

THE EUROPEAN ENERGY COMMUNITY*¹

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*A major part of Europe's geopolitical landscape is energy, and thus it is imperative to have an understanding of the tools and instruments employed by various international actors in this area. The major mechanism which the European Union uses in order to extend its energy regime beyond its own borders is the Energy Community. According to the European Commission, „The Energy Community Treaty is the reference point for the majority of the EU's neighbours willing to be a part of the European energy system.”³ Its two primary aims are the European Union's energy security and the desire to export its energy-related norms to neighbouring countries.⁴ The Energy Community's Secretariat has itself stated that, “The Energy Community's mission is to extend the EU internal energy market to South East Europe and beyond on the basis of a legally binding framework. The principal instrument to achieve this aim is the adoption of the EU's legislation, the so-called “*acquis communautaire*”, in energy and related areas.”⁵ In this article there shall be a brief overview of the background of to the Energy Community's formation, and its basic aims and structure.*

It was not until the late 1980s that real, substantial progress began to be made in the area of establishing a common European approach to energy policy.⁶ This may be considered somewhat curious, particularly if we consider such factors as the crucial role energy plays in modern economies, the consequences of the increases of the price of oil in the 1970s, the existence of the Euratom and ESCS Treaties, and the fact that the Commission itself had stated for years that the integration of the energy market would be highly beneficial and lead to large savings.⁷ The major obstacle to development in this area were the Member States themselves, who, due to their differing circumstances and peculiarities, tended to prefer national solutions.⁸

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³ Communication from the Commission (2011). *On security of energy supply and international cooperation – „The EU Energy Policy: Engaging with Partners beyond Our Borders”*, 7 September 2011, COM, pp. 6.

⁴ Talus, Kim (2013). *EU Energy Law and Policy: A Critical Account*, Oxford, Oxford University Press, pp. 245.

⁵ Energy Community (2017). *What We Do*, https://www.energy-community.org/portal/page/portal/ENC_HOME/ENERGY_COMMUNITY/What_we_do.

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⁶ Nugent, Neil (2010). *The Government and Politics of The European Union*, 7th edition, Basingstoke, Palgrave Macmillan, pp. 343.

⁷ Ibid.

⁸ Ibid.

One major aim of the development of a coherent, independent and united European energy policy is in order to alleviate pressures arising due to over dependence upon any particular particular energy producer.⁹ The EU relies on non-Member States to meet almost half of its energy needs, and in the case of oil the level of dependence reaches as high as 70 per cent.¹⁰ Specifically, it has been Eastern and Central European states which have been particularly concerned with this matter, and the 2004 and 2007 enlargements had the impact of making this issue of even more vital importance.¹¹ In addition, the repeated interruptions in the delivery of Russian energy along the Ukrainian and Belarussian transit routes (in particular in 2006 and 2009), as well as the present conflict taking place in Ukraine, have provided a strong impetus for the EU to seek alternative energy sources.¹²

In this context, the extension of the internal energy market to neighbouring countries was a natural step in the development of the European Union's energy policy. On 1 July 2006 the Energy Community Treaty came into force, it being initially limited to the European Community and the countries of the West Balkans, the signatories being Albania, Bulgaria, Bosnia-Herzegovina, Croatia, the Former Yugoslav Republic of Macedonia, Montenegro, Romania, Serbia, and Kosovo.¹³ Its main underlying thrust was that the EU would strengthen its supply security while the Balkan states involved would experience the benefits of a coherent policy in the energy area.¹⁴ The Energy Community Treaty explicitly seeks to emulate the European Coal and Steel Community, for in the same way that the latter arose in a region that had just emerged from war and conflict, so the Energy Community is the first time that all the West Balkan member states signed a legally binding treaty, which arose in the aftermath of the Balkan wars of the 1990s.¹⁵ Former European Council President Herman Van Rompuy had said, "Europe was built as a community for coal and steel. Sixty-four years later, and in new circumstances, it is clear we need to be moving towards an energy union".¹⁶

⁹Buchan, David (2015). *Energy Policy: Sharp Challenges and Rising Ambitions*. In Wallace, Helen, Pollack, Mark A. and Young, Alasdair R.: *Policy-Making in the European Union*, 7th Edition, Oxford, Oxford University Press, pp. 345.

¹⁰Nugent (2010): *i.m.* pp.343.

¹¹Buchan (2015): *i.m.* pp. 345.

¹²Ibid. See also Slobodian, Nataliia (2016). *Russia, Ukraine and European energy security*, New Eastern Europe. <http://www.neweasterneurope.eu/interviews/2007-russia-ukraine-and-europe-s-energy-security> [accessed November 15, 2017]

¹³Van Der Loo, Guillaume (2016). *The EU-Ukraine Association Agreement and Deep and Comprehensive Free Trade Area: A New Legal Instrument for EU Integration without Membership*, Leiden and Boston, Brill Nijhoff, pp. 348.

¹⁴Marhold, Anna (2016). *EU Regulatory Private Law in the Energy Community: The Synergy between the CEER and the ECRB in Facilitating Customer Protection*. In Cremona, Marise, and Micklitz, Hans W (2016). *Private Law in the External Relations of the EU*, Oxford, Oxford University Press, pp. 262.

¹⁵ European Commission Press Release (2005). *The EU and South East Europe sign a historic treaty to boost energy integration*, Brussels, 25 October 2005, IP/05/1346.

