



<b>QUESTIONNAIRE</b>	Submitted: 2014-02-06 12:21:13
Respondents to the public consultation are kindly invited to provide their contribution by filling out this questionnaire.	
<b>Agreement</b>	
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
<b>Your Details</b>	
Should you wish to remain anonymous, you are free to skip this section. Simple insert your e-mail address (mandatory field) so that we can confirm your submission.	
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For the purpose of this consultation, we have identified the following key stakeholder categories. Please, indicate, which category best describes your organisation.	
<input type="checkbox"/> , Governmental authorities	
<input type="checkbox"/> , Industry	
<input type="checkbox"/> , International Financial Institutions, Donors	
<input type="checkbox"/> , Consultant	
<input type="checkbox"/> , Academia	
<input checked="" type="checkbox"/> YES, Non governmental organisation	
<input type="checkbox"/> , Civil society	
<input type="checkbox"/> , Others	
<b>Questions</b>	
<b>I. GENERAL QUESTIONS</b>	

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?

1. by ensuring that energy, social and environment related EU commitments are adopted by the EC members 2. by establishing strong monitoring capacity of the EC, reporting mechanisms and dispute settlements procedures 3. by making the Treaty commitments more operational, with clear deadlines and obligations, 4. to ensure participation of civil society representatives participation and voice at all relevant bodies' meetings, together with timely exchange of information of public interest, 5. to give equal weight to all policy areas, i.e to energy, environment and social issues.

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?

We believe that strategic challenges lie in the areas of resource efficiency and moving to competitive low-carbon economy. The Energy Community could contribute to facing these issues 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 hydropower capacity in the region that can help to balance fluctuating electricity generation from renewable energy. 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?

In our opinion, the countries of the region are not fully integrated in the EU internal energy market. The important step to be taken before the countries will have been integrated is full adoption of the relevant EU acquis.

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 the implementation gap in the Energy Community can be closed without addressing wider issues such as corruption, the rule of law, and political governance, yet 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 (eg. 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. Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts The Directive applies to public contracts concluded by a contracting authority for supplies, services and works. Throughout the procedure, public contracts whose value exceeds the thresholds in the Directive are subject to obligations regarding information and transparency. The Directive provides conditions which may be required for the purposes of participation in public procurement. These conditions aim to check the suitability of economic operators tendering for contracts on the basis of criteria relating to their economic and financial capacity, and their technical and professional knowledge or abilities. The conditions for participation also aim to effectively combat fraud and corruption. By ensuring transparent, non-discriminatory procedures, the Directive aims principally to ensure that economic operators can fully enjoy fundamental freedoms in the competition for public procurement contracts. The Commission's report on the Energy Community identified the shortcoming of impact of the Energy Community Treaty on investments. This could be resolved with addressing the systemic

solutions. The application of public procurement rules would help to solve the problem of corruption and strengthen the rule of law. Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment The public plans and programmes covered by this Directive are subject to an environmental assessment during their preparation and before their adoption. This assessment includes the introduction of an environmental report (detailing the likely significant environmental effects and reasonable alternatives), as well as carrying out consultations (with the public, the authorities with environmental responsibilities and other States in the case of significant cross-border effects). According to the Directive the Strategic Impact Assessment is obligatory for plans/programmes which are inter alia prepared for energy sector and which set the framework for future development consent of projects listed in the Environmental Impact Assessment Directive. The Directive provides members of the public with opportunities to participate on the permitting and ongoing regulation of certain categories of activities. These are provided through consultation on certain key documents. By ensuring public participation the Directive favours the rule of law principle. Adaptation of Article 108 (ex-Article 88) of the TFEU – notification of the State Aid Any public aid which distorts or threatens to distort competition by favouring certain undertakings or certain energy resources shall be incompatible with the proper functioning of the Treaty. However: (a) aid having a social character, granted to individual consumers, provided that such aid is granted without discrimination related to the origin of the products concerned; (b) aid to make good the damage caused by natural disasters or exceptional occurrences; (c) aid granted to the economy of certain areas of the Federal Republic of Germany affected by the division of Germany, in so far as such aid is required in order to compensate for the economic disadvantages caused by that division. shall be compatible with the common market and (a) aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment; (b) aid to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State; (c) aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest; (d) aid to promote culture and heritage conservation where such aid does not affect trading conditions and competition in the Community to an extent that is contrary to the common interest; (e) such other categories of aid as may be specified by decision of the Council acting by a qualified majority on a proposal from the Commission may be considered to be compatible with the common market. The interpretation of whether the aid is compatible with the common market may lead to abuse of state interventions through the use of public resources to promote certain economic activities or to protect national industries. It is desirable to adapt Article 108 (ex-Article 88) of the TFEU and equip the Secretariat of the Energy Community with strong investigative and decision-making powers regarding state aid issues and aid measures in the energy sector should only be implemented after approval by the Secretariat. 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 must come first. In the energy sectors of the region, much has 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 EC countries.

