Annex 3/36th PHLG/12-03-2015

Analytical Paper

"Options for the Implementation of the Proposals made by the High Level Reflection Group"

and Review of the Responses to the Public Consultation

Table of Contents

Introduction and purpose of the paper

In October 2013, the Ministerial Council mandated a High Level Reflection Group (hereinafter: "the HLRG"), under the chairmanship of Professor Jerzy Buzek, a Member of the European Parliament, to make an independent assessment of the adequacy of the institutional set up and working methods of the Energy Community for the achievement of the objectives of the Treaty establishing the Energy Community (hereinafter: "the Treaty"). The Report proposes measures some of which do not require modifications of the Treaty (Level I proposals), and some of which require modifications of the Treaty by unanimous decision of the Ministerial Council (Level II proposals) and full revision of the Treaty with ratification (Level III proposals)[i].

This Report[ii] was submitted to the Permanent High Level Group (hereinafter: "the PHLG") in June 2014, inviting all stakeholders to discuss it and to provide additional input for the debate.

In his Political Guidelines European Commission President Juncker announced a reform and reorganisation of Europe's energy policy into a new European Energy Union. Building an Energy Union is also a goal of the European Council. Strengthening the Energy Community is an important element in this regard[iii].

The PHLG, at its meeting of 18 June 2014, endorsed Procedural Act 2014/02/MC-EnC of the Ministerial Council of the Energy Community of 23 September 2014 regarding the Report of the High Level Reflection Group of 11 June 2014 (hereinafter: "the Procedural Act").[iv] Furthermore, the PHLG invited all Contracting Parties and other stakeholders to send their concrete proposals and comments related to the HLRG report to the Secretariat to be included in the analysis envisaged by the Procedural Act regarding the Report of the HLRG. The Ministerial Council, on 23 September 2014, adopted a Procedural Act.[v]According to Article 2 of the Procedural Act,

The Secretariat shall prepare in agreement with the European Commission an analytical paper identifying options for the implementation of the proposals made by the High Level Reflection Group and proposals made by Parties and other stakeholders, as well as the consequences of their implementation. The paper shall contain an analysis of the proposals made by the High Level Reflection Group, the Parties and by other stakeholders to the Treaty in respect to:

(a) the legal procedures necessary for implementation;
(b) cost and benefits as well as the budgetary impact;
(c) implementation effort required;
(d) effectiveness, efficiency and coherence with the objectives of the Energy Community.

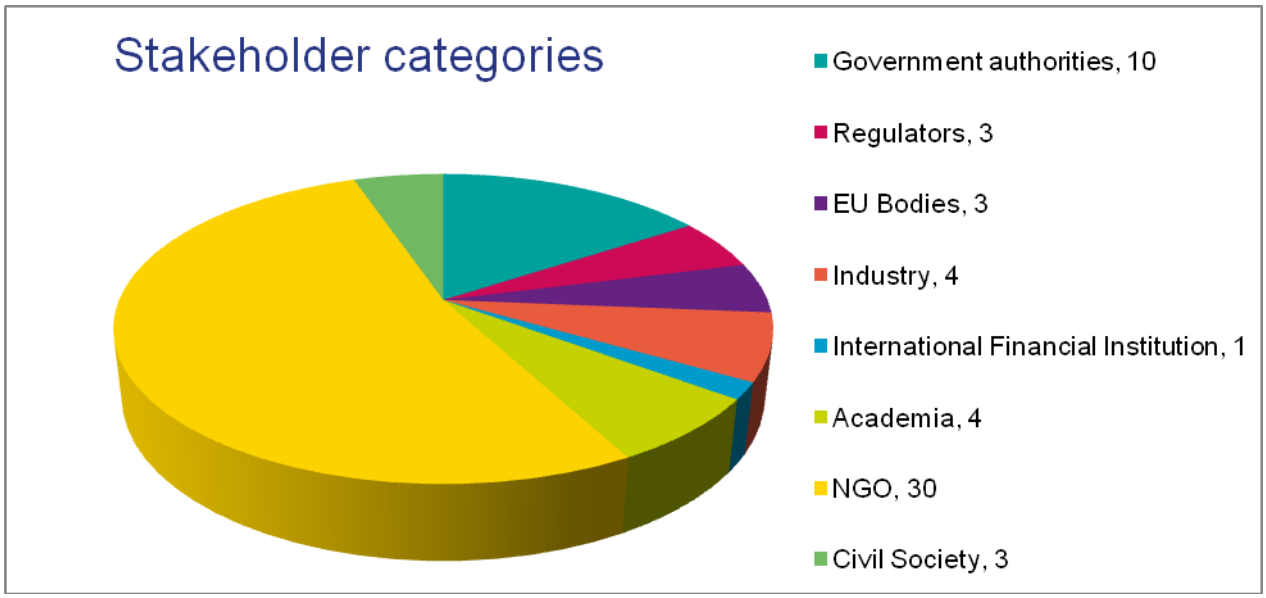
The present analysis regroups the proposals made by the High Level Reflection Group into thematic sections in order to better assess them in their respective contexts. The sections are entitled "Introducing more Flexibility in the Acquis" (A), "The pan-European Single Energy Market" (B), "Expanding the Scope of the Acquis in the Environmental Area" (C), "Opening and Protecting Energy Markets" (D), "Better Enforcement and Dispute Settlement" (E), **"**Improving the Investment Climate" (F), "Enlarging the Energy Community" (G), "Regulatory Cooperation" (H), and Reforming Current Energy Community Institutions (I).

As called for by the Ministerial Council and the PHLG, the analysis also covers proposals submitted to the Secretariat by other stakeholders and proposals included in the conclusions of the Ministerial Council in Kiev of 23 September 2014. Each option indicates whether it is a Level I, Level II or Level III proposal. The analysis considers the status quo as the first option and afterwards values each of the remaining options in relation to the status quo option.
This paper which was submitted for public consultation seeks views of the stakeholders for each of the options considered. It cannot be seen in any way to bind or reflect the views of either the Energy Community, any Party to it or its institutions and is without prejudice to the future reform of the Energy Community.

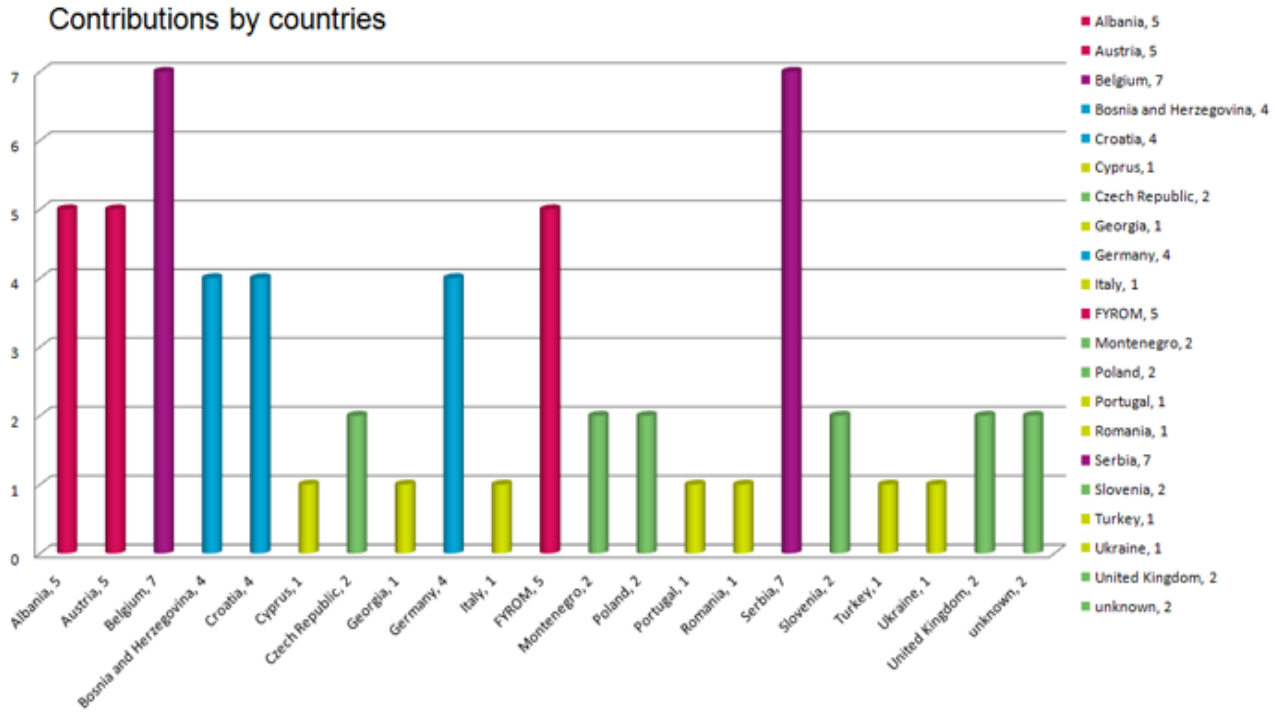
Summary of public consultation responses

The public consultation on the "Options for the Implementation of Proposals on the Future of the Energy Community" ran from 3 February to 6 March 2015.

Stakeholders
A total of 61 replies was submitted to the public consultation. Submission came from central government authorities, of Energy Community Contracting Parties or EU Member States, regulatory authorities and their regional associations, International Financial Institutions economic operators and their associations, EU bodies, Members of the European Parliament, NGOs and civil society individuals as well as academics.



In terms of geographical background, the majority of replies originate from Serbia, Belgium, Albania, former Yugoslav Republic of Macedonia, Austria, Germany, Bosnia and Herzegovina and Croatia. Two observers (Turkey and Georgia) also participated in the consultation.



Introducing more flexibility in the acquis

The majority of stakeholders opted for supporting the status quo (remain with the current practice of limiting the flexibility to the specifics of the institutional framework of the Energy Community and to the deadlines for implementation of the acquis by the Contracting Parties). The justification for choosing this option (when provided) was the concern that greater flexibility could result in negative impacts in terms of postponing the implementation of the EU acquis and the creation of an integrated energy market and increasing the complexity of the EU decision-making process. One third of the respondents chose option 1 and/or 2 as a way to more deeply involve the Contracting Parties in the legislative process and balance flexibility with the harmonisation necessary for a single market. A number of stakeholders considered status quo, option 1 and option 2 not to be mutually exclusive.

Activating Title IV

There was no clear consensus among stakeholders with respect to activating Title IV of the Energy Community Treaty as less than one third of the respondents answered this part of the questionnaire. Out of those that responded, the majority was in favour of amending Decision 2006/500/EC or at least using it actively in the area of security of supply.

Interconnectors between EU Member States and Contracting Parties

Option 1 (use of Title IV or Title III of the Energy Community Treaty in order to establish measures in consequence of which the laws of the Parties would need to be adapted so as to create a regime applicable to the borders between the Contracting Parties and the EU Member States) is clearly favoured by respondents to this question, notably by industry.

Broadening the scope of fundamental freedoms under Title IV

A narrow majority of respondents to this question support option 2 (introduce all fundamental freedoms to the Energy Community Treaty), 50% of which were central government authorities.

An entity allowing for gas demand aggregation
The majority of comments by academia and regulatory and government authorities support further research and discussion on establishing an entity for gas demand aggregation, at least on a voluntary basis. The task of elaborating on this concept could be given to the Secretariat. The concept was not supported by EU gas and electricity producer associations due to competition related concerns.

Expanding the scope of the environmental acquis
Option 2 (extend the existing acquis by some of the environmental acts proposed by the HLRG and update the existing ones in accordance with the amendments of the EU acquis) was supported by an overwhelming majority of NGOs as well as received the most support from non-NGO respondents, including government and regulatory authorities. NGOs advised in particular the adoption in the Energy Community of Chapter II of Directive 2010/75/EU on industrial emissions (also for existing plants); Directive 2008/50/EC on ambient air quality; and Directive 2001/42/EC on strategic environmental impact assessment. Directive 2001/81/EC on national emission ceilings for certain atmospheric pollutants was highlighted as also being important for achieving air quality standards. A very small minority of respondents specifically cautioned against the adoption of Directive 2003/87/EC on establishing a scheme for greenhouse gas emission allowance trading (ETC).

Additional pieces of environmental legislation proposed by stakeholders included inter alia: Directive 2013/30/EU on offshore safety; Directive 2008/56/EC on a maritime strategy framework; Directive 2000/60/EC on establishing a framework for action in the field of water policy; Directive 2008/105/EC on environmental quality standards in the field of water policy; Directive 2012/27/EU on energy efficiency; Directive 2001/81/EC on national emission ceilings for certain atmospheric pollutants; and Directive 2008/98/EC on waste.

It was noted that the role and capacities of the Secretariat should be further strengthened for the environmental sector.

Enhancing the effectiveness of competition law enforcement
A large majority of stakeholders support the HLRG proposal to include Article 108 of the TFEU into the Energy Community Treaty, and equipping the Secretariat with the necessary investigative and decision-making powers. Option 2 (strengthening the commitment for the Contracting Parties in the Treaty to implement the EU acquis on competition and State aid law for the energy sector, including the adoption of national procedures allowing effective implementation of these provisions) was the second most favoured option by stakeholders.

Introducing rules on public procurement
A vast majority of stakeholders, including government and regulatory authorities, support option 2 (implementation of the EU public procurement acquis to the extent relevant for the energy sectors) as a means to improve transparency, help solve the problem of corruption and strengthen the rule of law in the energy sector. Voluntary implementation was not considered sufficient.

Harmonisation of VAT treatment
An absolute majority of stakeholders favours option 2 (amending the Treaty so that every Contracting Party respects the EU VAT acquis). Voluntary implementation was not considered sufficient. It was noted by industry that the mentioned obligations, while being a priority, are

already included in texts of respective Association Agreements and usually go beyond the competences of Ministries of Energy.

Encouraging Private Enforcement
An overwhelming majority of stakeholders share the view that Option 2 (amend Title VI of the Treaty by a clear obligation on the administrative and judicial institutions of the Contracting Parties to accept direct effect of, the precedence of the Energy Community rules over conflicting national rules, as well as liability of the State for noncompliance in line with EU law) should be implemented as the most efficient measure to strengthen enforcement and improve acquis implementation.

Strengthening the framework for enforcement and dispute settlement
The majority of respondents shared the view that the current regime needs to be fundamentally changed as it cannot adequately deter Contracting Parties from violating the Energy Community acquis and clearly advocated for a strengthened framework for enforcement and dispute settlement. Option 3 (creation of a Court of Justice) and option 4 (incorporation of the EU approach to sanctions for infringements) were most favoured, including by individual EU Member States and regulatory authority.

Conditionality of financial assistance
The majority of respondents support introducing the conditionality principle as well as the introduction of a mandatory (non-binding) option of the Energy Community Secretariat by donors in their procedures. Moreover it was noted that any Contracting Party that is in breach of its obligations under Article 91 and 92 of the Treaty should not receive direct or indirect support of the EU. On the other hand, it was noted that there are instances when financial assistance is needed exactly for overcoming difficulties in implementing the acquis. NGOs also highlighted the need for the Energy Community to have increased monitoring and enforcement capability to ensure that Contracting Parties' investments do not infringe EU acquis or are in line with EU's long term climate and energy goals.

Increase and managing of available funding
Overall, stakeholders support increased financial aid and improvement of its management. 2 respondents did not support the introduction of a mandatory, non-binding opinion of the Secretariat in donors' procedures. NGOs stressed the need for increased funding to develop energy efficiency and renewable energy plans which were in line with the EU's energy, climate and environment policies and acquis. Other stakeholders highlighted the need for EU funds for the Projects of Energy Community Interest (PECIs) or creating a specific Energy Community Fund to be financed by different donors. Funding for projects which increase security of electricity and gas supply were considered important. Industry favoured market driven investment.

