SUBMISSION TO THE PUBLIC CONSULTATION ON AN ENERGY COMMUNITY FOR THE FUTURE

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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?

Since energy sector is seen as a basis for economic prosperity and development in the Energy Community region, it is essential to steer it further and bring to a sustainable path, in line with the EU standards. However, in order to achieve this, multiple changes to the Treaty need to be made.

Firstly, **a full range of energy and environment-related EU commitments needs to be adopted**, with an equal weight given to all policy areas, meaning that environmental *acqui* must be seen as equally important as the energy one. The Treaty commitments could also **be made more operational by clearly adjusting the deadlines or institutional obligations from EU Directives** for the purposes of the Energy Community.

Finally, to increase the credibility of a revised Treaty and engage more effectively its instruments, the involvement of all stakeholders is imperative. A democratic, transparent and more participatory Energy Community should rely on more openness in its functioning. Thus, **we believe that it is of the utmost importance that representatives of civil society organisations be heard at the meetings of all relevant bodies of the Energy Community.** This would also ensure a timely exchange of information of public interest, which so far has not been particularly efficient.

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?

The Energy Community needs to be strengthened by the commitment of its members to its goals and functioning and to the EU's long-term goals such as decarbonisation and environmental protection. Given the fact that the Energy Community Contracting Parties are also countries acceding to the EU, it is essential that EU's mid- and

longer term visions, presented through *Resource efficiency initiative* of Europe 2020 Strategy, recently released EU 2030 framework on climate and energy policies, as well as a *Roadmap for moving to a competitive low-carbon economy in 2050* need to be taken into account when planning strategically the future of the Energy Community. In our opinion the Energy Community could contribute to facing this challenge by assisting countries with **developing energy efficiency and decarbonisation scenarios that could significantly reduce the need for imported fossil fuels**, especially as there is a significant amount of existing installed hydropower capacity in the region that can help to balance fluctuating electricity generation from renewable energy sources such as solar and wind. This would make maximum use of indigenous renewable energy resources and energy efficiency potential.

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?

The Energy Community should not be fully integrated into the EU internal energy market until a level playing field is created by ensuring that the Energy Community countries comply with all relevant EU social and environmental/climate *acquis* since the current situation creates a risk of several detrimental undertakings in the countries of the Energy Community. These include construction of new facilities in naturally valuable sites (e.g. Mid-Drina hydropower project (BiH/RS), Dajc-Velipole wind farm (AL)), construction of new RES capacity for exports while domestic demands are being met with coal or other fossil fuels (Albania, Bosnia and Herzegovina, Montenegro, Serbia) and even construction of new coal power plants whose generation is expected to be used for exports (e.g. Burshtyn, Dobrotvir (UKR); Pljevlja II (MNE)). Moreover, the ways need to be found to incorporate external costs into the price of the energy imported into the EU, considering also health impacts in regions affected by further exploitation of coal.

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?

It is difficult to imagine that these two, undoubtedly major shortcomings, could be closed without addressing wider issues such as corruption, the rule of law, and political governance. However, postponing attempts to implement legislative improvements until these problems are solved is not the way forward. Some progress could be made with allocating **more capacity to the Secretariat to monitor implementation of the *acquis*** and by **expanding the penalties for non-compliance**, as well as with increased capacity to train staff from the Energy Community countries more thoroughly (e.g. through more secondments or internships). In compiling monitoring reports, input could be sought from a variety of stakeholders.

In order to address wider corruption issues, clear commitments need to be undertaken in the extended Energy Community Treaty in the area of corruption, public participation and the rule of law, which can then be subject to the same dispute settlement procedure as the energy and environment *acquis* within the Energy Community. Our proposals for the precise Directives are:

- **The Public Procurement Directive** 2004/18/EC – to ensure that public tenders take place in the construction of energy infrastructure.
- **The SEA Directive** 2001/42/EC – to increase public participation during the development of plans and

programmes.

- **Adaptation of Article 108** (ex-Article 88) **of the TFEU** – notification of State Aid – to make the existing commitments under the Energy Community more functional.

The Aarhus implementation Directive 2003/35/EC is also relevant to the Energy Community Contracting Parties, but under the Energy Community's existing enforcement structure there is no real role for the Secretariat because the Aarhus Compliance Committee already exists. However, if the decision is taken to strengthen the Energy Community's enforcement mechanisms to an extent that they become more of a deterrent than the Aarhus Convention's Compliance Committee it would be appropriate to incorporate this Directive into the Treaty.

