaty, as the strongest sanction.

How could the enforcement mechanisms be improved and made more effective?

EPSU has argued that **the social dimension** (MoU) needs to be integrated and the democratic nature strengthened. Going further before this is done would be counter productive.

Would the establishment of a Court of Justice be possible / advisable, possibly following the example of the EFTA Court?

Idem, first strengthening the **social dimension** and the **democratic nature**.

If so, what should be the extent of its competences? Should it be limited to dispute settlement cases only or should its competence be extended to direct actions against binding decisions taken by the institutions of the Treaty or even to provide preliminary rulings on the interpretation of the Energy Community rules?

How could the rights of individuals (private persons and companies) be better protected, in line with the European Convention on Human Rights?

EPSU does **not** agree that the rights of companies are similar as those as individuals and in this context the reference to the European Convention on Human Rights seems not appropriate. The countries are members of the Council of Europe and its mechanisms. We do not agree with the possibility to develop judicial systems outside of the competencies of national courts or the recognized European institutions.



12 Limited scopes of environmental acquis

The limited scope of environmental acquis under the Treaty is being regularly criticized by NGO's as falling behind the standards of the European Union.

What can be done to address this question? Should, and if yes which, additional acquis be incorporated into the Treaty?

We agree that the Energy Community should ensure that the environmental acquis is respected. Both **the social and environmental acquis** should be integrated in the Treaty.



IV. GEOGRAPHICAL SCOPE

13 Membership of the Energy Community

The membership of the Energy Community has evolved over time. Three original Contracting Parties (Bulgaria, Croatia and Romania) have already joined the EU. Ukraine and Moldova joined the Energy Community and Georgia is in the process to become a member.

What would be the optimal geographical scope for this organization? Shall / can we put borders on it?

If countries from the neighborhood of the EU/Energy Community want to join this should be open to these countries. Adding countries which are not given the prospect of joining the EU does change the dynamics.

As we have argued before, additional measures are therefore needed to ensure coherence and cohesion.

- integration of the MoU on the social aspects in the Treaty itself to ensure that any future development of the Energy Community has a social dimension
- The establishment of a regional parliament that can control the decisions of the Ministerial Council.
- As EPSU argued in the contribution to the Regional Social Strategy a social and economic council focused on energy issues, using the example of Slovenia to develop this also at the regional level.



14 Gap between adopting EU rules and creating open and well-functioning energy markets

The Energy Community, as an international organization, is becoming more visible than ever and its Secretariat is gaining prestige and professionalism. The Energy Community keeps adopting EU rules and the number of events increases every year, but the main objective of creating open and well-functioning electricity and gas markets has not been achieved.

Is the Energy Community progressing too quickly with the adoption of new legislation and accepting new members? Do national markets need more time to absorb reforms?

EPSU has on several occasions argued yes. **Countries need more time** to implement the energy acquis..

Do we need more flexibility when adapting EU rules to the specific situation of Contracting Parties? Should genuine Energy Community framework rules be developed on sensitive issues (price regulation, RES support schemes)?

The EU Member States have developed a lot of flexibility. This could offer guidance.

Can the Energy Community be made more flexible to allow for a membership "light" for countries without immediate EU accession perspective? Would a "two-speed Energy Community" be appropriate? Would such a variable geometry – possibly based on a "multiple-ring-structure" be feasible at all? What kind of consequences should that entail for institutions and law on substance?

While recognizing that the dynamics have changed with adding new countries without EU membership prospects, key institutions and values need to guide further developments. This includes the points we made on page 12.

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EPSU is the European Federation of Public Service Unions. It is the largest federation of the ETUC and comprises 8 million public service workers from over 265 trade unions; EPSU organises workers in the energy, water and waste sectors, health and social services and local and national administration, in all European countries including in the EU's Eastern Neighborhood. EPSU is the recognized regional organization of Public Services International (PSI).

For more information on EPSU and our work please go to:

www.epsu.org