Investments-friendly area
The majority of stakeholders support option 1b (undertaking a number of measures under current Treaty to improve investment climate). Overall, all 7 proposed actions were supported by various stakeholders, with the adoption of Regulation (EU) No 347/2013 having the widest support. NGOs expressed concern regarding the streamlining of environmental assessment procedures for priority projects and the introduction of shortened administrative procedures which they said could result in projects of lesser quality and/or with significant impacts on the environment. NGOs also expressed scepticism towards the establishment of a one-stop-shop as this was considered conditional on significant investment in communications/IT infrastructure.

An Energy Community Risk Enhancement Facility

The majority of respondents are sceptical towards the establishment of an Energy Community Risk Enhancement Facility (ECREF). Some respondents noted the lack of detailed information about the facility in the analysis. NGOs proposed that the focus should be rather on improving implementation and enforcement of the acquis. Other respondents agreed that the most practical solution would be giving PECIs access to EU financing as soon as possible.

Platforms of complementary projects

Option 1 (agreement of sub-set of priority projects from the PECI list) and Option 2 (clustering projects and improve monitoring of the PECIs) were nearly equally supported by the respondents to this question, with several selecting both options. NGOs reiterated the need for PECIs to be screened for compliance with EU legislation, including environmental acquis, and the EU's long-term climate goals.

Enlarging the Energy Community

The majority of the questionnaire respondents did not agree with the analysis made in the Analytical Paper. The majority of stakeholders supported the status quo. The focus should be on creating an operational 8th region energy market first, but this did not preclude enlargement at a later date. A number of respondents noted that the Energy Community should be open to all EU neighbouring countries willing and able to fully and timely implement the acquis, but expressed reservations towards two-tier membership due to concerns over disintegration. About one fifth of the stakeholders supported a more flexible approach to Energy Community membership. Enlargement to Turkey, Belarus, Switzerland and the Mediterranean countries was noted.

Strengthening of the ECRB and cooperation with ACER

Option 3 (better representation of Contracting Parties' NRAs in ACER and improving the effectiveness of ECRB) received the most support from stakeholders, followed by option 2 (legislation specifying competences of ECRB and ACER as adopted under Title IV of the Energy Community Treaty in consequence of which the laws of the Parties would need to be adapted) and option 1 (granting ECRB similar competences as ACER). Certain respondents considered all three options to be acceptable. Extending the ECRB's President's term was supported by two government authorities. While not an option per se, 3 respondents noted opposition towards the recommendation of the HLRG for Contracting Parties to be part of ACER and for associate members to be part of ECRB.

ACER noted that the assignment of ECRB's competences should be considered on a case-by-case basis in order not to "create unnecessary duplication" or inconsistencies with the current EU institutional framework for the Internal Energy Market. It may be appropriate to consider whether an enhanced role for the ECRB would also require putting in place a system of checks and balances, requirements for independence, similar to those of the Agency, and an appropriate enhancement of the ECRB's resources. ACER called on the Commission to fill the legal gap with respect to cross-border issues which concern both the EU and the Energy Community. ACER proposed that in case of a dispute between one or more EU Member States' NRAs and one or more Energy Community Contracting Parties' NRAs over a cross-border issue, the Agency would decide on the dispute whilst a procedure would be in place which would involve the concerned NRA(s) of the Energy Community Contracting Party(ies). ACER also reiterated its proposal on Contracting Parties' NRAs participation in ACER sent to the Commission on 26 November 2014.

Involvement of Energy Community TSOs in ENTSOE and ENTSOG

The majority of respondents supported the request to ENTSOG to adapt its Articles of Association allowing observer participation of Energy Community TSOs, with several respondents supporting

the right of Contracting Parties TSOs to become full members of ENTSO-G based on similar principles as those applied by ENTSOE.

Energy Community Budget Contribution System

The majority of respondents supported keeping the status quo (i.e. the current system of budget contributions). It was noted that more detailed information would be required to assess option 1 (all Parties to the Treaty offer on voluntary basis a number of secondments of staff to the Secretariat). Representative of the donors' community noted that strengthening of the Contracting Parties' personnel skills by seconding experts seemed very relevant and proposed the establishment of a work-shadowing system between Contracting Parties, participating EU Member States and Energy Community Secretariat.

Making the Ministerial Council more strategic and upgrading the Permanent High Level Group

Option 1 (PHLG functioning similarly to COREPER and the Ministerial Council encompassing different constellations of ministers representing Contracting Parties) was favoured by the majority of respondents.

Strengthening the institutional capacity of the Secretariat

Option 2 (Increasing of funds to the Secretariat to increase capacities to organise training programmes and assistance in implementation of the legislation and investment projects) was supported by a vast majority of stakeholders. While the strengthening of secondment programmes and internships at the Secretariat was considered important, the increase of resources to hire highly competent expert staff on a permanent basis was considered imperative to increasing effectiveness and efficiency of the organisation. A number of stakeholders also noted that the Secretariat's competences should be strengthened.

The future role of the fora: electricity, gas and oil

There was no overwhelming consensus on this topic. A narrow majority of respondents supported option 3 (the Energy Community Fora will be held back to back with the EU Fora, once a year providing an opportunity to have a joint session of both Fora). The value of having joint EU and Energy Community sessions on issues such as the creation of a pan-European energy market and security of supply was recognised, while also noting that separate sessions were required to address issues still specific to the EU or to the Energy Community. More strategic choice of topics and improved results (option 1) and their increased diffusion was considered important by a number of regulatory bodies.

Consumer platform

Option 1 (establishment of an Energy Community consumer platform) was the most preferred, in particular by NGOs as a means to implement public awareness activities. Several government authorities favoured option 2 (access to and involvement of Energy Community stakeholders in the European Citizens Forum).

Future involvement of civil society and business institutions

The overwhelming majority of stakeholders supported option 1 (CSOs granted formal observer status at the PHLG meetings). NGOs advocated for being granted full access to all the Energy Community task forces and coordination groups. A number of government authorities expressed concerns citing confidentiality and decreasing efficiency of the decision making progress of the

PHLG. It was proposed that CSOs and business could be debriefed on the discussions and decisions afterwards.

Creating an Energy Community Parliamentary Assembly (ECPA)
The majority of answers received are in support of option 1 (establishment of an Energy Community Parliamentary Assembly). The assembly was considered beneficial in terms of attaining the Energy Community's goals.

A. Introducing more flexibility in the acquis

Proposals by the High Level Reflection Group: 1.1.

The Report of the High Level Reflection Group requests that "*more flexibility should be allowed in the scope and time of the adaptation of the acquis, taking into account that the situation of the Contracting Parties may differ in many aspects which are key for implementation (e.g. social conditions, existing or missing links to EU transmission grids, existing or missing gas pipelines, different country sizes, different technical standards etc*.)".

The Energy Community Treaty ensures that the Contracting Parties apply the same set of rules as the EU Member States do owing to their membership in the Union (Title II); allows for a special regime catering for the needs of regional integration in South East Europe (Title III); allows for deviations from the original EU energy *acquis* by establishing measures and provisions that apply on the territory of the EU and the Contracting Parties (Title IV). Within Title II, (on which the activities of the Energy Community legislature have so far exclusively focused), there is a specific provision, Article 24, designed to ensure flexibility in the way EU energy law is incorporated in the Energy Community. However, so far, the adaptations made under Article 24 of the Treaty have in essence only extended deadlines and responded to the specifics of the institutional framework of the Energy Community. There is no formal process for identifying where further flexibility on substance is needed, and perhaps as a result, so far the Contracting Parties have not been vocal on this topic.

Status quo: Remain with the current practice of limiting the flexibility to the specifics of the institutional framework of the Energy Community and to the deadlines for implementation of the acquis by the Contracting Parties.

Option 1 (Level I proposal): The European Commission could be encouraged to involve the Contracting Parties in consultations allowing them to highlight their specific national circumstances before a proposal under Title II of the Treaty is tabled.

Option 2 (Level I proposal): The European Commission could be encouraged to involve the Contracting Parties in consultations allowing them to highlight their specific national circumstances already before a proposal within the EU legislative process is tabled.

In comparison to maintaining the status quo, implementing options 1 and 2 could have the following impacts:

Options	Legal procedures	Costs/budget	Implementation effort	Effectiveness/efficiency/coherence
Option 1	Establishment of a procedure within existing institutional arrangements and identification of the special needs for each Contracting Party for each legislative act	No additional costs	Low effort to establish and implement the procedure	Effective and efficient in implementing the acquis and therefore in building the integrated market. Less coherent with the aim to establish a market based on the same rules as in the EU (homogeneity)
Option 2	Establishment of a consultation process involving the Contracting Parties	Limited additional costs	Medium effort to establish and implement the procedure; Similar solution exists already under the EEA Agreement	Will effectively ensure homogeneity of the acquis between the Contracting Parties and the EU. Less effective in adapting the acquis to the specific situation of the Contracting Parties

Questions to the stakeholders:

1. Do you agree with the above assessment?
2. Do you support the status quo, Option 1 or Option 2?
3. Do you consider that additional options need to be added? Which? What are the impacts in comparison to the status quo?

Public Consultation Submitted Responses

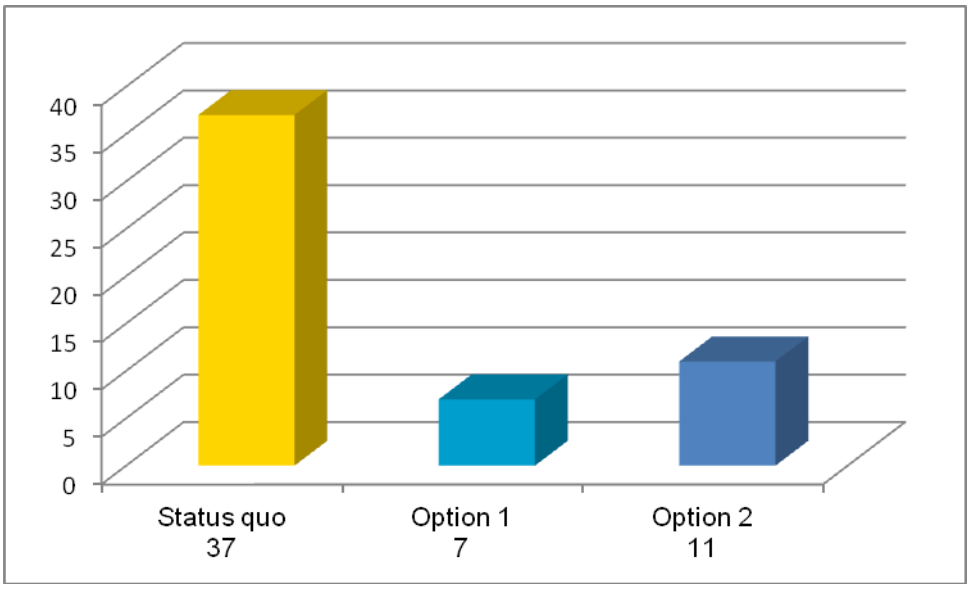
1. Do you agree with the assessment made in the Analytical Paper?

	YES 13 / NGO 1		NO 4 / NGO 28		DO NOT KNOW / NGO 1

Total number of responses: 47

Comment:
Goverment /Serbia
Partially. If the assessments are related to acquis by implementation of the Title II (Extension Acquis). Since the measures for implementation based on Title II are adopted following the proposal of the European Commission (Article 79 of the Treaty), it is understood that the European Commission is free to arrange procedures of consultations. The assessment of costs is rather general and cannot be used as criterion for selection of proposed Option 2, since it has been stated „limited additional cost“ and it is impossible to make an estimation.
The more detailed description of the options is required in order to conclude in which measure the specific national situations of the Contracting Parties could be taken into account. This is especially true for Option 2. Regarding Option 1, it is not clear whether the proposal refers to the legislation that already exists in the context of Title II "each legislative act", or it refers to some future legislation that might become a part of Title II.

2. Which of the three options do you support the most? (Please note these options are not mutually exclusive and may also depend on each other.)
Number of responses: 55



3. Comments/More options

Academia:
Poland:
A good identification of areas where the greater/deeper involvement of the Contracting Parties seems needed could increase their voice and participation in the process of adapting the EU acquis and their responsibility for its outcome. At the same time, greater flexibility will just postpone the full implementation of the EU acquis in time, so it shouldn't affect the goal of establishing a market based on homogenous rules, just prolong the process. What's more, it would better reflect the reality (even within the EU) where such homogeneity is still a quite distant goal.

Civil society
Austria
It is suggested to distinguish between the various geographic regions (western Balkans, UA/MD, future CPs) under the common umbrella of the Energy Community. To put- by default- all Contracting Parties into one single and artificial 8th Region leads to unrealistic expectations.

Government authority:
FYR of Macedonia
The proposed options from this chapter are acceptable having in mind that these two options might be combined in two steps. It will be very beneficial situation if the contracting parties are invited in the discussions while preparing and communicating the EU acquis. Afterwards it is necessary that contracting parties are deeply involved even in preparation of the proposals for adaptation of the EU acquis under article 24 of the Treaty establishing the Energy Community. There is need for establishment of new costly procedure just EC to involve the contracting parties in already established procedure within EU.

Serbia:
We agree with the Option status quo, together with the support for greater use of existing possibilities. According to the Options 1 are 2, that are not mutually exclusive, we are not able to give our final position on the basis of the proposed options, since it is impossible to make conclusion on the effectiveness of their conduction in respect to Contracting Parties. Furthermore, the mechanisms for participation of Contracting Parties in shaping of legislative acts of the EU and their impact on formulation of European energy policy have not been offered. Since the Options are not mutually exclusive, it is possible to use all three, however further, more detailed clarification of the options is needed, in order to reach the final conclusion.

The Czech Republic
The Czech Republic would prefer the status quo to be preserved. It is very important to ensure homogeneity between market rules in the EU and the EnC. In our opinion, Article 24 allows for sufficient flexibility for Contracting Parties (respecting specifics of the institutional framework and allowing extending deadlines for implementation of the acquis). Further consultations with Contracting Parties prior to tabling a proposal under Title II could endanger the above mentioned homogeneity, analytical paper also recognized it. Concerning Option 2, (consultations with Contracting Parties already by drafting EU legislation), in our understanding procedure of consultations with relevant stakeholders when drafting new law in the EU already exists. If Contracting Parties wish to express their views, they may do so initiatively and on a case-by-case basis. We do not think any special consultation mechanism should be established. This could make the EU legislative process even more complex. However, we agree that we should have

future consequences for the Energy Community in mind when tabling a proposal within the EU legislative process. We could e. g. put a clause in a legislative act that if it is being implemented in the EnC in the future, it will apply for all the EnC Contracting Parties and on their borders as well as on borders between the EU and the EnC. This clause will “activate” itself when the law is implemented in the EnC in real terms.

Poland
Poland has strong reservation as regard the proposal to introduce more flexibility in the *acquis*. Poland believes that it is crucial for the Contracting Parties to have identical goals and obligations in the same timeframe. In case the Ministerial Council decided to ensure more flexibility in the way EU energy law is incorporated in the Energy Community, it would have a negative impact for the organisation in terms of legal distinctions and different pace of the reforms in the specific Contracting Parties. Introducing more flexibility in the *acquis* might cause lack of political integrity of the Energy Community.