5 Balance between liberalisation and public services

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

Where there is a conflict between liberalisation and public services, public services should come first. Liberalisation is only the means to an end, and if at a certain point in time it does not seem to serve this end, certain elements of the policy should not be pursued. The situation in the Energy Community with price deregulation is a good example of this. Price deregulation may work under conditions where people have control over their own consumption of energy and when there is an adequate safety net for vulnerable customers. However in most, if not all, countries of the Energy Community, these conditions are not currently in place. **Much more work needs to be done on energy efficiency measures and implementing social safety nets if liberalisation is to have a chance of producing positive results in the region.**

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 programmes? What has this organisation to offer to present and future potential Contracting Parties, compared with the key motivations at the origin of this organisation? Which lessons could be learned for and from the Energy Community?

The added value of the Energy Community reflects through **functional legislative framework** that has been set in the Contracting Parties, leading to the adoption of energy efficiency and renewable energy targets as well as Chapter III of the Industrial Emissions Directive which would unlikely been achieved without the existence of such an overarching framework. Also, the Energy Community has more added value for the countries further from EU accession, as it has **obtained concrete commitments that otherwise may have not been accomplished** in the near future. In principle, the Energy Community can have a major value added in the environmental field, considering that this area is otherwise of very little interest to decision-makers in the field of energy in the Contracting Parties. Unfortunately, this potential has not yet been fully realized.

In addition, the selection of regional Projects of Energy Community Interest in our opinion reinforces rather than challenges regional governments' tendencies to concentrate on grand new infrastructure – which often turns out to be unrealistic or in contradiction with the law. We propose **more focus to be turned to energy savings, decentralised renewables and lower-cost smart solutions**.

Moreover, the added value should further be reinforced through adopting and implementing the environmental *acquis* of the EU the Energy Community is also an important factor in the region when it comes to tackling environmental health risks**. Air pollution in the countries of the Energy Community is a persistent threat to public health**; it increases the rates of cardiovascular and respiratory diseases as well as lung cancer, which are three leading groups of chronic disease in the region. Cardiovascular and respiratory mortality rates in countries of the Energy Community are much higher than in Western Europe. The European Environment Agency estimated that every year, air pollution shortens the lives of people in Albania, Bosnia and Herzegovina, Croatia, Macedonia, Montenegro and Serbia together by 288,100 years, which is equivalent to 26,847 premature deaths due to air pollution with fine particulate matter ($PM_{2.5}$).

The energy industry is one of the sectors with the largest emissions of sulphur dioxide, nitrogen oxides and particulate matter, for which epidemiological studies have confirmed correlations with the aforementioned chronic diseases, as the REVIHAAP report of the World Health Organization recently confirmed. Almost all countries in the Energy Community are experiencing levels of average air pollution beyond 40 or even 60 microgram of PM_{10}, whereas the WHO recommends a level of 20. Especially the combustion of coal and lignite in combustion plants with low thermal efficiency and insufficient pollution abatement results in high emissions. Unfavorable meteorological conditions in winter aggravate this pollution problem, causing smog episodes during which hospital admissions and mortality rates soar while productivity is impaired. For example Bosnia experiences severe episodes of winter smog with visibility levels dropping to a few meters in December 2013.

Air pollution from power plants not only causes ill-health and deaths, it also implies large health care costs, as it was documented in a 2013 report by South East European Consultants for the Energy Community Secretariat. Impacts on the overall economy arise from productivity declines and the perceived quality of life is low in regions affected by air pollution. But also the health of future generations is already at risk when pregnant mothers are exposed to high levels of air pollution, which can cause complications in pregnancy, lower birth weight of the newborn or a premature birth. Additional environmental health risks arise from contamination of groundwater related to the mining and combustion of coal, and the disposal of coal waste ashes. The environmental *aquis* of the EU has the potential to mitigate this environmental health crisis. The SEEC study from November 2013 showed that the avoided external costs from implementing the Industrial Emissions Directive to health and the environment are as high as 193 billion Euro per year for the total of the Energy Community contracting parties, thus largely outweighing the necessary investment costs.

7 Investment promotion

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?