¹⁶Ellis, Vicky (2014). *EU countries agree to scrap reliance on Russian gas*, Energy Live News <https://www.energylivenews.com/2014/03/21/eu-countries-agree-to-ditch-reliance-on-russia-gas/> [accessed November 15, 2017]

Eventually, the European Commission called for the ECT to move beyond the Balkans and to also cover European Neighbourhood Policy states,¹⁷ and so Moldova joined in 2010, Ukraine in 2011.¹⁸ The common interests of all parties with this action were described by the then European Commissioner for Energy, Günther Oettinger that „Ukraine will have access to a pan-European energy market, based on the principles of solidarity and transparency. For the Community, Ukraine is an important new member and security of supply further improved.”¹⁹ This statement reiterates the fact that the Energy Community facilitates the extending of the legal boundary of the EU beyond its political-institutional boundary with the aim of ensuring its security and stability, while third countries are also able to benefit from integrating into the the European Union’s energy system and order.

The Treaty Establishing the Energy Community states in its preamble that it seeks “to establish among the Parties an integrated market in natural gas and electricity, based on common interest and solidarity”. According to Title 1 Article 2 of the Treaty, its aims are to:

- (a) create a stable regulatory and market framework capable of attracting investment in gas networks, power generation, and transmission and distribution networks, so that all Parties have access to the stable and continuous energy supply that is essential for economic development and social stability,
- (b) create a single regulatory space for trade in Network Energy that is necessary to match the geographic extent of the concerned product markets,
- (c) enhance the security of supply of the single regulatory space by providing a stable investment climate in which connections to Caspian, North African and Middle East gas reserves can be developed, and indigenous sources of energy such as natural gas, coal and hydropower can be exploited,
- (d) improve the environmental situation in relation to Network Energy and related energy efficiency, foster the use of renewable energy, and set out the conditions for energy trade in the single regulatory space,
- (e) develop Network Energy market competition on a broader geographic scale and exploit economies of scale.

The Energy Community places a strong onus upon signatory countries, which can be seen in Article 6 of the ECT, which states that „The Parties shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of this Treaty. The Parties shall facilitate the achievement of the Energy

¹⁷Communication from the Commission (2006). *On Strengthening the European Neighbourhood Policy*, Brussels, 4 December 2006, COM 726, 8, 3.4.

¹⁸Energy Community (2017). *About Us: Parties*, https://www.energy-community.org/portal/page/portal/ENC_HOME/ENERGY_COMMUNITY/Stakeholders/Parties. [accessed November 15, 2017]

¹⁹European Commission Press Release: *Commission welcomes Ukraine in Energy Community*, Brussels 24 September 2010, IP/10/1173.

Community's tasks. The Parties shall abstain from any measure which could jeopardise the attainment of the objectives of this Treaty.”

The Energy Community is an example of EU external governance policy, that is, an attempt to expand and move the legal boundary of the Union while not simultaneously moving the political boundary of the Union through official enlargement.²⁰ This is connected to the concept of the EU as a ‘normative power’, which aims at exporting and promoting its norms and ideals.²¹ Such an approach includes third countries applying the EU’s ‘sectoral acquis’, which allows them greater access and integration into the Internal Market of the EU.²² By harmonizing energy legislation and market conditions between EU Member States and third parties, the Energy Community also seeks to facilitate foreign investment and the creation of transborder interconnections in the area of the transmission of electricity and energy trade across borders.²³

One of the major criticisms of the Energy Community has been that implementation of the energy *acquis* varies between different contracting states, thus leading to a very “mixed picture” in terms of successful implementation.²⁴ This problem is compounded with issues relating to enforcement mechanisms, with the claim being made that existing ones are weak, and that so far no financial sanctions or binding penalties having been imposed for the breach of obligations.²⁵ Many, however have hailed the Energy Community as a success story of EU external relations policy.²⁶ This may be argued as the European Union has managed to integrate countries that are not full Member States into a crucial part of its legal order. It cannot be doubted that the issue of energy will only gain in importance in the years to come, and with it, the role of the Energy Community as a crucial component of EU external relations policy.

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²⁰Lavenex, Sandra (2004). EU external governance in ‘wider Europe’, *Journal of European Public Policy*, Vol.11, No. pp. 683.

²¹Manners, Ian (2002). Normative Power Europe: A Contradiction in Terms?, *Journal of Common Market Studies*, Vol.40, No. 2.

²² Petrov, Roman (2014). Applying the European Union’s ‘energy acquis’ in eastern neighbouring countries: the cases of Ukraine and Moldova, *Oil, Gas and Energy Law Intelligence*, Vol. 12, Issue 2.

²³ Rosner, Kevin (2009). *The European Union: On Energy, Disunity*. In LUFT, Gal, *Energy Security Challenges for the 21st Century: A Reference Handbook*, Praeger Security International, Santa Barbara, California, pp. 171.

²⁴ European Parliament (2015). *Energy Community: Prospects and challenges*, European Parliamentary Research Service, Briefing October 2015, pp. 5.

²⁵ *Ibid*, 8.

²⁶Schwarz, Oliver (2015). *Exploring the Impact of the Energy Community: A True Pan-European Single Market or Difference Worlds of Compliance*, ECPR General Conference Université de Montréal, Montreal, 26-29 August 2015, <https://ecpr.eu/Events/PaperDetails.aspx?PaperID=25993&EventID=94>. [accessed November 15, 2017]

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