Romania
We consider that the first option should be taken into consideration in the sense of a deeper involvement of the European Commission (COM) in the consultation process with the Contracting Parties (CP) with a view to identifying specific characteristics that can be applied to the common market of the Energy Community. In accordance with art. 24, it is not mandatory, nor possible, from what we have seen so far, for the energy sector within the Energy Community to function by strictly the same rules as the EU. Such a flexibility could be taken into account provided that, in the case of identifying a solution for render some regulations more flexible, the CP implement these “flexible” rules within the established deadlines, with no further delays, as occurred by now.
Option 2, even if it may be more efficient, it would be difficult to implement as the Member States cannot be pushed to take into account the specificities of some states that are not EU members and for which there are no guarantees in the end that they would have the necessary openness to implement also “adaptated” new possible legislative proposals.

United Kingdom
We consider that involving the Contracting Parties in consultations before an EU proposal is tabled would help to integrate Contracting Parties' views in the development of new EU legislation.

Industry
EURELECTRIC
The region is characterized by significant heterogeneity in market designs and regulation and although in progress is not fully in line with the *acquis*. Cooperation with governments and stakeholders in the region is thus crucial. Nevertheless, EURELECTRIC believes that flexibility should not be used as justification not to implement agreed *acquis*. Exceptions that would lead to fragmentation of the market should be avoided. Any exemptions should thus be well justified. Unnecessary bureaucratization of the procedure and regulatory overstretch should be also avoided. Difficulties for the EU member states to implement the same acquis and possible changes to this acquis shall be taken into account. Transparency for all interested stakeholders about discussions to implement new parts of acquis is key
.
Eurogas
Eurogas would prefer to see the status quo maintained, which already allows for flexibility in relation to the specifics of institutional frameworks and deadlines. Moving in the direction of more flexibility will mean that it will take longer to achieve an integrated market approach in the

Community countries and with EU Member States. This could also have negative consequences on the effectiveness and efficiency of EU consultation processes.

EVN
The CPC are still struggling to overcome overall past structures with emigration of mainly well educated young people leaving the others in a status of insufficiant capability to adapt infrastructure and producing industry to general European level. The collapse of the old political system left too many people in a status of desorientation resulting in critical informal and political networks hampering the autonomous and self-confident development of the energy system to more efficiency and sustainability. The current situation requests a sound assessment including the economic and social environment, clear and realistic targets and consequence in realisation on a local level instead of across-the-board enforcement.

Donors
GIZ
The basis for Option 2 should be an analytical process, which would make the specific national conditions transparent for the European Commission and the respective Contracting Party. This seems to be in particularly important, when environmental issues would become a stronger focus of the Energy Community Treaty. The European Commission and the respective Contracting Party should appoint the expert group doing specific analyses. The analyses ideally should serve as an initial point for the Contracting Party to develop its related capacities and structures to meet EU standards.

Regulators
E-CONTROL:
I agree with the High Level Reflection Group which highlights the importance of allowing more flexibility when it comes to adapting European legislation when incorporating it into the Energy Community. Although the Treaty allows certain flexibility in Article 24, this flexibility potential has never been fully used in practice. This can be observed with regard to the implementation of the Renewable Energy Directive 2009/28/EC. As a consequence of not adapting the Directive to the socio-economic realities of Contracting Parties, they most likely won't be able to fulfill the very ambitious imposed targets. Therefore, it would be desirable if the European Commission could find the right balance between flexibility on the one side and harmonization necessary for the functioning of the internal Energy Community market on the other side. I believe that the status quo is not an option. Thus, I support both Option 1 and Option 2. The inclusion of contracting parties in the drafting process of legislative proposals at two distinct stages of the legislative procedures is of great importance. I would also welcome the inclusion of experts of the Energy Community Secretariat in both consultation stages. Such an approach, however, would require a certain formalization of the two consultation stages, similar to the decision-shaping procedures of the EEA Agreement.

EU bodies
MEPs
All possible steps should be taken within the Energy Community to align perspective member states with EU membership requirements.

B. The Pan-European Single Energy Market

Proposals by the High Level Reflection Group:1.2, 1.5, 1.6.(a), 2.4.

By extending European energy legislation to its Contracting Parties, the Energy Community seeks to create a single pan-European energy market among its Parties. This single market is subject not only to two identical sets of rules applicable within the European Union and the Contracting Parties but also to provisions stipulated by the Treaty itself. Title IV of the Treaty envisages legal bases for a pan-European energy policy in Articles 42, 43 and 45 (internal market, external energy trade policy and security of supply).

I. Activating Title IV

The High Level Reflection Group proposes that "Title IV should be expanded and used more systematically in order to design a genuine set of rules and institutions governing fully integrated pan-European energy markets." As a precondition for activating this Title, the Group recommends "that the European Union's restrictive Decision 500/2006/EC be revised in order to allow for more flexibility".

Title IV of the Treaty includes a (narrow) set of rules and legal bases which allow the adoption of legal acts binding on both the EU and the Contracting Parties. Under this title, measures can be introduced by unanimity following a proposal from a Party. The High Level Reflection Group deplores that Title IV "*has not been used so far*". Indeed none of the Parties have made proposals under Title IV in the past. In respect to the position of the EU the matter is regulated by the provisions of the Council Decision 2006/500/EC which ratified the Energy Community Treaty on behalf of the European Community. Article 4(3) of that Decision excludes that Decisions adopted by the Ministerial Council "*go beyond the* [EU] *acquis communautaire*", with an exception only for security of supply in the event of special circumstances.

Status quo: The measures under Title IV may be taken subject to a proposal from a Party to the Energy Community Treaty and are decided unanimously. Decision 2006/500/EC remains in force. Until now no formal proposals were made.

Option 1 (Level I proposal): Title IV could be used actively in the area of security of supply.

Option 2 (Level I proposal): HLRG proposal to the European Union to amend the Decision 2006/500/EC in order to allow for more flexibility under Title IV.

In comparison to maintaining status quo, implementing option 1 and 2 could have following impacts:

Options	Legal procedures	Costs/budget	Implementation effort	Effectiveness/efficiency/coherence
Option 1	No amendments to the Energy Community Treaty; And no legislative amendments in the EU	Neutral	Depending on the actions/measures taken under Title IV	It is effective and efficient to integrate energy markets. It is also coherent with this aim but only limited in the area of security of supply.
Option 2	No amendments to the Energy Community Treaty; Legislative amendments in the EU would be necessary.	Neutral	Depending on the actions/measures taken under Title IV	It is effective and efficient to integrate energy markets. It is also coherent with this aim in all areas.

Questions to the stakeholders:

4. Do you agree with the assessment of the above options?
5. Do you support the status quo, Option 1 or 2?
6. Do you consider that additional options need to be added? Which? What are the impacts in comparison to the status quo?

II. Interconnectors between EU Member States and Contracting Parties

The High Level Reflection Group proposes to consider "interconnectors between EU Member States and Contracting Parties … interconnectors regardless of whether they are interconnectors between Member States or between Contracting Parties." The problem, the Group explains, is as follows: "One concrete example for the unsatisfactory results and problems caused by the lack of flexibility is the definition of "interconnectors" in the incorporation of the 3rd Package into Energy Community law. As it was (only) based on Title II, Member States are not covered, and the connection between Member States and their neighbouring Contracting Parties, as originally intended, is obstructed. This hinders the objective to achieve the true pan-European energy market envisaged in the Energy Community Treaty. Making more and better use of Title IV will allow for these problems to be avoided."

On 23 September 2014, the Ministerial Council of the Energy Community adopted an Interpretation under Article 94 of Articles 7 and 41 of the Treaty[vi]. Subsequently, the European Commission adopted a non-binding Recommendation[vii] addressed to the EU Member States as well as the Agency for the Cooperation of Regulators. The Secretariat mirrored this in Policy Guidelines addressed to the Contracting Parties[viii].

These documents point out the need of the EU Member States and the Contracting Parties to cooperate in the consistent application of the Third Package on the borders between the Contracting Parties and the EU Member States and invite the relevant authorities to do so.
Status quo: Ministerial Council Interpretation under Article 94 of Articles 7 and 41 of the Treaty and the Recommendation of the Commission address the problem identified by the High Level Reflection Group in a legally binding manner, and provide legal certainty to all stakeholders and investors. The provisions can be applied immediately; however future development needs to be carefully observed.

Option 1 (Level I proposal): Use of Title IV or Title III of the Energy Community Treaty in order to establish measures in consequence of which the laws of the Parties would need to be adapted so as to create a regime applicable to the borders between the Contracting Parties and the EU Member States.

In comparison to maintaining the status quo, implementing option 1 could have following impacts:

Options	Legal procedures	Costs/budget	Implementation effort	Effectiveness/efficiency /coherence
Option 1	Initiation of a legislative procedure within the EU and application of the procedure under the Title III and Title IV	Neutral	When legislation in place the implementation effort might be lower than the current practice.	It is effective and efficient to integrate energy markets. It is also coherent with this aim.

Questions to the stakeholders:

7. Do you agree with the assessment of the above options?
8. Do you support status quo or Option 1?
9. Do you consider that additional options need to be added? Which? What are the impacts in comparison to the status quo?

III. Broadening the scope of Fundamental Freedoms under Title IV

In its report, the High Level Reflection Group recommends that “the scope of the Energy Community should be broadened ... by symmetrically applying all fundamental freedoms: besides free movement of goods, also free movement of services and capital and freedom of establishment should be introduced in the Treaty”.

Currently Article 41 of the Treaty protects free trade of network energy between the Parties and is modelled on several provisions dealing with the free movement of goods in the Treaty on the Functioning of the European Union (TFEU). This is the main focus of the Treaty. Provisions on the freedom of establishment, services and capital are missing. In the EU case law, they have proven to be of similar importance as the free movement of goods. Without these freedoms, the market players have difficulties to broaden their activities beyond national borders and a single energy market is not complete. In jurisprudence, freedom of establishment played a crucial role in energy

cases such as the *Hjemfall* case in the EEA. The free movement of capital was decisive in many of the so-called "*golden shares*" cases and the free movement of services is instrumental to remove barriers in energy trade, including registration, seat and corporate requirements, as well as double taxation.

Status quo: Maintain current focus of the Treaty on free movement of goods in energy.
Option 1 (Level I proposal): Voluntary introduction of relevant elements of freedoms of establishment, services and capital by the Contracting Parties, however without Treaty change.

Option 2 (Level II proposal): Introduce all fundamental freedoms to the Energy Community Treaty.

In comparison to maintaining the status quo, implementing options 1 or 2 could have the following impacts:

Options	Legal procedures	Costs/budget	Implementation effort	Effectiveness/efficiency /coherence
Option 1	Minor changes necessary at the Energy Community level (e.g. Recommendation of the Ministerial Council); unclear how fundamental freedoms can be transposed on a national level, and who will enforce them	Difficult to predict at this stage	Considerable effort on the side of the Parties introducing the change	It can facilitate achieving the aims of the Energy Community in some cases. Not effective, and departing from the structure and logic of the Treaty
Option 2	Change of Title IV of the Treaty (based on Article 100 of the Treaty, no ratification required)	No direct costs	Once incorporated in the Treaty, compliance would be assessed on a case-by-case basis by national courts and under Article 90 of the Treaty.	It can facilitate achieving the aims of the Energy Community in a number of cases and would increase coherence (homogeneity) in the pan-European energy market.

Questions to the stakeholders:

10. Do you agree with the assessment of the above options?
11. Do you support the status quo or Option 1 or Option 2?
12. Do you consider that additional options need to be added? Which? What are the impacts in comparison to the status quo?

IV. An Entity allowing for Gas Demand Aggregation

In Proposal 2.4., the High level Reflection Group concludes that "an entity allowing for demand aggregation for imported energy, most notably gas[ix], would enhance the ability of relatively small players to improve their negotiation position, obtain better terms, better manage security of supply challenge and – with the possible support of an Energy Community Risk Enhancement Facility – constitute a credit-worthy shipper able to support implementation of critical infrastructure. Art. 43 of the present Treaty already provides a basis for such a measure."[x]
An energy aggregator is understood as an entity that acts as a broker for groups of buyers. These buyers are bundled together to improve buying power through economies of scale - by consolidating downstream demand, the aggregator aims to achieve credibility and have a high level of market expertise. By virtue of the aggregator's supply portfolio and marketing expertise, buyers could rely on security and diversification of their gas supply, as well as certainty of market pricing. In general, there are some hopes that an aggregator should provide better terms than each member (a state or a company) buying gas separately.

Depending on a model, the cost-related risks are attached to aggregator. It cannot be assessed at this stage of analysis if such an entity (be it a mandatory, in application of Article 43, a voluntary bottom up model or application of a public service obligation) could deliver lower overall gas prices for the customers, thus increasing overall social welfare.

The concept of a gas demand aggregator at supranational or national level may raise concerns with regard to the European internal market rules and objectives.

Questions to the stakeholders:

13. The stakeholders are invited to share their opinions and views in respect to this proposal of the High Level Reflection Group.

Public Consultation Submitted Responses

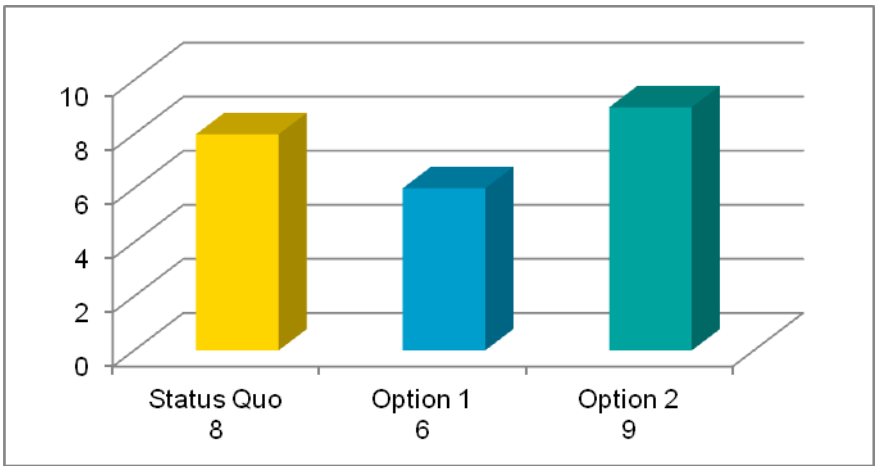
I. Activating Title IV

4. Do you agree with the assessment made in the Analytical Paper?

	YES 13 / NGO 1		NO 2 / NGO		DO NOT KNOW 1 / NGO 2

Total number of responses: 19

5. Which of the three options do you support the most?
Number of responses: 23, Multiple responses: 4



6. Comments/More options

Academia
Poland: I would think how to stimulate parties to use the provisions of Title IV which are already in place, and maybe then consider what the limits of the unanimity rule and of Decision 2006/500/EC are.

Civil society
Turkey: EU should formally acknowledge the Energy Community region as one of its micro regions introduced by 'Regional Initiatives' concept. It does not require any legal procedure or additional cost. It is more effective and efficient to integrate energy markets in comparison to Option 2.

EU bodies
ENTSOE The electric system in all its dimensions is deeply impacted by fundamental changes in the electricity generation portfolio. Managing these changes is politically, financially and technically challenging. The evolution of the European internal electricity market (IEM) is central to meet these challenges. ENTSOE therefore welcomes any initiatives to extend the implementation of the IEM further afield to the panEuropean level. There are benefits for social welfare in reducing the costs

for consumers and increase in security of supply through reserve sharing and power transfers. This ENTSOE policy paper outlines future ideas for developing market design:

Governments
FYR of Macedonia
As it is mentioned in the HLRG report proposal for using Title IV from a Party under the Treaty has not been used till now. It might be more useful if also the Secretariat besides the parties has possibilities to propose measures under Title IV of the Treaty. This is in line with its obligation under article 67 which is supposed to have clear picture of the existing circumstances and burdens for implementation of some of the measures or even the acquis. Also the article 4 paragraph (3) of the Decision 2006/500/EC should be considered to be change in order to reflect the necessities to implement Title IV of the Treaty in the real life.