The EU's interest can easily be seen in **new renewables projects and large-scale energy efficiency projects**, as well as in projects which promote the **import of electricity** from the Contracting Parties. Nevertheless, there is a key aspect to bear in mind, as discussed above – the need to avoid so-called 'energy grabbing'. The grid initiatives which facilitate imports of electricity to the EU from Contracting Parties (with less strict environmental/climate standards) can result in social and environmental impacts in the countries where it is produced, which in the long run may cause more harm than good to the EU's climate commitments as the Contracting Parties gradually become members of the EU.

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

As mentioned above, it is crucial not to just promote investments *per se*, but carefully chosen ones. This means **that a more active stance from the Energy Community is needed on helping countries with their energy strategies**, bearing in mind long-term EU goals, and that the Energy Community needs to have **increased monitoring and enforcement** capacity to ensure that countries' investments do not infringe the EU *acquis* or risk being regrettable in the medium to long term.

The projects put forward within the Energy Community need to make a credible contribution towards the achievement of the Treaty's long-term goals. **Private investors can be attracted to such initiatives when given a clean track record of application of environmental, planning and procurement processes in the Contracting Parties.** These processes can only result from thorough and transparent planning processes in which a wide range of stakeholders has been included to ensure widespread buy-in. Insisting on the highest standards of transparency

throughout projects e.g. tender processes would also help to stop delays related to suspicions of irregularities and would give investors a clear time-frame for return on investments.

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

Although certain investments such as energy efficiency in housing are proceeding slowly at present, one of the problems is not necessarily the overall lack of money but the proliferation of various funds that can hardly be tracked. Therefore, rather than creating new funds, **it appears more sensible to consolidate some of the existing ones.**

Another issue is that the Energy Community has a tendency to concentrate on cross-border projects or projects of regional importance, whereas we believe that the most necessary projects for funding are energy efficiency projects or small-scale renewables.

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

As the PECIs are currently conceived, none. As discussed above, in our opinion, the prioritization of regional projects over smaller ones, especially residential energy efficiency, is only reinforcing decision-makers' tendency to build large prestige projects instead of smaller, smarter ones.

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

The Energy Community has attempted to link the implementation of the *acquis* to the PECIs' projects by stating that **if the PECIs are found to be infringing the *acquis*, they can be removed from the list**. This is a good start but raises the question of which *acquis*, because many of the issues relate to areas of high natural value, which are not well protected through the Energy Community Treaty. Therefore we consider that the main beneficial action would be to **expanding the environmental *acquis*** in the Treaty, such as the Habitats Directive, but in the meantime to adopt a more precautionary approach in which concerns relating to the EU *acquis* are taken into account even for those pieces of the *acquis* which are not yet implemented.

One additional principle that could be adopted is that the Energy Community would not lend its support to any new generation projects unless the host country is on track to **meet its energy efficiency targets**.

As for indicators for success in investment, **an important pre-requisite must be a project's inclusion in a good-quality energy strategy** which is in line with EU legislation and short- and long-term policies (e.g. 2050 goals) and which is based on realistic demand scenarios. Compliance with the Aarhus implementation Directive 2003/35/EC on public participation must be a pre-condition for incentives.

In the selection of the PECIs, contribution to the renewables targets was also an indicator, and this is quite reasonable in theory, though attention must be paid to the diversity of renewables and their environmental sustainability. However in the recent PECIs process, **contribution to expanding renewable energy was weighted very lightly**, and it appears that more or less any generation project could get some points in this category, whether it is a renewable energy project or not, on the basis that non-renewables projects provide back-up. This can to some extent to be justified for gas, but not for inflexible coal.

A decrease in absolute CO_2 emissions from the energy sector and a decrease in energy intensity should also be an indicator. It will most likely not be possible to measure what exactly the Energy Community did to achieve the indicators as opposed to other actors in the region, but this is to be expected, and the main thing is the overall result.

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?

Perhaps the single most important step that the Energy Community could take in order to increase the profile, perceived importance and therefore real weight of its work for ordinary would be a **commitment to full transparency in terms of publishing reports, strategies, and analysis** in good time prior to decision-making within the PHLG and Ministerial Council.

In addition publishing and **publicizing clear and concise annual balanced score cards** for each signatory party would help to identify where members stand in terms of their commitments to the Treaty obligations.

Operationalising the obligations towards energy efficiency, energy poverty and environmental improvements contained in Article 2 of the Treaty and providing training, studies and recommendations would greatly increase the respect for and support of the Energy Community's work amongst the tens of millions of consumers in the region.