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 general added value of the Energy Community is that it sets a functional legislative framework in the Contracting Parties that contributes, along with the EU, to addressing political challenges in terms of addressing the negative impacts of the energy sector and finding the right balance between the different sources of energy and increasing energy efficiency, and ensuring a reliable and safe supply. However the extent of the Energy Community's added value depends on the topic area and on the country. In general the Energy Community has more value added for the countries which are further from EU accession, as it has obtained concrete commitments from those countries that would not necessarily have been fulfilled as soon through the EU accession process. 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, however this potential has not yet been fully realised. One example where the Energy Community could contribute more is in adopting more ambitious energy efficiency targets as well as GHG emission reduction targets. On the other hand, an example of where we have seen the Energy Community's substantial added value is in the adoption of renewable energy targets. The adoption of Chapter III of the Industrial Emissions Directive also represents an initiative by the Energy Community which goes beyond what many of the Energy Community countries would have adopted themselves, although we hope that in the future the Chapter II requirement for Best Available Techniques will also be included in the Treaty.

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, it is necessary 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-long term.

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

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?

We believe the advantages should be granted to energy efficiency and small scale renewables projects.

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 most important indicators are contribution to energy efficiency and renewables targets, as well as compliance to the EU *acquis*.

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? YES

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?

In general, we call for more openness in the EC activities and for inclusion of CSO representatives in them. We believe that additional personnel should be recruited in areas where staff was not sufficient, primarily in energy efficiency, vulnerable consumers and renewables. Similarly, we propose also to establish fora for the topics. We call for the introduction of a mechanism to allow CSOs representatives to be present at any of the institutions of the EC. We also believe that the decisions of both the PHLG and Ministerial Council should be published clearly reflecting voting patterns. Perhaps the single most important and simple step that the Energy Community could take in order to increase the profile, perceived importance and therefore real weight of its work for ordinary consumers - which would not require any reform of the existing Treaty but simply a procedural decision - 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 has somewhat undermined the real weight of the Energy Community in the region.

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

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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 training are important but need to be done over a longer period than simply running workshops. Therefore it is positive that the Secretariat has offered secondments and internships, and its capacity to do so should be increased. 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 modernisation 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 organisational 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 ENTSG?

No comment.

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. The following should be considered:

- Strengthening the Secretariat's role in implementation and monitoring 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*
- Introducing automation of 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 noncompliance 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 communautaire* 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 ie. 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

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 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 PECL 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?

Yes, 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. 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) Chapter II of the IED sets certain basic obligations to be met by any industrial installation which carries out the activities listed in Annex I to the Directive (inter alia Combustion of fuels in installations with a total rated thermal input of 50 MW or more): preventive measures are taken against pollution; the best available techniques (BAT) are applied; no significant pollution is caused; waste is reduced, recycled or disposed of in the manner which creates least pollution; energy efficiency is maximised; accidents are prevented and their impact limited; and sites are remediated when the activities come to an end. 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. In general Chapter II of IED replaces the integrated pollution prevention and control Directive which importance is already recognized by the Treaty. Chapter II sets out the main principles for the permitting and control of installations based on an integrated approach and the application of best available techniques (BAT) which are the most effective techniques to achieve a high level of environmental protection, taking into account the costs and benefits. It is crucial that in energy sectors which have a significant impact on the environment the best available techniques are used to minimize long-distance or transboundary pollution and ensure a high level of protection for the environment as a whole. Implementation of Chapter II strengthens the rule of law by ensuring public participation in the permitting process. 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 The Directive sets legally binding limits and targets for concentrations of major air pollutants: sulphur dioxide, nitrogen dioxide and oxides of nitrogen, particulate matter (PM10 and PM2.5), lead, benzene and carbon monoxide as well as ozone in outdoor air for the protection of health and the environment as a whole. The directive lays down also measures aimed at assessing ambient air quality on the basis of common methods and criteria and ensuring that information on ambient air quality is made available to the public. The energy sector contributes greatly to overall air pollution. Energy related emissions are released through the entire spectrum of energy activities, from upstream emissions during fossil fuel extraction and production to end-use emissions. The combustion of coal contributes the most to air pollution. The pollution from coal-fired power plants comes from the emission of gases such as carbon dioxide, nitrogen oxides, and sulphur dioxide and from the emission of particular matter into the air. These compounds have a range of harmful local and regional impacts. 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 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 out environmental quality standards concerning the presence in surface water of certain pollutants and substances or groups of substances identified as priority on account of the substantial risk they pose to or via the aquatic environment. The priority substances are defined by the Water Framework Directive which establishes a list of 33 priority substances including cadmium, lead, mercury, nickel and its compounds, benzene, polycyclic aromatic hydrocarbons (PAH) and DDT total. Twenty priority substances are classed as hazardous. The quality standards are differentiated for inland surface waters (rivers and lakes) and other surface waters (transitional, coastal and territorial waters). The energy sector is not indifferent to the aquatic environment. The impact of 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 as the water pollution hazards created by coal mining should be minimized. Coal-fired plants produce vast amounts of fly ash combustion residuals which contain heavy metals and radioactive material, while surface mining gives rise to water pollution when coal with high sulphur content and other impurities is exposed to air and water. 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. This system should prove highly beneficial both to the public and to the environment on the local and regional level. It would, inter alia, reduce the costs of treating drinking water and improve the quality of organisms living in these waters and of livestock drinking these waters. 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 This Directive applies to waste resulting from the extraction, treatment and storage of mineral resources and the working of quarries. This particular extractive waste must be managed in specialised facilities in compliance with specific rules. The Directive sets out the rules 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". According to the Directive no