Serbia
The Title IV of the Treaty comprises only the measures undertaken to eliminate Network energy supply disturbances and probably, the measures undertaken pursuant to Articles 44 and 45 of the Treaty. We have impression that the provision of Article 40 of the Treaty, according to which it is determined that the measures from the respective chapter are applied in the territories to which the Treaty establishing the EU is related, under the terms set forth by that Treaty, was not taken into account. Therefore it is disputable if there is a necessity to change the Decision 2006/500 EC, without previous change of the Treaty, however, if the change of decision is possible without change of the EU laws.
It is stated that there are no costs related to options 1 and 2. However, the implementation costs should be stated and, if the aim is to establish procedures and new institutions, the costs certainly exist and they are probably not negligible. It is not possible to assess the costs from the proposals given in the options. The difference between options status quo and Option 1 is not clearly defined. We have impression that the same concept was described in two ways. For the time being, until we obtain the further clarification, we agree with the option status quo. From the Option 2 the amendments to the Decision 2006/500/EC, nor implications for the Contracting Parties could not be clearly viewed. It is necessary to make further more detailed elaboration of the Option 2.

Czech Republic
The Czech Republic would like to stick to the position of the EU not to revise the Council Decision 500/2006/EC. However, the Title IV could be used more actively in the area of security of supply, as proposed in Option 1.

Romania
Option 2 could be taken into consideration, but only if Contracting Parties requested it for certain measures/actions. A possible amendment of the Decision 2006/500/EC without a similar response from the CP would have no useful results.

United Kingdom
We would want to support actions to improve security of supply and consider that Option 1 might help with security of supply.

Industry
EUROGAS
Comment - It is not well understood why Title IV needs to be expanded and used more in order to design rules and institutions governing fully integrated pan-European energy markets. This would surely be achieved through the implementation of the acquis. The assessment does not justify

changing the purpose of Title IV, and introducing more unspecified flexibility. Eurogas would be especially concerned if more flexibility were to lead to a retreat from the current acquis on the market, and in relation to security of supply the introduction of non-market instruments.

EVN
The political, legal, economic and social status of the CPC's becomes not only evident in the accession negotiations. As also other preconditions for a membership in the European Union first have to be achieved, the adaption of the energy infrastructure and the improvement of energy efficiency within the infrastructure should be ensured first before final goals of a competitivelly enforced. This demands flexibility in bringing the national legal environment closer to the common European legal status. If such a sensitive approach is not observed the fragile political stability will be seriously endangered threatening also neighboring Member States. Consultancy support and sound expertise could provide trust and a better knowledge of the challenges and are prerequisite to achieve good results in carefully set priorities.

NIS
The status quo and the two suggested options should not be seen as mutually exclusive, regardless of the fact that Decision 2006/500/EC should be amended under Option 2. Option 1 should not only be utilized for matters of security of supply, but for extending the application of existing acquis uniformly throughout the EU and the Contracting Parties in order to enable the proper functioning of mechanisms, institutions, and rules that enable full market integration (ACER membership, application of Network Codes, membership in ENTSOs). The point is that mere extension of the acquis in line with Title II creates a situation in which the (same or similar) rules are applicable in parallel in the EU MS and the Contracting Parties, while under Title IV they become a pan-European instrument, and thus contribute to homogeneity and resolve potential issues related to interfaces between EU MS and Contracting Parties. Option 2 could be utilized to open up the possibility to introduce specific mechanisms that might be narrower in territorial application, and include the Contracting Parties and some of the (bordering) Member States –this could especially be useful when trying to introduce mechanisms that are in line with, but not explicitly foreseen in the existing acquis, because it would ensure that any obligations that would fall on Member States would have a sound legal basis and been forceable.

II. Interconnectors between EU Member States and Contracting Parties

The HLRG proposes to consider "interconnectors between EU Member States and Contracting Parties … interconnectors regardless of whether they are interconnectors between Member States or between Contracting Parties." The problem, the Group explains, is as follows: "One concrete example for the unsatisfactory results and problems caused by the lack of flexibility is the definition of "interconnectors" in the incorporation of the 3rd Package into Energy Community law. As it was (only) based on Title II, Member States are not covered, and the connection between Member States and their neighbouring Contracting Parties, as originally intended, is obstructed."

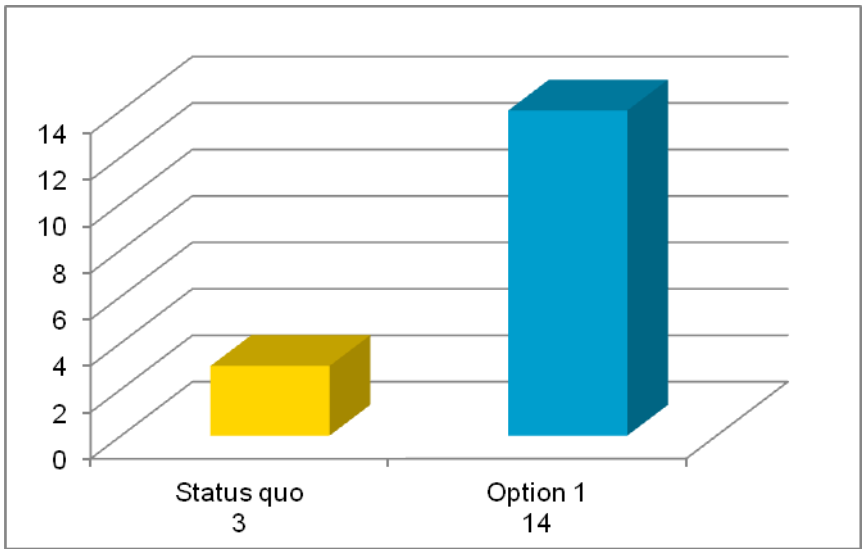
7. Do you agree with the assessment made in the Analytical Paper?

	YES 20 / NGO 26		NO / NGO		DO NOT KNOW 2 / NGO 4

Total number of responses: 52

Comments:
Goverment/Serbia
Not in the part whereby the overcoming of open issues is brought into connection with the implementation of measures specified in Title IV (Creation of a unique energy market), taking into account that it would require a significant change of the concept and the nature of the Treaty and also taking into account that under the Treaty, the issue is directly connected to Title III (mechanism for operation of network energy markets).
It is not clear from Option no. 1 whether it is sufficient to implement the provisions from Chapter IV in the form in which they exist or is it necessary to implement certain changes within Chapter IV in accordance with the proposal *Activation of Title IV* in order to achieve the goal.
If the issue is not directly connected only to Title III (Mechanism for operation of network energy markets), then one should also take into consideration the comments pertaining to the Activation of the Title IV (answers to questions 4, 5 and 6). Description of the Option 1 states: "Use of Title IV of Title III OR ..." while the table contains, in the description of the legal procedures "... under the Title III and Title IV."

8. Which of the two options do you support the most?
Number of responses: 17, Multiple responses: 2



9. Comments /General options

Academia
Poland
I am not sure whether or how the non-binding recommendation will be applied by the all parties involved. Option 1 seems a sensible move if a need for a consistent application of the Third Package is seen and expressed at the EC/regulators level. I guess it could also quite effectively help in addressing the current challenges related to the treatment of the Ukraine/EU border points, debates on the legality (or not) of enabling reverse flow on specific interconnections, the rules for enabling such reverse flows, the financing of new interconnections envisaged between EU member states and Contracting Parties, etc. It could also be a step in help the design of regional

energy policy solutions which could be more effective if not limited to the EU only (for example, in the SEE region).

Citizen
Turkey
I support neither status-quo nor Option 1. Regarding status-quo; it is true that Ministerial Council Interpretation addresses the problem identified by HLRG and provides legal certainty to all stakeholders and investors. However it is not the case for Commission's non-binding Recommendation. Commission still should provide a legal basis for interconnectors between Member States and Contracting Parties by amending its relevant acquis. Therefore Option 1 is also lacking. European Commission should amend its acquis to identify interconnectors between Member States and Contracting Parties and it should provide legal certainty to all stakeholders and investors too. Initiation of a legislative procedure within the EU is required. It is more effective and efficient to integrate energy markets.

Government
Serbia
Status quo and Option 1 in terms of measures referred to in Title III (Mechanism for operation of network energy markets), until clarifications are received in terms of questions 4, 5 and 6. Option 1 states either “Title IV or Title III”. What is the difference?

FYR of Macedonia
The definition of interconnectors under the adaptation of the 3rdIEM package was done in a manner like it did not take into consideration the real situation for existence of interconnections between Contracting Parties and Member States in the region and possible construction of new once. This should be clearer if activities for real implementation of Title IV take please. The proposed option is acceptable.

Czech Republic
We fully agree that without having the correct definition of interconnectors between Member States and Contracting Parties, the objective to achieve a pan-European energy market may be hindered. As Option 1 presents no need to amend the Treaty, we think it could be used to create a regime applicable to borders between the Contracting Parties and the EU Member States.

Poland
Poland recognizes the need to achieve consistent application of the Third Package on the borders between the Contracting Parties and the EU member States. Poland believes it is crucial to further integrate energy markets. The EU and the EnCom should head to the direction of full integration of the energy markets through cross-border interconnectors between the EU and the Contracting Parties. We therefore call upon the ultimate creation of compatibility of the cross-border interconnectors between the EU and the CP. Last but not least, it is relevant that the CP should conclude their work on the implementation of III energy package.

Romania
We support option 1 – our view, expressed in different occasions, was to treat interconnections with Energy Community Member States in a similar way with the EU members.

United Kingdom

We support using Title IV or Title III of the Treaty to establish measures so as to create a regime applicable to the borders between the Contracting Parties and EU MSs (as long as the regime that applies is the EU acquis).

Industry
Eurogas
Eurogas agrees with Option 1, to apply more consistently the Third Package on the borders between the Energy Community countries and Member States.

EVN
The political development of the past two decades left the region in a very fragmentated structure where formerly elements of a bigger infrastructure had to be upgraded to a more or less self-contained body, especially concerning control areas managing cross-border capacities. These efforts and the lack of a market-orientated mindset realising the organisational preconditions to facilitate a liquid market blocked the free exchange of electricity and probably also gas. As the common market rules for the Internal Electricity Market still are not in place, the mainly responsible NRA's and TSO's missed the orientation in developing a
harmonized market model and organisational infrastructure as internal rules, ICT, etc. But also the generators only little by little realize the need to guarantee agreed delivery respectively calculate risk and costs of failure. TSO in cooperation with (normally) other state-owned generators often do a great job in improvisation to manage system stability. To reallocate the responsibility according to the intended roles a common set of processes and interfaces have to be arranged.

NIS
Status quo is a step towards attaining the goal of an integrated pan-European energy market (and can serve its purpose until Option 1 is implemented), but its inherent flaw is that the Interpretation and the Recommendation do not create a legal obligation to act in line with them. Option 1 covers this inherent flaw of status quo. The current behavior of Member States which currently refuse to give equal treatment to interconnectors between Member States and Contracting Parties is a formalistic approach based on wording, and does not take into account the spirit and the goals of the Treaty. Namely, if the Contracting Parties had wished to conclude a Treaty between themselves (and not with the EU) which would support the creation of a regional (and not a pan-European) market by applying relevant parts of the acquis, they would not have concluded the Treaty which they did. The equalization of the status of interconnectors (be they between MS or between MS and Contracting Parties or the Contracting Parties themselves) is in the core of the spirit of the Treaty.

Regulators
CEER
Concerning interconnectors, particularly between an EU country and a Contracting Party, CEER believes that the existing legal gap (where neither the Energy Community Treaty nor the EU energy acquis provides for a definition between the two jurisdictions), should be addressed by the European Commission at its earliest convenience. Any modification or process envisaged, including in relation to dispute resolution, should be developed with appropriate safeguards to ensure that all relevant interests are taken into consideration and that decisions are being taken on an equitable basis in respect to the powers of all NRA(s) of the Member State(s) involved. Meanwhile, Europe’s energy regulators recognise that our markets are becoming ever more interconnected, facing security of supply and geopolitical challenges. CEER is therefore committed to strengthening its relationship and cooperation with our close neighbours; offering the opportunity

to engage more fully in CEER's work and to benefit from our successful and established regulatory network and cooperation tools, which also works to promote greater understanding of EU energy policies.

E-CONTROL
After the adaption to the Third Package for incorporation in the Energy Community, interconnectors between a Contracting Party and an EU Member State were not covered by any acquis. The Ministerial Council solved this matter by issuing a, for both Contracting Parties and Member States, binding Interpretation. Bearing the binding nature in mind, I believe that this Interpretation is sufficient to address the existing Energy Community acquis. It would be welcomed if future Energy Community acquis with Enc-EU cross-border relevance would be based on Title III or IV.

III. Broadening the scope of Fundamental Freedoms under Title IV

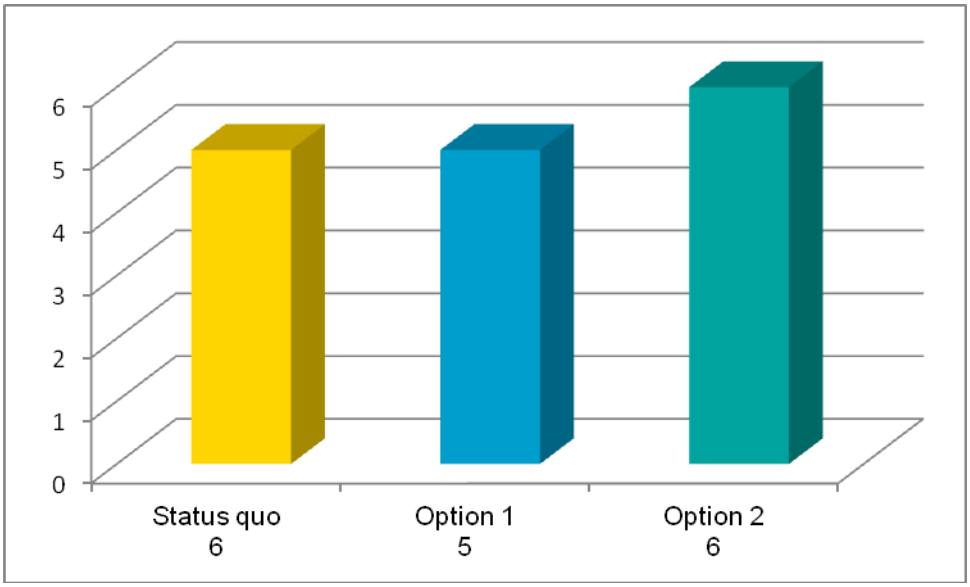
10. Do you agree with the assessment made in the Analytical Paper?