The issue of compliance is also of some concern since all signatory parties have taken on substantial responsibilities but without adequate resources for monitoring and – if necessary – effective binding legal recourse for non-compliance. This has somewhat undermined the real weight of the Energy Community in the region and should be addressed in the revision process.

In case it is decided to set up **an independent legal mechanism**, with the ability to provide binding decisions and credible sanctions for breach of Treaty provisions, such an institution's credibility would rely heavily on the fulfilment of the following basic principles:

- Complete independence and effectively managed resources. The conditional funding of such an institution by parties to the treaty or even the secondment of personnel to such a legal entity would create the perception if not the reality that the institution – like so many in our region – cannot act independently of their appointees.
- Such an institution should be able to rule on any article or provision of the Treaty as well as processes and procedures adopted by the institutions of the Energy Community.
- It should have the power of providing binding decisions with effective sanction.
- Specifically, its decisions should not be subject to approval of the Ministerial Council or any other body of the Energy Community.

An alternative, and probably more cost-effective option, would be **to make EU IPA funds as well as IFI financing conditional on meeting the Energy Community obligations.**

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

It has become obvious that the work and relevance of the Energy Community has increased as many of her signatory parties accession aspirations move them inexorably towards EU membership and also as energy becomes not just a key social and geopolitical issue but also an existential environmental issue for the planet.

However from the perspective of many Civil Society Organisations (CSOs) – in spite of the informal efforts made especially by an increasingly open Secretariat – **the institutional structures and procedures of the Energy**

Community have been constituted to all but exclude CSOs from any meaningful impact on the work of the Energy Community.

In addition the effectiveness of the Energy Community in terms of monitoring, enforcement and issues such as energy efficiency, non-hydro renewables, and energy poverty is greatly hampered by staffing and institutional arrangements which are gravely skewed towards generation, fossil fuels and market regulation.

Secretariat

In terms of the Secretariat it is clear that in spite of the various provisions (Article 2 (d) and Article 35) of the legal framework (3rd Edition) – hereafter referred to as the Treaty - of the Energy Community relating to Energy Efficiency and Renewables that there is an extreme dis-balance within the staffing of the secretariat which until end 2013 had a single junior staff member responsible for both issues out of a staff of over 20 people. In addition the focal point for Oil appears to also cover Social Policy issues.

Also given the extensive responsibilities to monitor the ever mounting number of provisions of the Treaty and the need to, for example, examine compliance of the recently selected PECI projects with the EU *acquis* and avoid a number of non-IED compliant lignite plants being constructed in the region, **the Secretariat is ill-equipped to carry out this role in any meaningful manner and additional staff should be recruited for these functions.**

Fora

Many CSOs are concerned that Electricity and Gas in particular have the status of Fora while other critical topics such as Energy Efficiency, Environment and Social Issues are relegated to the status of working groups or task forces again reflecting an imbalance in respect of the terms of the Treaty.

Participation & Transparency

Given that the Treaty specifically sets out the responsibilities in relation to energy consumers across the region and the EC guidance on the role of Civil Society in developing transparent and effective governance mechanisms the following changes should be adopted:

- A mechanism is put in place to **allow for civil society representatives to be present as observers/non-voting participants** to any of the institutions of the Energy Community and receive such material, studies and reports as any other participant.
- The decisions of both the Permanent High Level Group (PHLG) and the Ministerial Council should be published clearly reflecting voting patterns.
- Recent publications and studies produced by the Energy Community – most notably in recent years the Regional Energy Strategy, Large Combustion Plant Directive & Industrial Emissions Directive study and the evaluation of the Projects of Energy Community Interest while useful in their own right have all been made public after key decisions on these issues have been taken by the Energy Community. Given that these products are all largely funded by the European Commission – and therefore EU taxpayers – this lack of transparency in relation to crucial information informing debates which will affect the entire region is unacceptable especially given the provision available under Article 86 of the Treaty.

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)?

Activities such as **trainings** are important but need to be done over a longer period, rather than focusing on brief workshops. Therefore it is positive that the Secretariat has offered **secondments and internships**, and its capacity to do so should increase. Also Participant governments could offer such opportunities, to spread around the work.

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?

Given the above-mentioned EU integration process, it is clear that Energy Community institutions should gradually integrate into EU bodies active on energy. In our view, a realistic timeline for this should be discussed and used as one of the tools for a more prompt and effective compliance with the EU acqui.