extractive industry waste facility may operate without a permit issued by the competent authorities. The competent authorities must inform the public of applications for permits that are submitted. This provision enables the public to submit comments and to participate in the assessment procedure for authorisation requests. It is necessary to lay down minimum requirements in order to prevent or reduce as far as possible any adverse effects on the environment or on human health which are brought about as a result of the management of waste from the mining industry. The mismanagement of such waste may cause pollution of a transboundary nature. Thus implementing the Directive would ensure a minimum level of safe and responsible management of such waste and maximising its recovery throughout the region. The Directive would strengthen also the rule of law principle 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 The Directive establishes a common framework of measures for the promotion of energy efficiency in order to ensure the achievement of the 2020 20% headline target on energy efficiency and to pave the way for further energy efficiency improvements beyond that date. It lays down rules designed to remove barriers in the energy market and overcome market failures that impede efficiency in the supply and use of energy, and provides for the establishment of indicative national energy efficiency targets for 2020. Energy efficiency offers a powerful and cost-effective tool for achieving a sustainable energy future. Improvements in energy efficiency can reduce the need for investment in energy infrastructure, cut energy bills, improve health, increase competitiveness and improve consumer welfare. 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. This Directive has been proposed for adoption by the Energy Community in 2014, which is highly welcome. Art. 4.7 of Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy The ultimate objective of the Directive is to achieve "good ecological and chemical status" of surface freshwater (including lakes, streams and rivers), groundwaters, groundwater dependant ecosystems, estuaries and coastal waters out to one mile from low-water. The States have to identify all the river basins lying within their national territory and to assign them to individual river basin districts. The energy sector uses water for extraction, cooling, generation and processing, and hence has significant impacts on the quality and health of water bodies, notably: biological, ecological and chemical status, water temperature, flow regime, hydromorphological alterations. The Directive identifies the priority substances and obliges States to monitor the level of those substances and to achieve good status of water quality. The Directive also requires the "non-deterioration of water bodies' status, tolerating a few exemptions set out under Art. 4.4, 4.5, 4.6 and 4.7. provided specific conditions are met (e.g. "no significantly better environmental options" are available, the project is of "overriding public interest"). Art. 6 of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora The Habitats Directive established the "Natura 2000" network. Annexes I and II to the Directive contain the types of habitats and species whose conservation requires the designation of special areas of conservation. Some of them are defined as "priority" habitats or species (in danger of disappearing). Annex IV lists animal and plant species in need of particularly strict protection. Member States must take all necessary measures to guarantee the conservation of habitats in special areas of conservation, and to avoid their deterioration and the significant disturbance of species. Energy investments have significant impact on the environment. The Directive allows the protection of priority species to avoid their deterioration and the significant disturbance of species. Directive 2010/31/EU of the European Parliament and of the Council of 19 May 2010 on the energy performance of buildings. The Directive aims to promote the energy performance of buildings and building units. The Member States shall put in place, in compliance with the calculation methodology, minimum requirements for energy performance in order to achieve cost-optimal levels. New buildings shall comply with these requirements and undergo a feasibility study before construction starts. When undergoing major renovation, existing buildings shall have their energy performance upgraded so that they also satisfy the minimum requirements. Energy efficiency offers a powerful and cost-effective tool for achieving a sustainable energy future. Improvements in energy efficiency can reduce the need for investment in energy infrastructure, cut energy bills, improve health, increase competitiveness and improve consumer welfare. Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage The Directive establishes a framework for environmental liability based on the "polluter pays" principle, with a view to preventing and remedying environmental damage. Under the terms of the Directive, environmental damage is defined as: direct or indirect damage to the aquatic environment covered by Community water management legislation; direct or indirect damage to species and natural habitats protected at Community level by the 1979 "Birds" Directive or by the 1992 "Habitats" Directive; direct or indirect contamination of the land which creates a significant risk to human health. The principle of liability applies to environmental damage and imminent threat of damage resulting from occupational activities, where it is possible to establish a causal link between the damage and the activity in question. The Directive refers inter alia to the damages caused by energy undertakings. It envisages the "polluter pays" principle and obliges the authorities to take appropriate measures to prevent or remedy environmental damage.

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 organisation? 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 organisation, 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?

The problem is primarily driven by the question of will, not time. Further, it is about 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 a frank and 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. Any future signatories should be made more thoroughly aware of the weight and seriousness of the admittedly challenging obligations they are taking on in advance of their accession to the Treaty in order to prevent situations in which Parties are unwilling or unable to fulfil their commitments.