	YES 10 / NGO 0		NO 3 / NGO 1		DO NOT KNOW / NGO 0

Total number of responses: 14

Comment:
Government/Serbia
A full integration of the markets of the Adhering parties into an internal energy market within EU is not possible only through implementation of acquis communautaire for the energy sector, i.e. for individual segments. It is necessary to thoroughly harmonize the legal and economic framework and legal systems of the Adhering parties with acquis communautaire within EU as a whole. It is not possible, or at least not possible without serious negative consequences for the Adhering parties, to determine various rules within the same legal system for the freedom of movement of capital and services in the field of Network energy and other rules for other commercial sectors. Apart from that, only in the segment of freedom of movement of capital and services, it is not possible to achieve full integration of energy markets of the Adhering parties into an internal market for network energy within EU, taking into consideration that it would require a necessary implementation of acquis in many other segments pertaining to the functioning of the market. It is indisputable that the integration of energy market of the Adhering parties into an internal market of EU Network energy is the ultimate goal of the Treaty, but it is also indisputable that the basic reason why the Adhering parties have decided to establish the Energy community, the accession to the EU, is the ultimate goal and the interest of the Adhering parties to fully implement acquis communautaire and to adjust its legal systems during the accession process. In order to achieve this goal, to a significant extent, the Adhering parties have an internal need to harmonize their laws beyond the obligations taken over by the Treaty with the laws in effect in EU countries and with acquis in general; however, it is certainly indisputable and should not be brought into connection with the obligations accepted under the Treaty. The Adhering parties which are in the process of accession to the EU have special obligations in this segment.

11. Which of the three options do you support the most?
Number of responses: 16, Multiple responses: 2



12. Comment/Options

Government
Czech Republic
Without having the freedom of establishment, services and capital introduced in the national law, market players have difficulties to broaden their activities beyond national borders. This hinders the completion of a single energy market, which is a priority for the Czech Republic. Therefore we think Option 2 should be selected – unanimous decision of the Ministerial Council should introduce all fundamental freedoms to the Energy Community Treaty.

Poland
Poland shares the opinion of High Level Reflection Group that the scope of the Energy Community under Title IV could be broadened. Therefore PL believes that, besides free movement of goods, the Contracting Parties should have a right to voluntary introduce specific components of freedoms of establishment, services and capital.

Romania
As in the **"***The Pan-European Single Energy Market* ", an amendment request under the IVth Title should come from the CP, depending on the degree of their availability to implement the provisions of the new acquis.

Industry
EUROGAS
Eurogas considers these issues outside its competence to comment in detail, but in principle holds the view that it is not necessary to broaden the scope of fundamental freedoms. The Community should focus on developing competitive energy markets, compatible with the EU market.

NIS
First and foremost, the proposal of the HLRG has a major omission. Namely, although it recommends the introduction of all fundamental freedoms, it omits the freedom of movement

(including the movement of labor force), so from a purely legal point of view the proposal does not entail the inclusion of the four basic freedoms, but rather three. Full-fledged introduction of the basic freedoms, in our view would be hard to enforce (if not be unenforceable in the existing framework of the Energy Community). We propose taking gradual steps and, aside from Option 1 which encompasses voluntary introduction of relevant elements of three freedoms, the framework of the Energy Community should foresee the possibility of a legally binding introduction of certain elements of these freedoms, which would be a part of mechanisms for further market integration. For example, the introduction of elements of the freedom of establishment would foster removing obstacles to trade in the form of multiple incorporation requirements of suppliers/traders in more jurisdictions (this would also have to be ensured vis-à-vis Member States and the Contracting Parties, as is the case currently in the EU between Member States, and not only between the Contracting Parties). Such an introduction of relevant elements of the freedoms should actually be a part of a more specific Decision of the Ministerial Council dealing with the mechanism at stake, rather than a decision dealing solely with one of the basic freedoms.

EVN
It is not only about fundamental rights according to TFEU but also subsidiary and proportionality. As laid down in the Article 5 of Protocol Nr. 2 to the TFEU, the principle to "take into account the regional and local dimension of the action envisaged" should also apply in transposing the Acquis Communautaire. The very different situation in CPC therefore should be part of the transformation as the energy market doesn't stand for itself but is a main element of the state structure. If, as in more or less all CPC, social adequacy of energy prices is in question, not only legal enforcement of the 3rd package should be envisaged, but also ensuring affordability e.g. by social targeting, etc.

Regulator
E-Control
In order to ensure a successful establishment of an internal market between the EU Member States and the Energy Community Contracting Parties a level playing field respecting fundamental freedoms is a basic requirement. A selective application of these fundamental rules for the market results in a distortion of this level playing field. Such distortions, caused by this imbalance, have already been observed in the past. It is therefore of great importance that the missing fundamental freedoms are incorporated into the Energy Community, to say the freedom of services, establishment and capital.

IV. An Entity allowing for Gas Demand Aggregation

13. The stakeholders are invited to share their opinions and views in respect to the HLRG proposal. Please, comment

Academia
Albania:
Notwithstanding, the multiple benefit of the here propose a milestone to be kept in focus is that the internal market as to be trade-off between above positions and the ones to stimulate a better settle for a fair competition that is still faraway for being clear by the here propose.

Poland:
Gas demand aggregation is certainly an issue worth further research, especially in the case of the

Energy Community's Contracting Parties. I think the most effective approach would be to give priority to research related to voluntary demand aggregation mechanisms & options, as these are currently also being examined by the European Commission (see Energy Union Strategy Communication). However, due to differing (as for now) legal realities from the EU one, the Energy Community's Contracting parties do not have to limit their research to that area. It would also be interesting to examine whether, and if so in what form, there could be scope for cooperation between the EU (some EU member states/companies) and the Energy Community's Contracting Parties/companies in this field. For example, one could envisage a joint study on the rationale behind, and the potential role & feasibility of joint demand aggregation mechanism(s) in the countries most vulnerable to gas supply risks in both the EU (Central & South-Eastern Europe + the Baltic states) & the EnC (for example, as identified by the EC's stress test exercise & report). The CESEC (Central and South Sast Europe Gas Connectivity) Group launched by the EC or V4+ could serve as a good platform to discuss that. Besides increasing the security and diversity of gas supplies, and probably allowing for better pricing of the gas acquired, demand aggregation mechanisms could also become an element which eases infrastructural development within the region (regarding both bigger diversification projects and interconnectors & storage facilities), which in turn are a kind of hardware to develop effective regional gas markets and provide for their integration with the EU.

Citizens
Turkey:
The discussions on 'common purchase of gas' have been ongoing also within the EU. Some concerns have been raised regarding the breach of competition rules of both EU and World Trade Organization. Therefore the proposal of constituting an entity for gas demand aggregation in the Energy Community should be discussed at European level and relevant action should be taken accordingly. However, to implement such a measure could be more effective and efficient for the Contracting Parties in comparison with EU Member States because of Contracting Parties' less liberalized market structures.
Unknown:
There is no need for special provisions - other than for protection from politically motivated suppliers (Gazprom and Russian owned intermediaries). If such provisions are to be added, then care should be taken to respect competition rules.

Governments
Albania:
The discussion about gas demand aggregation has started in the context of the Energy Union within the EU and we see no reason why this should not include the Energy Community. Therefore we would suggest that the Secretariat is tasked by the PHLG to elaborate a concept for a gas demand aggregator in the Energy Community (based on Article 43) which then should be further discussed within the institutions and through public consultations.

FYR of Macedonia
The gas markets in the region are premature for this kind of establishment. It should be useful this topic to be discussed after the recommendations of the Gas to Power Study and to see the first steps that will be obtained by the contracting parties in relation to the recommendations.

Serbia
Energy Law of the Republic of Serbia defines the principles of free market. The formation of a mandatory aggregator would be contrary to the principle of free functioning of market forces and

an example of overregulation. The establishment of the proposed aggregator could be on a voluntary basis.
We disagree with the foreseen role of ECREF, as it is not at all clear and especially given the lack of own resources. The introduction of ECREF would just make the framework more complex.

Czech Republic
Concerning the proposal for an entity allowing for Gas Demand Aggregation, we agree that it may be difficult for some small players to obtain the best offer at the gas market. The Czech Republic is of an opinion, that this concept has to be carefully considered and all the implications, including unavoidable additional costs, have to be taken into account prior to discussion about its possible introduction. If such an entity shall be introduced, it must operate on a purely voluntary basis, strictly complying with the EU competition and IEM provisions. It cannot be mandatory as that could endanger operation of private companies, provide for market distortions and would be strictly against the EU competition rules. We think that the concept of a gas demand aggregator (being introduced as mandatory) at supranational or national level could contradict with the European market rules.

Poland
PL supports the creation of such an instrument. PL agrees with the conclusion of HLRG that it is worth analyzing whether Gas Demand Aggregation mechanism could be introduced to the Energy Community. Poland also shares the opinion that an entity allowing for demand aggregation for imported energy would enhance the ability of relatively small players to improve their negotiation position, obtain better terms, and better manage security of supply challenge. Poland strongly emphasizes on the need to conduct a comprehensive discussion on this issue in parallel to the discussion on the Energy Union.

Romania
We agree with the concerns regarding the concrete possible applications of this concept ("demand aggregation for imported energy") in the context of the European internal market rules and objectives.
Such proposals may be accepted only if proper solutions for the above-mentioned concerns can be reached and commonly agreed.

United Kingdom
The UK is open to considering whether there are possible options for voluntary demand aggregation, as long as EU internal market and competition law is fully respected, and it did not impact on the development of the internal market.

Industry.
NIS
We are of the opinion that the formation of a mandatory aggregator would be contrary to the principle of free functioning of market forces and an example of overregulation. There are currently no obstacles in the framework of the Treaty for the interested stakeholders to work together towards the establishment of the proposed aggregator, but only on a voluntary basis (if the stakeholders can identify their interest to participate in such an entity). We fully disagree with the foreseen role of ECREF, as it is not at all clear (in relation to the aggregator proposal and on a general note) what added value ECREF would bring to the
framework – especially given the lack of own resources. The introduction of ECREF would just make the framework more complex and with no clear benefits for the stakeholders.

EVN
The demand aggregation was in practice in some MS before the competitive IEM was established but then eliminated as a form of a cartel. The question will be, how such concentration will nevertheless meet the objective to promote competition. The security of energy supply is indispensable for economic prosperity and standard of life. To provide this to everybody and anywhere a public obligation has to be ensured including the financial funds not provided in a competitive system. To achieve both objectives will need a well balanced approach and a deep knowledge of the complex energy infrastructure to deliver the benefit to all EU (and CPC) citizens.

EUROGAS
Eurogas does not support the proposal to introduce an entity for gas demand aggregation to act as a broker for groups of buyers. More diversified supplies and access to liquid markets, will strengthen more effectively the negotiating positions of companies. This question or similar is also discussed in the context of the revision of the Security of Gas Supply Regulation (994/2010). The Energy Community can assess it again when it is clearer what the approach will be in the EU, and if the current acquis change. The analysis states that "Article 43 of the present Treaty already provides the basis for such a measure. More accurately, the Article refers to the possibility of taking measures necessary for the regulation of imports and exports of network energy to and from third countries with a view to ensuring equivalent access in respect of basic environmental standards or to ensure the safe operation of the internal energy market. It is not apparent how this could support the introduction of collective purchasing that could be incompatible with the market.

Regulators
E-Control
I would propose to entrust the Secretariat with the task of developing a concept for gas demand aggregator in the Energy Community (based on Article 43) which should serve as a basis for further discussion.
MEDREG
MEDREG suggests that any decision on this matter follows the design of a detailed and dedicated scenario analysis on gas demand projections in the region.

General Comments on B. The Pan-European Single Energy Market
EURELECTRIC believes that:
-until main task of Energy Community is achieved – i.e. to create operational regional market which shall be integral part of the European internal energy market – it is over ambitious to go further and extend it;
-broadening any scope of fundamental freedoms will require involvement other ministries and bodies from contracting parties as it goes far beyond responsibilities of the Ministries of Energy. Legally speaking each contracting party has a bilateral agreement with the EU with gradual liberalization on all four freedoms. There is no need to duplicate those;
-mechanisms such as demand aggregation for imported energy would limit competition and we also doubt whether such mechanisms can be considered to be in line with the Treaty on the functioning of the European Union. Art. 101 of the Treaty seems to explicitly exclude the possibility to arrange common purchasing mechanisms, considered as incompatible with the internal market, in particular from the competition point of view. There should be an increased focus on achieving the interconnection targets.

C. Expanding the Scope of the acquis in the Environmental Area

Proposals by the High Level Reflection Group: 1.4.

In the area of environment, the High Level Reflection Group's report concludes as follows: "*The Energy Community should reconsider the scope of rules related to environmental protection*". It proposes the following additional directives to be included in the Energy Community's environmental *acquis*:

- Chapter II of Directive 2010/75/EU on industrial emissions (IED) and Chapter IV also for existing plants,
- Directive 2008/50/EC on ambient air quality (AQD),
- Directive 2004/35/EC on environmental liability (ELD),
- Directive 2001/42/EC on strategic environmental impact assessment (SEA),
- Directive 98/70/EC relating to the quality of petrol and diesel fuels and amending Council Directive 93/12/EEC as adapted by Directive 2009/30/EC (FQD),
- Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading (ETS).

According to the Energy Community Treaty, all Contracting Parties already need to bring their national laws and procedures into line with the requirements of various acts of the EU environmental *acquis* and to implement those Directives. These environmental acts include the Large Combustion Plants Directive (Directive 2001/80/EC, from 1 January 2018 onwards) and with respect to new plants, Chapter III (Annex V) of the Industrial Emissions Directive (Directive 2010/75/EU from 1 January 2018 onwards). Furthermore, the Ministerial Council is expected to decide on the date by which existing plants need to implement Chapter III (Annex V) of the Industrial Emissions Directive. The Environmental Impact Assessment Directive (Directive 85/337/EEC as amended by Directive 2003/35/EC, EIA) is also already part of the Energy Community's environmental *acquis* and so is Directive 1999/32/EC related to reduction in the sulphur content of certain liquid fuels (in its original version, SiF).

Status quo: Maintain the existing *acquis* as it stands now.

Option 1 (Level I proposal): Voluntary implementation of the entire applicable EU *acquis* related to network energy by the Contracting Parties.

Option 2 (Level II proposal): Extend the existing *acquis* by some of the environmental acts proposed by the HLRG and update the existing ones in accordance with the amendments of the EU acquis.

Option 3 (Level II proposal): Extend the existing acquis by the environmental acts proposed in the HLRG report.