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?

The effective enforcement of the Energy Community *acquis* is crucial for proper functioning of Energy Community. Contracting Parties' compliance with the *acquis* should be assessed not only on the basis of transposition of the *acquis* in their national legislation but also on the basis of effective implementation. In our opinion the existing enforcement mechanism does not fulfill its role and should be strengthened by enhancement of the dispute settlements mechanism as well as democratization of the decision-making processes. Consequently, strengthening the Secretariat's role in implementation and monitoring should be achieved, by equipping it with strong investigative and decision-making powers regarding:

- Introducing **reporting obligations** of the Contracting parties regarding the transposition and implementation of the *acquis;*
- **Automatically opening dispute settlement mechanism** procedures in cases when the *aquis* is not transposed in a timely manner;
- Linking the fulfilling of the obligations deriving from Energy Community Treaty with the accession process;
- Strengthening the consequences of non-compliance by introducing financial penalties;
- **Linking bilateral financial assistance** to the respect of commitments under the Energy Community Treaty.

In democratic countries public control plays a great role in assuring compliance with rule of law. Thus we recommend increasing public awareness and participation in the implementation of Energy Community acquis and decision making processes by:

- Increasing the transparency of the decision making process *before* the decisions are made;
- Increasing the role of civil society organizations in the institutions of the Energy Community (the Fora, Task Forces and High Level Permanent Group);
- Strengthening the powers of the public in the dispute settlement mechanism;

- Implementing the *acquis* favouring public participation.

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

If a court is established, taking into account the similarities between the Energy Community and the European Free Trade Association, **the Court could be patterned upon the already tested model of the EFTA Court**.

To fulfill its role the Court should be founded upon the principles of:

- Impartiality – the majority of judges should come from nearby countries outside the region and represent the highest level of competence;
- Comprehensiveness – the whole legal framework i.e. all parts of the *acquis* should be treated with the same level of importance;
- Openness – access to justice and participation of civil society representatives within the court proceedings should be assured.

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?

A Court of Justice, if it is established, **should accomplish three main functions**:

- Ensure that Contracting Parties States comply with the Energy Community *acquis* within infringement procedures regarding acts of omission, violation of Energy Community law and non or inadequate transposition / implementation of the *acquis*;
- To settle questions of interpretation the Energy Community *acquis* rules to make sure that they are understood and applied in the same way in all Contracting Parties;
- Ensure that the Energy Community bodies do not act illegally.

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

Human rights, democracy and the rule of law should be core values of the Energy Community. **Thus, the Treaty should contain a clause stipulating that human rights are an essential element in relations between the Contracting Parties.** Energy Community shall ensure that human rights including civil, political, economic, social and labour rights are realized for all. Violation of human rights should be subject to the dispute settlement procedure within the Energy Community and an effective legal framework should be established to enable victims to exercise their right to compensation. Privileges by endowed by the EU and the Energy Community such as financial assistance and support for a country's projects through the PECI process should be conditional on the respect of human rights.

12 Limited scope 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?

The environmental *acquis* should be expanded with the Directives below. In addition the **2030 climate targets** currently under consideration on the EU level must be incorporated into the Energy Community Treaty in order to ensure that the countries of the Energy Community are not left even further behind in the transformation to an energy-efficient, renewables-based society. Although not yet binding on the EU level, reference needs to be made in the Treaty to the EU's 2050 long-term climate goals in order to raise awareness of the Contracting Parties that they need to develop their energy sectors in line with a decarbonisation trajectory.

Therefore, we propose for **more ambitious energy efficiency targets than the ones currently adopted by the Energy Community as well as committing to GHG emission reduction targets** in the revised Treaty so to enable the Contracting Parties to meet the obligations coming from the EU accession process. We advocate for the inclusion of Chapter II requirement for Best Available Techniques in the Treaty.

The proposed additional Directives are the following:

Chapter II of Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) – the key Directive for assuring preventive measures are being taken against pollution as well as the best available techniques (BAT) are applied. It also deals with waste reduction, recycling or disposal and energy efficiency. According to Chapter II Industrial installations must use the best available techniques to achieve a high general level of protection of the environment as a whole, which are developed on a scale which allows implementation in the relevant industrial sector, under economically and technically viable conditions. Chapter II sets also permitting conditions, environmental inspections rules regarding access to information and public participation in the permit procedures and access to justice. Implementation of Chapter II strengthens the rule of law by ensuring public participation in the permitting process.

Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC - to ensure optimal use of this powerful and cost-effective tool for achieving a sustainable energy future. In addition, the harmonized development of energy efficiency in the Energy Community is one of the key objectives for 2014 and 2015 according to the Energy Community Work Program for 2014-2015.

Directive 2010/31/EU of the European Parliament and of the Council of 19 May 2010 on the energy performance of buildings - to promote the energy performance of buildings and building units whereas *new buildings* shall comply with these requirements and undergo a feasibility study before construction starts. In case of *existing buildings* undergoing major renovation, they need to have their energy performance upgraded so that they also satisfy the minimum requirements.

Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe

Energy sector contributes greatly to overall air pollution in the Energy Community region with the combustion of coal as one of the key culprits. Implementation of the Directive is essential to enforce energy sector transformation in order to reduce harmful effects of energy production on human health and the environment. The Directive favours the development of rule of law through dissemination of information on air quality and ensuring public participation in creating air quality plans.

Directive 2006/21/EC of the European Parliament and of the Council of 15 March 2006 on the management of waste from extractive industries and amending Directive 2004/35/EC - Statement by the European Parliament, the Council and the Commission - to limit risks to public health and the environment related to the operation of extractive waste processing facilities, *inter alia* by applying the concept of "best available techniques". The Directive would strengthen also the rule of law principle by ensuring public participation in the permitting process.

Directive 2008/105/EC of the European Parliament and of the Council of 16 December 2008 on environmental quality standards in the field of water policy, amending and subsequently repealing Council Directives 82/176/EEC, 83/513/EEC, 84/156/EEC, 84/491/EEC, 86/280/EEC and amending Directive 2000/60/EC of the European Parliament and of the Council

The Directive sets up the environmental quality standards for priority substances and certain other pollutants in order to achieve a good surface water chemical status. Given the impact of coal power plant operation on water quality, including impacts on fish and other aquatic life by cooling water intakes, thermal impacts of heated water discharge, and pollution from power plant effluent as well as impacts of fossil-fuel production, such hazards should be minimized.

Art. 6 of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora

Since energy investments have significant impact on the environment, the Directive would allow the protection of priority species to avoid their deterioration and the significant disturbance of species.

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?

The issue is not so much one of where the organizations' geographic borders are as much as whether the institutions can create conditions which support compliance with their legal framework. Based on the Energy Community's own analysis even the current signatories are not compliant and therefore **the expansion of the membership would seem somewhat ambitious at this time**, particularly given that those countries not aspiring to imminent EU membership have fewer incentives to adopt the *acquis* and agree to strict standards.

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?

While there are certainly challenging issues of institutional reform and re-orientation based on transition from centralized planning and control to regulated free market, **the main issue lies in lack of political will for having a more mature, long-term, citizen-focused approach to policy planning and investment**. The Energy Community's role in such a process should be limited to great transparency, effective monitoring and reporting combined with the possibility for legal recourse.

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 issue of price regulation is extremely sensitive issue for consumers and the political elites of the region. Currently what passes for full cost recovery pricing in the region is based on a substantially degraded network, amortized generation facilities and the disregard of external costs. However pricing is also a critical component as part of a series of measures including encouraging increased energy efficiency, energy intensity, and reduced technical and commercial losses in the energy system.

Feed in tariffs for RES are also a particularly sensitive issue across the region in terms of financial risk that investors would find acceptable balanced against sinecure concessions to favoured companies and the impact this has on consumer prices.

Any discussion on rules regarding these topics should be based on quality in-depth studies and an open debate between interested parties.

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?

A key concern in relation to adopting a two speed Energy Community is that the market will create pressure for supply of demand at market prices, which **would lead to a situation where "light members" would effectively have an unfair trading advantage** compared to other signatories. In all likelihood social and environmental costs would be discounted and create an "uneven playing field" which would clearly be in contravention to several key articles of the Treaty and the fundamental principles upon which the European Union is based upon. In addition, such a division might result in a situation where **'light members' would feel more comfortable to continue with unsustainable energy planning**. This should not be allowed if EU 2030 and 2050 decarbonisation targets are taken into account, since in this time frame, the most of the Contracting Parties are expected to become fully-fledged EU members.