In comparison to maintaining the status quo, implementing options 1, 2 or 3 could have the following impacts:

Options	Legal procedures	Costs/budget	Implementation effort	Effectiveness/efficiency/coherence
Option 1	Minor changes necessary at the Energy Community level (e.g. Recommendation of the Ministerial Council)	Costs and benefits of implementing the acquis in the Contracting Parties are hard to monetize precisely.	Considerable effort on the side of the Contracting Parties implementing the Recommendation	Any measure envisaging to improve the environmental situation in relation to Network Energy in the Contracting Parties is fully coherent with and could effectively contribute to attaining the objectives of the Energy Community. However, a Recommendation is a non-effective instrument to achieve this goal because it does not create legal obligations and the efficiency of voluntary implementation of environmental legislation is highly questionable.
Option 2	Updating existing pieces of the Energy Community environmental *acquis* (EIA and SiF) is regular practice under Article 25 of the Treaty. Extension of the Energy Community *acquis* by some of the directives proposed by the HLRG and update pieces of the existing environmental *acquis*, using standard procedures under Title II of the Treaty. Furthermore, without an overhaul of the	Costs and benefits of implementing the acquis in the Contracting Parties are hard to monetize precisely.	From the directives proposed by the HLRG, it can be envisaged that implementing the AQD and the ETS would require very high implementation efforts from the Contracting Parties. In the case of Chapter II of the IED and the FQD, while the implementation effort foreseen is significant, the foreseen associated benefits clearly outweigh them. The ELD would require moderate implementation efforts while the effort associated to the implementation of the SEA and Chapter IV of the IED is foreseen as minor in view of the small number of	Any measure envisaging to improve the environmental situation in relation to Network Energy in the Contracting Parties is fully coherent with and could effectively contribute to attaining the objectives of the Energy Community. At the same time, it should be born in mind that new pieces of EU *acquis* should only be included in the Energy Community legal framework if their practical application with a view to the definition of Network Energy can be ensured..

	definition of Network Energy, AQD and ETS Directives cannot be included in the Energy Community Treaty due to the major differences in scope.		waste (co-)incineration plants currently operated in the Contracting Parties.	
Option 3	Extension of the Energy Community acquis by the Directives proposed by the HLRG using standard procedures under Title II of the Treaty; Furthermore, without an overhaul of the definition of Network Energy, AQD and ETS Directives cannot be included in the Energy Community Treaty due to the major differences in scope.	Costs and benefits of implementing the acquis in the Contracting Parties are hard to monetize precisely.	From the directives proposed by the HLRG, it can be envisaged that implementing the AQD and the ETS would require very high implementation efforts from the Contracting Parties. In the case of Chapter II of the IED and the FQD, while the implementation effort foreseen is significant, the foreseen associated benefits clearly outweigh them. The ELD would require moderate implementation efforts while the effort associated to the implementation of the SEA and Chapter IV of the IED is foreseen as minor in view of the small number of waste (co-)incineration plants currently operated in the Contracting Parties.	Any measure envisaging to improve the environmental situation in relation to Network Energy in the Contracting Parties is fully coherent with and could effectively contribute to attaining the objectives of the Energy Community. At the same time, it should be born in mind that new pieces of EU *acquis* should only be included in the Energy Community legal framework if their practical application with a view to the definition of Network Energy can be ensured.

Questions to the stakeholders:

14. Do you agree with the above assessment?
15. Do you support the status quo or any of Options 1, 2 or 3? In case you support Option 2, are there any particular pieces of legislation among those proposed that should be included?
16. Do you consider that additional options i.e. other pieces of environmental legislation, need to be added? Which? What are the impacts in comparison to status quo?

Public Consultation Submitted Responses

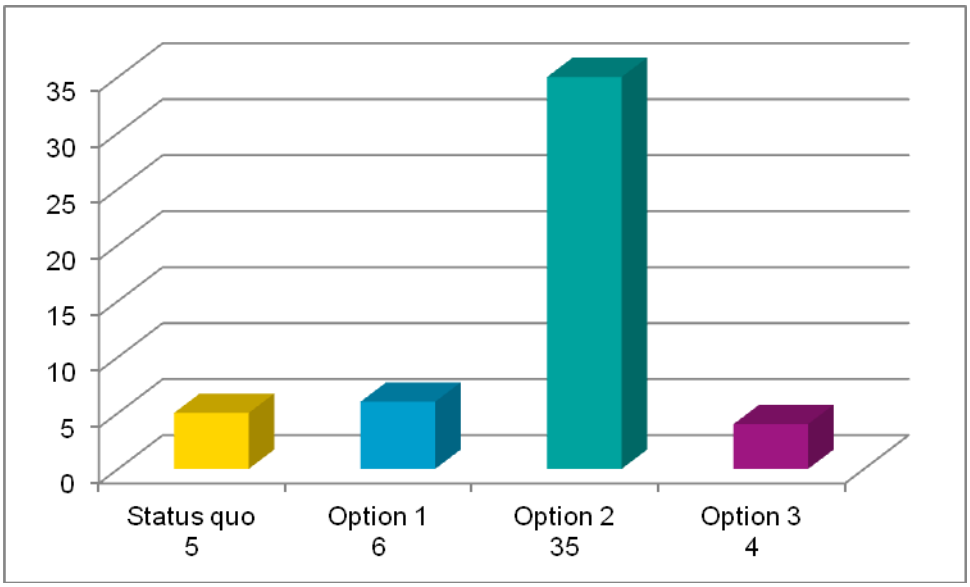
14. Do you agree with the assessment made in the Analytical Paper?

	YES 16 / NGO 28		NO 3		DO NOT KNOW / NGO 1

Total number of responses: 48

Comments:
Government/Serbia:
According to Article 17 of the Treaty, the provisions on the environmental protection are applicable only to Network energy, but the assessment covers a significantly wider context of application of acqui in the field of environmental protection. The Adhering parties also have an internal need to harmonize their laws beyond the obligations taken over by the Treaty with the laws in effect in EU countries and with acquis; however, it is certainly indisputable and should not be brought into connection with the obligations accepted under the Treaty. The Adhering parties which are in the process of accession to the EU also have special obligations in this segment. The comment pertains to paragraph 3 from introductory considerations.

15. Which of the four options do you support the most?
Number of responses: 50, Multiple responses: 2



Comments:
Government/Serbia
Option 2 could be supported, but only in the event that the process of accession to the EU is fully acknowledged, as well as the plans and deadlines in accordance with the said process. The comment pertains to paragraph 3 from introductory considerations. In case Option 2 has been adopted, then certainly it would be necessary to analyse the situation in each Contracting Party, in terms of the current situation, time, cost, etc., prior to deciding whether a new piece of EU legislation in the field of environmental protection becomes part of the EC Treaty.

In case you support Option 2, are there any particular pieces of legislation among those proposed that should be included?

Academia
Poland:
I think that both Option 1 & 2 seem sensible. If chosen, Option 2 should be supported by encouraging the greater involvement of the Contracting Parties in public consultations (as suggested in part A, options 1 & 2) in order to find out what the most needed and feasible amendments/additions to the already existing acquis would be. I would be very cautious, though, in assuming *a priori* that it is necessary to extend the existing acquis, especially bearing in mind the limited effectiveness of implementing them, and the complicated & differing national situations/needs and possibilities in the Contracting Parties.

Unknown:
As the HLRG has already recognized, sustainability and the rules on environmental protection and climate change should be properly reflected in Energy Community policy. We highly support the HLRG's recommendation to broaden the scope of rules related to environmental protection. We especially advise the Energy Community to adopt and implement: Chapter II of Directive 2010/75/EU on industrial emissions (also for existing plants) according to which, industrial installations must use the "best available techniques" to achieve a high level of environmental protection. The Directive ensures a level playing field in energy generation in the EU and Energy Community and prevents the danger of emissions leakage. Directive 2008/50/EC on ambient air quality and cleaner air for Europe which, defines objectives for ambient air quality designed to avoid, prevent or reduce harmful effects on human health and the environment as a whole. The ultimate electricity consumers, citizens, and protection of their health should be a central part of broadening of the scope of rules. We encourage ensuring the integration of health protection into Energy Community policy. Achieving the air quality standards by local concentration limit values require also reduction of background emissions through implementing Directive 2001/81/EC. Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment according to which a Strategic Impact Assessment is obligatory for plans/programmes, inter alia those prepared for the energy sector, and which sets the framework for future development consent of projects listed in the Environmental Impact Assessment Directive

Governments
Cyprus:
Additionally to the existing list of environmental directives it is important to include other EU acquis that aim to achieve Good Environmental Status (GES) of the EU's marine waters or generally facilitate the better implementation of the Environmental EU acquis such as environmental management plans, emergency response and crisis management plans for pollution. Therefore it is crucial for our opinion to include the legislation related to the offshore safety (Directive 2013/30/EU), the Marine Strategy Framework Directive (Directive 2008/56/EC) and the exploitation of natural resources exclusive economic zone (EEZ) of Member States (e.g. UNCLOS)

Germany
The German Federal Ministry for the Environment, Nature Conservation, Building and Nuclear Safety welcomes the proposals made by the High Level Reflection Group regarding the extension of the scope of the acquis in the environmental area. From our point of view a mix between option 1 and option 2 should be chosen when it comes to the specific acts proposed. We support the

extension of the existing acquis regarding the Directive 2010/75/EU by Chapter II and Chapter IV also for existing plants. From our point of view Option 1 could be chosen for a transition period until the existing acquis is fully implemented. We also welcome the proposal to incorporate Directive 98/70/EC relating to the quality of petrol and diesel fuels and amending Council Directive 93/12/EEC as adapted by Directive 2009/30/EC (FQD), except for articles 7a and 7b-d, as it is of great value to the environment (air quality), consumer protection and the economy in order to create a level-playing field between countries. Moreover, there is a direct relation to Directive 1999/32/EC (reduction in the sulphur content of certain liquid fuels), which is already implemented by the energy community. Directives 2008/50/EC on ambient air quality (AQD) and 2004/35/EC on environmental liability (ELD) could be implemented according to Option 1. In the area of establishing a scheme for greenhouse gas emission allowance trading from our point of view no one-size-fits-all approach is possible for the contracting and candidate parties of the Energy Community. Differentiating (on a voluntary basis) between commitments to be taken up is necessary to account for different starting positions and economic circumstances. In any case a step-by-step approach for the establishment of the scheme should be taken, starting with capacity-building and exchange of experience to prepare for monitoring and verification of emissions on installation level and the technical infrastructure necessary for emissions trading in a transition period. The final implementation of an emissions trading should accommodate a potential future link to the EU ETS. Generally, it should be ensured that close synergies are created between the different commitments, which the contracting parties are taking up with regard to energy, e.g. the provisions under the accession process and the associations agreements signed in 2014.

United Kingdom
We consider that it could be valuable to consider progressing more work on environmental protection, taking into account the capacity of the Contracting Parties to adopt more legislation, and as long as any extension to the Energy Community acquis is in accordance with the existing EU acquis.

NGOs
1.SAME answer by 25 NGOs
As the HLRG has already recognized, sustainability and the rules on environmental protection and climate change should be properly reflected in Energy Community policy. We highly support the HLRG's recommendation to broaden the scope of rules related to environmental protection. We especially advise the Energy Community to adopt and implement: Chapter II of Directive2010/75/EU on industrial emissions (also for existing plants) according to which, industrial installations must use the "best available techniques" to achieve a high level of environmental protection. The Directive ensures a level playing field in energy generation in the EU and Energy Community and prevents the danger of emissions leakage. Directive 2008/50/EC on ambient air quality and cleaner air for Europe which, defines objectives for ambient air quality designed to avoid, prevent or reduce harmful effects on human health and the environment as a whole. The ultimate electricity consumers, citizens, and protection of their health should be a central part of broadening of the scope of rules. We encourage ensuring the integration of health protection into Energy Community policy. Achieving the air quality standards by local concentration limit values require also reduction of background emissions through implementing Directive 2001/81/EC. Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment according to which a Strategic Impact Assessment is obligatory for plans/programmes, inter alia those prepared for the energy sector, and which sets the framework for future development consent of projects listed in the Environmental Impact Assessment Directive.

2. SAME answer by 2 NGOs
We support the HLRG's position which acknowledges that the rules on environmental protection and climate change should be properly reflected in Energy Community policy. The specific Directives we consider the Energy Community should adopt and implement are: Chapter II of Directive 2010/75/EU on industrial emissions (also for existing plants). We much commend the Energy Community's adoption of Chapter III of the IED but, we believe that Chapter II is also a very necessary addition, as it replaces the IPPC Directive, whose importance is already recognized by the Treaty, and stipulates the use 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. This is very important given the long lifetime of combustion plants and the need to avoid a situation in which the EU may import cheaper but dirty energy from neighbouring countries. . 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 Air pollution is a deadly problem in the Energy Community countries, and much of the pollution comes from the energy sector. People who live in Pristina, Tuzla and Pljevlja are losing years of their lives due to this pollution. While the emissions limits in the Industrial Emissions Directives are an important step forward to addressing this issue, it is also overall air quality that counts in the impact on people's health, and it is therefore crucial to have not only legislation on emissions but on air quality itself. Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment according to which a Strategic Impact Assessment is obligatory for plans/programmes, inter alia those prepared for the energy sector, and which sets the framework for future development consent of projects listed in the Environmental Impact Assessment Directive.

3. The following: Chapter II of Directive 2010/75/EU on industrial emissions (also for existing plants) which will ensure that the industrial installations use the "best available techniques" (BAT), thus achieving much better and equal (to EU) environmental protection in energy generation and also preventing emissions leakage. Directive 2008/50/EC on ambient air quality and cleaner air for Europe. Considering the impact of energy generation on citizens' health (and consequently the economy), we think it is very important to integrate health protection into Energy Community policy. In this manner we also propose implementing Directive 2001/81/EC. Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment according to which a Strategic Impact Assessment is obligatory for plans/programmes, inter alia those prepared for the energy sector, and which sets the framework for future development consent of projects listed in the Environmental Impact Assessment Directive.

4. We support inclusion of all proposed pieces of legislation EXCEPT the Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading (ETS)

16. Do you consider that additional acquis / Comments

Academia
Poland: I am not sure if and how the regulation on the security of gas supply applies to the Contracting Parties, and whether its revised version or the possible regulations on the security of electricity supply would also apply – I think it could be important to look closer into whether and on what conditions it would be needed. I was also wondering whether and how the EU should talk in concrete terms & apply solidarity measures in energy crisis situations in its relations with the Contracting Parties (as we can hear right now, sometimes there are calls for EU solidarity with

Ukraine, for example, in the case of gas supply crises, or similar discussions re. the situation in the Western Balkan states) – I think this needs to be clearly defined, and then applied if needed.

Unknown:
Directive 2001/81/EC on national emission ceilings for certain atmospheric pollutants, known as NEC Directive, and its amending Directive 2003/35/EC (COM 2013 920 final) which limits the emissions of certain atmospheric pollutants in order to improve the protection of the environment and human health against risks of adverse effects from acidification, soil eutrophication and ground-level ozone and to move towards the long-term objectives of not exceeding critical levels and loads and of effective protection of all people against the recognised health risks from air pollution. It is important to note that by this Directive is an instrument to cut down transboundary pollution, particularly of pollutants like PM2.5 which travel the longest distances and are one of the most harmful to human health.

Serbia
As the HLRG has already recognized, sustainability and the rules on environmental protection and climate change should be properly reflected in Energy Community policy. We highly support the HLRG's recommendation to broaden the scope of rules related to environmental protection. We especially advise the Energy Community to adopt and implement: Chapter II of Directive 2010/75/EU on industrial emissions (also for existing plants) according to which, industrial installations must use the "best available techniques" to achieve a high level of environmental protection. The Directive ensures a level playing field in energy generation in the EU and Energy Community and prevents the danger of emissions leakage. Directive 2008/50/EC on ambient air quality and cleaner air for Europe which, defines objectives for ambient air quality designed to avoid, prevent or reduce harmful effects on human health and the environment as a whole. The ultimate electricity consumers, citizens, and protection of their health should be a central part of broadening of the scope of rules. We encourage ensuring the integration of health protection into Energy Community policy. Achieving the air quality standards by local concentration limit values require also reduction of background emissions through implementing Directive 2001/81/EC. Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment according to which a Strategic Impact Assessment is obligatory for plans/programmes, inter alia those prepared for the energy sector, and which sets the framework for future development consent of projects listed in the Environmental Impact Assessment Directive.

Governments
FYR of Macedonia
The issue on environment is very sensitive in the energy domain especially due to the huge necessary investments that should be provided and current economic situation. Option 1 in which it is said that contracting parties should be left voluntarily to implement the environment acquis it should be clear that contracting parties have obligation to implement relevant acquis under the processes set in the Stabilisation and association agreements. Before reaching the agreement on this issue, the Environmental task Force should be deeply involved and is proposed to be conducted study by the Energy Community Secretariat which will take into consideration the level of transposition of the environment acquis in all contracting parties, level of implementation and needed investments and cost to the budget for putting obligation for implementation additional measures.

Serbia

When it comes to the proposal to include additional directives into the acquis of the Energy community in the field of environmental protection, in particular: Directive 2003/87/EC of the European Parliament and Council dated October 13th, 2003 establishing a scheme for greenhouse gas emission allowance trading (ETS), we are of the opinion that such a proposal is not acceptable. This position originates from the following:

IN GENERAL

The sectors involved in ETS by far exceed the sectors (part of the energy sector) which are included in the domain of competences of the Energy community treaty. In other words, the inclusion of ETS into ECT would mean a significant expansion of the competencies under ECT. Furthermore, taking into account that ETS, apart from the energy production sector (heating and electric energy), also includes the sector of industrial production, as well as the sector of air traffic, such situation requires a consensus of all interested parties (not only those directly involved in the work of the Energy community treaty - ECT) in order to expand the scope of ECT to two entirely new sectors. At the same time, by virtue of the provisions of the Directive itself, it is not possible and is completely pointless to include the implementation of only a part of ETS which implies the sectors defined in the ECT. Such consensus is not achieved in the R. of Serbia.

The inclusion of the ETS request and the practical analysis of the market would be organized at this level and the sustainability thereof (market liquidity and supply-demand equilibrium). Namely, taking into consideration the level of emission originating from the energy sector, it is justifiable to ask how a market formed in this manner would secure sufficient quantities of emission units.

From a practical point of view, and taking into consideration the provisions of the directive, the question is raised who would be responsible and who would ensure an auctioning platform, registry, auctioning monitor (which could cost millions of euros to establish maintain and operate) and regularly assessment of market developments and ensuring of appropriate measures to avoid possible market abuse. Also, the issue of the manner of connecting with the EU market and the time frame for such connecting, having in mind that currently effective regulations are limited to the year 2021, is completely unclear.

If problems set forth in item 1 are surpassed, only after the analyses and specific results of such analyses, in terms of the elements listed in items 2 and 3, we are of the opinion that the inclusion of ETS into ECT could be considered.

SPECIFIC FOR THE REPUBLIC OF SERBIA

The Republic of Serbia is implementing the project: “Establishing of the monitoring, reporting and verification (MRV) system, necessary for efficient implementation of the EU Emissions Trading System”. The project is financed through IPA programme for the year 2012 and the value of the project is 1 million EUR. The implementation of the project commenced in September 2013, and the project is supposed to last for 24 months. The project is being implemented as a twinning project and the twinning partner on this project is a consortium consisting of the institutions of the Governments of France, Austria and Germany. The goal of the project is to establish a legislative and institutional framework for the implementation of ETS in the Republic of Serbia. The institutional organization is determined by virtue of a Decision of the Government. The plan is to adopt the legislations required for the implementation, in particular the MRV, by the end of 2015.

The possibilities and the manner of implementation of the entire Directive were considered within the project. Three options were developed and presented to the European Commission at a bilateral screening (in November 2014). In other words, the negotiations in this field were initiated within the framework of the negotiations for the membership in the EU.Having in mind the above said, the inclusion of ETS into ECT would be acceptable for Serbia only in the manner which is congruent with the provisions of the national legislations and initiated in the negotiations with the EC. Otherwise, it would bring into question the justifiability of the spending of the money of the EU

member States tax payers, taking into consideration that 1 million EUR was awarded and spent on the said project, through the budget for the project.

Czech Republic
Environmental protection is an integral part of the European Union external energy policy. The Energy Community is obliged to implement some of the EU acquis; however, not all acts in the phase of the EnC implementation are still up-to-date in the European Union. Therefore we think that the Option 2 – to extend the existing acquis by some of the environmental acts proposed by the HLRG and update the existing ones in accordance with the amendments of the EU acquis – is the most suitable. We should also take into consideration the fact that some of the EU acquis will be changed in the near future (expected reform of the EU ETS).

Romania
The implementing of one of the 3 options depends on the CP interest to deeper implement the European acquis, as in the case of the energy acquis, where the CP which have the interest of a quicker accession to the EU have made substantial efforts to completely implement the acquis, while some others have registered substantial delays in comparison to the agreed schedule.

Industry
EURELECTRIC in principle welcomes the proposal to extend the implementation to the additional environmental acquis. Where old, low efficiency and highly polluting coal-fired power plants are currently in operation, their replacement with newer (or refurbished) more efficient ones would contribute to the emissions reduction, allowing at the same time a wider participation of the private sector in energy infrastructure investments (especially when gas-fired generation is not readily available, would not be economically viable, where or would lead to overdependence on one single fuel source). Nevertheless, a reality check should be made taking into account the potential resources mix, technical and economic constraints, social welfare, security of supply (fuel availability and diversification) and affordability of supply in the different Contracting Parties and derogations allowed where necessary. Obligations under the Association agreements shall be taken into account. Support of EnC Secretariat with DG Environment when discussing on implementation of these obligations can be useful to encourage Contracting Parties authorities to advance the implementation.

NIS
Option 1 seems to be the most appropriate at this moment. There are several reasons for this view. They can be summed up by saying that meeting the requirements of the environmental acquis is one of the most challenging and investment heavy tasks put before the Contracting Parties on their EU path. Their economies are struggling in general and there are finding it hard to meet the already existing environmental acquis of the Energy Community. Further to that, the EU Oil Refining Fitness Check preliminary results, as presented at the 4th Oil Refining Forum show that the additional costs brought about by the implementation of (predominantly) environmental legislation in force have amounted to 0.40 eurocents/bbl, and that further costs are in the pipeline with the application of the Industrial Emissions Directive. Additionally, the assessment in the Analytical Paper does not elaborate how “the foreseen associated befits clearly outweigh the implementation efforts”. Thus, instead of setting extremely hard to meet targets and a playground for most certain breaches of the requirements, we suggest taking small steps to achieve great feats. A Recommendation of the Ministerial Council in light of Option 1, albeit non-legally binding is a signal in the right direction, and when the constellation of all relevant factors allow it, can be (fully or partially) transformed into a legally binding Decision of the Ministerial Council.

Donors
GIZ: As energy and environmental issues are closely interrelated, the expanding of the scope of the Energy Community would be just consequent. However, the significant development needs in legislation, internal cooperation-relations, capacities and implementation-strengths within many Contracting Parties seem to be for the environmental sector even more evident than for the energy sector. Insofar the role and the capacities of the Secretariat should be further strengthened for the environmental sector accordingly. Also for newly integrated environmental topics, sectorial analyses of the initial situation are recommended.

NGOs
1. Same answer by 24 NGOs
Directive 2000/60/EC establishing a framework for action in the field of water policy, known as the Water Framework Directive, aims to prevent deterioration of the status of the water bodies and to achieve good ecological status of all waters (surface and groundwater) by requiring establishment of environmental objectives and ecological targets for surface waters, as well as preparation of comprehensive basin level plans for water management. This implies that all energy projects planned in a river basin will have to be assessed in terms of that basin's management plan to determine their impact, so provisions of this Directive are directly relevant for energy project development. Having in mind the large number of planned hydropower projects by the contracting The Directive will contribute to better assessment of planned hydropower projects and prevent deterioration of the quality status of a body of surface water as result of new sustainable human development activities. Directive 2008/105/EC on environmental quality standards in the field of water policy which sets environmental quality standards for surface waters (rivers, lakes, transitional and coastal waters). The impact of power plant operation on water quality should be minimized by implementing this Directive. Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora, known as the Habitats Directive, is designed to help maintain biodiversity in by defining a common framework for the conservation of wild plants and animals and habitats of Community interest. This Directive plays a significant role in energy investments, particularly in the hydropower or wind sector, which can have a serious impact on natural habitats, flora and fauna. The Appropriate Assessment, obliged by this Directive, is a highly useful tool that can show the cumulative impact of several energy projects planned in or near a habitat and balance interests and ensure the credibility of projects. Provisions under this Directive also contribute towards better implementation of the EIA Directive and the Amending EIA Directive (2014/52/EU) and will enable joint procedures (EIA and AA) in accordance with Article 3 paragraph 3 of the EIA Directive. According to the Amending EIA Directive 2014/52/EU the EIA procedure must identify, describe and assess the direct and indirect significant effects of a project on the biodiversity, with particular attention to species and habitats protected under Directive 92/43/EEC and Directive 2009/147/EC. Directive 2006/21/EC on the management of waste from extractive industries and amending Directive 2004/35/EC which applies to waste resulting from the extraction, treatment and storage of mineral resources. The Directive is clearly relevant to mining supplying the energy sector in the Energy Community countries. Directive 2001/81/EC on national emission ceilings for certain atmospheric pollutants, known as NEC Directive, and its amending Directive 2003/35/EC (COM 2013 920 final) which limits the emissions of certain atmospheric pollutants in order to improve the protection of the environment and human health against risks of adverse effects from acidification, soil eutrophication and ground-level ozone and to move towards the long-term objectives of not exceeding critical levels and loads and of effective protection of all people against the recognised health risks from air pollution. It is important to note that by this Directive is an instrument to cut down transboundary pollution, particularly of pollutants like PM2.5 which travel the longest distances and are one of the most harmful to human health. We also agree with the assessment of the High Level Reflection Group that the Energy Community should

help Parties reduce the investment risk by applying the best available European standards in screening the projects for their compliance with the long-term climate policy of the EU. As the HLRG suggests, the blueprint for this could be taken from the European Investment Bank's energy policy.

2. Directive 2000/60/EC (the Water Framework Directive). We see this directive as relevant and crucial for hydropower Energy projects (and quite a few are planned by the contracting parties). The inclusion of this directive can prevent deterioration of the quality status of a body of surface water. Related to the previous one we also think that Directive 2008/105/EC on environmental quality standards in the field of water policy should be included. Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (the Habitats Directive). We see this Directive as crucial for energy investments, especially when it comes to
hydropower or wind energy projects. The Appropriate Assessment, obliged by this Directive, is a highly useful tool that can show the cumulative impact of several energy projects planned in or near a habitat and balance interests and ensure the credibility of projects. Provisions under this Directive also contribute towards better implementation of the EIA Directive and the Amending EIA Directive (2014/52/EU) and will enable joint procedures (EIA and AA) in accordance with Article 3 paragraph 3 of the EIA Directive. According to the Amending EIA Directive 2014/52/EU the EIA procedure must identify, describe and assess the direct and indirect significant effects of a project on the biodiversity, with particular attention to species and habitats protected under Directive 92/43/EEC and Directive 2009/147/EC. Directive 2006/21/EC on the management of waste from extractive industries and amending Directive 2004/35/EC which applies to waste resulting from the extraction, treatment and storage of mineral resources. The Directive is clearly relevant to mining supplying the energy sector in the Energy Community countries. Directive 2001/81/EC on national emission ceilings for certain atmospheric pollutants (NEC Directive), amending Directive 2003/35/EC (COM 2013 920 final) which limits the emissions of certain atmospheric pollutants in order to improve the protection of the environment and human health against risks of adverse effects from acidification, soil eutrophication and groundlevel ozone and to move towards the longterm objectives of not exceeding critical levels and loads and of effective protection of all people against the recognized health risks from air pollution. It is important to note that by this Directive is an instrument to cut down transboundary pollution, particularly of
pollutants like PM2.5 which travel the longest distances and are one of the most harmful to human health. We also agree with the assessment of the High Level Reflection Group that the Energy Community should help Parties reduce the investment risk by applying the best available European standards in screening the projects for their compliance with the long term climate policy of the EU. As the HLRG suggests, the blueprint for this could be taken from the European Investment Bank's energy policy.

3. Energy Community Work Program for 2014-2015. This Directive has been proposed for adoption by the Energy Community in 2014, which is highly welcome. 5) 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. 6) Directive 2001/81/EC on national emission

ceilings for certain atmospheric pollutants, known as NEC Directive, and its amending Directive 2003/35/EC (COM 2013 920 final) which limits the emissions of certain atmospheric pollutants in order to improve the protection of the environment and human health against risks of adverse effects from acidification, soil eutrophication and ground-level ozone and to move towards the long-term objectives of not exceeding critical levels and loads and of effective protection of all people against the recognised health risks from air pollution. It is important to note that by this Directive is an instrument to cut down transboundary pollution, particularly of pollutants like PM2.5 which travel the longest distances and are one of the most harmful to human health. 7) Directive 2008/98/EC on waste sets the basic concepts and definitions related to waste managament and explains when waste ceases to be waste and becomes a secondary raw material (so called end-of-waste criteria), as well as how to distinguish between waste and by-products. The Directive lays down basic waste management principles, requiring that waste be managed without endangering human health and harming the environment, and in particular without risk to water, air, soil, plants or animals, without causing a nuisance through noise or odours, and without adversely affecting the countryside or places of special interest. Its provisions are applicable to energy projects which, especially in their phase of construction and sometimes even during operation, generate large amounts of waste. 8) Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention). 9) Convention on Environmental Impact Assessment in a Transboundary Context and its Protocol on Strategic Environmental Assessment (Espoo Convention).

Regulator
E-Control
Due to the limited environmental acquis of the Energy Community currently in place, Contracting Parties cannot measure up with EU Members States with regard to environmental obligations. As a result, distortion of the internal market can be observed. I believe that a voluntary implementation, as it is proposed in Option 1 is an inefficient and not feasible approach. Therefore, I prefer Option 2. To facilitate the introduction of new environmental acquis, the wording “Network Energy” in Article 2 of the Treaty could be replaced by “Energy Sectors”. This would not only cover all consumption of energy, but could also serve as an incentive to foster energy efficiency measures in Contracting Parties.

EU bodies
MEPs
It should be ensured that the Energy Community's legal framework be aligned with that of the EU in order to create a "level playing field" on environmental standards.
In the context of the EU's commitments on climate change, in this very important year of the COP21 in Paris, we urge the Energy Community to state a firm commitment to the EU 2050 Road Map and to apply the 2020 and 2030 goals as a matter of priority.

D. Ensuring level playing field and fair competition

Proposals by the High Level Reflection Group: 1.6.(b), 1.6. (c), 4.5, 5.2 (Stakeholder proposal)

I. Enhancing the Effectiveness of Competition Law Enforcement

The High Level Reflection Group essentially proposes two measures to enhance the effectiveness of competition and State aid enforcement in the Energy Community, namely that "*the scope of the Energy Community* [be] *broadened ... by including procedural rules related to competition and State aid in the energy sector in accordance with the EU model (e.g. including notification of State aid to the Secretariat, following the model of Article 108 TFEU)*", and that "*the Secretariat should be strengthened in terms of executive and investigative powers, e.g. in the area of competition, procurement and State aid in accordance with the model applied in the EU*."

In addition to the energy acquis, the Contracting Parties have an obligation to adopt and apply competition rules to their energy sectors. The acquis in this field makes Articles 101, 102 and 107 of the Treaty on the Functioning of the European Union (TFEU) applicable[xi] in order to prevent trade in energy between the Contracting Parties from being affected.[xii] Moreover as candidate countries, potential candidate countries or parties bound to the EU by Association Agreements, the Contracting Parties are bound by the obligation to approximate to the EU's competition rules, including creating the necessary national authorities to enforce competition and state aid rules.

The Energy Community Treaty currently has not integrated procedural regulations or guidelines of the EU acquis which complement and implement the above mentioned competition provisions. The Energy Community does not have a central authority for the enforcement of the competition and State aid rules, nor does it provide for sufficient alternative procedural and organizational structures to ensure enforcement of State aid rules.

On the one hand, the national State aid enforcement system currently put in place in the Contracting Parties is lacking in independence and capacity to perform its task. Both the decision-making body and the administrative units of the national enforcement authorities are closely linked to the respective governments in terms of nomination, organization, financing and interests. Moreover, the national enforcement authorities are lacking in experience to deal with the many complex questions posed by State aid law in the energy sectors. As a result, there is only a limited number of notifications by the granting authorities and a failure of the State aid authorities to act ex officio. Energy sectors are very important for domestic economies and traditionally strong political influence is exercised on the shape of energy markets.

Due to the above shortcomings, no Contracting Party has so far taken a decision to prohibit State aid to an energy undertaking or issued a recovery decision in the energy sector

On the other hand, contrary to the EEA agreement, the Energy Community encompasses countries which are governed by the accession process or Deep and Comprehensive Free Trade Agreements (DCFTA), which provide for rules on competition enforcement (including on State aid)

based on the EU acquis. Ukraine and Moldova have for instance signed Deep and Comprehensive Free Trade Agreements with the EU that include already a commitment to integrate the "acquis communautaire" in the field of competition and state aid control within their jurisdiction. This also includes a commitment to set up and/ or strengthen the enforcement capacity in these fields. Moreover, these countries are also part of the EUs Eastern Neighbourhood Policy which aims at providing funding to assist them in implementing the provisions of the DCFTAs. These instruments are currently already in place to build up the competition enforcement (antitrust, mergers & state aid) in these countries and can be made use of.

Similar considerations can be made with regard to those Contracting Parties which are part of the accession process (whether candidate countries or potential candidates) and the Instrument for Pre-Accession as well as the funding and technical assistance available under TAIEX.

As a result, there is a need to strengthen the enforcement of competition and state aid rules in the energy sector.

Status quo: Maintain the existing system of competition and State aid law control based on national enforcement.

Option 1 (Level I proposal): Strengthen independent national competition authorities in enforcing competition law and advocate and build on the commitments (accession process or DCFTAs) of the Contracting Parties regarding competition enforcement and encourage the Secretariat and the Commission to offer technical assistance for cooperation of these authorities in uniform application of the competition rules, using the available instruments.

Option 2 (Level II proposal): Strengthening the commitment for the Contracting Parties in the Treaty to implement the EU acquis on competition and State aid law for the energy sector, including the adoption of national procedures allowing effective implementation of these provisions.

In comparison to maintaining the status quo, implementing options 1 or 2 could have the following impact:

Options	Legal procedures	Costs/budget	Implementation effort	Effectiveness/efficiency/coherence
Option 1	No legal procedures at Energy Community necessary	Costs related to support of technical assistance	Substantial at Contracting Parties level	Efficient and coherent way in implementing the aims of the Energy Community; More effective in comparison to status quo since the Contracting Parties authorities will be strengthened under this option
Option 2	Treaty amendment required (Article 100 of the Treaty, and complemented by changes to Title II)	Costs related to support of technical assistance	Substantial at Contracting Parties level	Stronger focus in Energy Community on implementing competition and state aid rules in energy sector of Contracting Parties; whilst leaving the enforcement duty with national authorities as foreseen under DCFTA and Accession process

Questions to the stakeholders:

17. Do you agree with the above assessment? How do you perceive the current implementation process for competition and State aid law in the Energy Community?
18. Do you support the status quo, Option 1, Option 2 or the above proposal of the HLRG? (Please note these options are not mutually exclusive and may also depend on each other.)
19. Do you consider that additional options need to be added? Which? What are the impacts in comparison to status quo?

II. Introducing Rules on Public Procurement

The High Level Reflection Group also proposes to broaden the scope of the Energy Community "*by including rules on public procurement (Directives 2004/17 and 2004/18/EC) in the energy sector*." As they promote transparency and non-discrimination, the introduction of public procurement rules binding on public authorities and utilities has been consistently ranked as one of the highest priorities for investors and NGOs.

The award of public contracts (public works, public supply and public service contracts) in the EU was coordinated in the past by two specific directives: Directive 2004/18/EC on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts regarding the so-called "traditional contracting authorities" (the "classical sector") and Directive 2004/17/EC concerning the coordination of procurement procedures of entities operating in the fields of water, energy, as well as transport and postal services (the "utilities sector"). In 2014, the European Union adopted three new directives in the area of public procurement repealing the cited directives, and adding new rules in the concession contracts. The Directive 2004/17/EC was repealed in 2014 by the Directive 2014/25/EU of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal service sectors (new so-called "Utility Directive"). The new Directive will come into force from April 2014; however, the Directive 2004/17/EC will only be repealed with effect from 18 April 2016. The Directive 2014/24/EU repealed the Directive 2004/18/EC (so-called "classic directive"). On 26 February 2014, the European Union also adopted Directive 2014/23/EU on the award of concession contracts (so-called "Concession Directive"), a matter hitherto not covered by European legislation.

Status quo: The status quo in the Energy Community is such that the EU *acquis*, either new or old, does not apply to Contracting Parties. The national public procurement laws are based on the principles deriving from the EU *acquis*. However in practice, many of the details, including the application of different thresholds and discriminatory practices, are different. Adoption of National Action Plans for Sustainable Public Procurement is still at very early stage, *i.e.* none of the Contracting Parties have adopted Action Plans, although in some of them initial preparation is on-going. Given that public procurement is currently out of the scope of the Energy Community, there is also no enforcement possible in cases of non-compliance, either through non-transposition by a Contracting Party or non-/wrong application by its authorities/utilities in a given case.

Option 1 (Level I proposal): Voluntary **i**mplementation of the EU public procurement rules by the Contracting Parties.

Option 2 (Level II proposal): Implementation of the EU public procurement acquis (Directives 2014/23/EU, 2014/24/EU and 2014/25/EU) to the extent relevant for the energy sectors.

In comparison to maintaining status quo, implementing option 1 or 2 could have following impacts:

Options	Legal procedures	Costs/budget	Implementation effort	Effectiveness/efficiency/coherence
Option 1	Minor changes necessary at the Energy Community level (e.g. Recommendation of the Ministerial Council)	No direct costs, minor additional administrative burden in Contracting Parties	Some effort on the side of the Contracting Parties introducing the change; Savings generated by EU public procurement Directives likely to exceed the costs, for public purchasers and suppliers, of running those procedures	A non-binding Recommendation is a non-effective instrument to achieve the goal of increasing transparency and non-discrimination; however it is coherent with the aims of the Energy Community.
Option 2	Treaty amendment necessary; Can be incorporated into the acquis based on Article 100 of the Treaty	No direct costs, minor additional administrative burden in Contracting Parties	Some effort on the side of the Contracting Parties introducing the change; Savings generated by EU public procurement Directives likely to exceed the costs, for public purchasers and suppliers, of running those procedures	The change would be coherent with establishing a level playing field amongst the Contracting Parties and the European Union in this area. The regulatory guarantees established by the energy-specific EU Directives may be a necessary but not a sufficient condition to break down the barriers to cross-border participation in public procurement markets.

Questions to the stakeholders:

20. Do you agree with the above assessment?
21. Do you support the status quo or Option 1, or 2?
22. Do you consider that additional options need to be added? Which? What are the impacts in comparison to status quo?

III. Harmonisation of VAT Treatment

In a letter sent to the Energy Community Secretariat on 25 October 2014, the Coordinated Auction Office of South Eastern Europe called for the *harmonization of VAT treatment* in non-EU states in South Eastern Europe. The harmonisation of VAT treatment and regulation in participating countries was identified as being of great importance for the further, undisturbed development of the Coordinated Auction Office, but also for everyday trade in energy as a commodity.

The EU Directive 2006/112/EC on common system of value added tax defined principles for the taxation of electricity and gas and related services. . Since then, the tax dimension has been monitored and instruments made available to foster the single electricity and gas market by removing fiscal obstacles. This Directive was amended in 2008 with the Directive 2008/8/EC as regards to the place of supply of services and further clarified with the Implementing Regulation (EU) No 282/2011 laying down implementing measures for Directive 2006/112/EC. In addition, to combat tax fraud, the EU adopted the Regulation (EU) No 904/2010 on administrative cooperation and combating fraud in the field of value added tax. In 2013 the EU amended the Directive 2006/112/EC with Directive 2013/42/EU which introduced a Quick Reaction Mechanism against VAT fraud and Directive 2013/43/EU which introduced a reverse charge mechanism as a temporary measure.

Article 41 of the Treaty establishing the Energy Community explicitly requires that “Customs duties and quantitative restrictions on the import and export of Network Energy and all measures having equivalent effect shall be prohibited between the Parties. This prohibition shall also apply to customs duties of a fiscal nature.” Pursuant to Article 42 the Treaty, the Energy Community may take measures with the aim of creating a single market without internal frontiers for Network Energy, whereas these measures shall not apply to fiscal measures.

Some stakeholders have identified VAT as an obstacle to trade, and have emphasised the need to remove fiscal barriers to trade. The Coordinated Auction Office (CAO) has identified obstacles of a fiscal nature to cross border transactions. At the same time, transmission system operators working on establishing common auction of interconnecting capacities have faced the problem of double taxation arising from the different definition of the place of taxable transaction. The Agreement on common allocation procedure between TSOs from Serbia and FYR Macedonia prepared in 2011 is still on hold due to non-harmonized fiscal treatment. Non-harmonized VAT policies and double taxation also affect trade in electricity and gas in the Contracting Parties.
The 18th Athens Forum, in its Conclusions related to promoting cross-border electricity trade, invited Contracting Parties to overcome the barriers to regionally coordinated capacity allocation and market coupling resulting from different VAT rules.

Status quo: No VAT harmonisation at the level of Energy Community.

Option 1 (Level I proposal): Voluntary harmonisation achieved on the level of inter-governmental decisions of the Contracting Parties (double tax agreements).

Option 2 (Level II proposal): Amending the Treaty so that every Contracting Party respects the EU VAT acquis.

In comparison to maintaining status quo, implementing option 1 or 2 could have following impacts:

Options	Legal procedures	Costs/budget	Implementation effort	Effectiveness/efficiency/coherence
Option 1	No changes necessary at the Energy Community level	Direct costs on national budgets limited	Requires changes in tax legislation in some Contracting Parties	The change would be coherent to allow stronger integration of the energy markets. However, risks of preserving divergent rules and therefore facing double taxation. Also outside the structure of the Energy Community Treaty, e.g. updates and enforcement not ensured.
Option 2	Treaty amendment necessary; An adapted version of the EU acquis related to VAT and applicable to energy only can be incorporated into the acquis based on Article 100 of the Treaty	Direct costs on national budgets limited	Requires changes in tax legislation in some Contracting Parties	The change would be effective and coherent to allow stronger integration of the energy markets, and would increase homogeneity within the pan-European energy markets.

Questions to the stakeholders:

23. Do you agree with the above assessment?
24. Do you support the status quo or Option 1, or 2?
25. Do you consider that additional options need to be added? Which? What are the impacts in comparison to status quo?

Public Consultation Submitted Responses

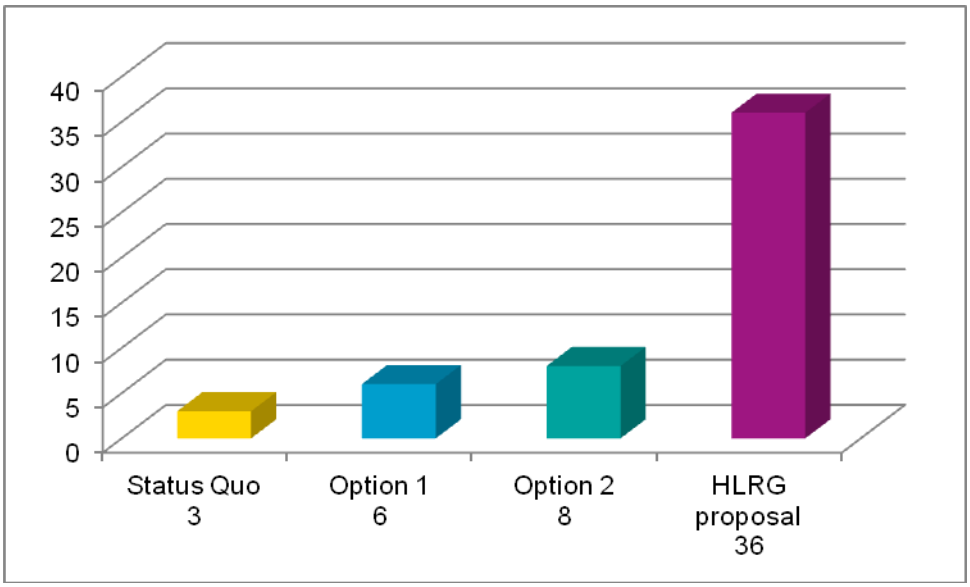
I. Enhancing the Effectiveness of Competition Law Enforcement

17. Do you agree with the assessment made in the Analytical Paper?

	YES 12 / NGO 29		NO 2 / NGO		DO NOT KNOW 2 / NGO 1

Total number of responses: 46

18. Do you support the status quo, Option 1, Option 2 or the above proposal of the HLRG?
Number of responses: 53, Multiple responses: 6



19. Additional options? Comments on implementation process for competition and State aid law in the Energy Community?

Academia
Unknown:
A decision by a state on whether aid is compatible with the common market, may lead to abuse of state interventions through the unlawful use of public resources. Thus it is necessary to have an independent body included in the decision-making. According to Article 108 (ex-Article 88) of the TFEU, "the Commission shall, in cooperation with Member States, keep under constant review all systems of aid existing in those States (...). If, after giving notice to the parties concerned to submit their comments, the Commission finds that aid granted by a State or through State resources is not compatible with the internal market having regard to Article 107, or that such aid is being misused, it shall decide that the State concerned shall abolish or alter such aid within a period of time to be determined by the Commission". Inclusion of Article 108 into the Energy Community Treaty with adjustments to equip the Secretariat with strong investigative and decision-making powers

regarding state aid issues and aid measures would help to build a transparent aid procedure in the energy sector.

Civil Society
Turkey
In order to provide more secure, competitive and non-discriminatory investment climate for the investors, current implementation
process for competition and State aid law is lacking. Competition rules in Contracting Parties should be aligned with EU rules and a monitoring regime should be introduced over the implementation of the competition, procurement and State aid acquis. The monitoring body can be Secretariat in accordance with the model applied in the EU as proposed by HLRG.

Government
Albania
We are convinced that the current implementation process for competition and State aid law in the Energy Community can not be reached without strengthening the Secretariat position. Many of the commitments undertaken by the Contracting Parties exist on paper only and will not make the required impact for achieving the Community's ambitious objectives without some degree of central enforcement like in EU.

Serbia
The Treaty itself has indisputably taken over the obligation of the Adhering parties to apply the rules for the implementation of State assistance and the rules on competition directly in accordance with the Treaty on the establishing of the European Community (Annex III of the Treaty). It is not possible, or at least not possible without serious negative consequences for the Adhering parties, to determine various rules within the same legal system for the competition in the field of Network energy and other rules for other commercial sectors. The Adhering parties have an internal need to harmonize their laws beyond the obligations taken over by the Treaty with the laws in effect in EU countries and with acquis in general; however, it is certainly indisputable and should not be brought into connection with the obligations accepted under the Treaty. The Adhering parties which are in the process of accession to the EU also have special obligations in this segment. The comment pertains to paragraph 3 from introductory considerations.
In particular, we would like to point out that the assessment of the condition of the subject in question in the Contracting Parties is provided in one paragraph, while at the same time the source of evaluation is not mentioned. Has such assessment been made and which document is the reference document that supports the statements.
Option 3 in terms of providing technical assistance is a welcome opportunity for those Adhering Parties that wish to take it up voluntarily, as it could help in strengthening the institutions dealing with competition and state aid issues.

Czech Republic
Analytical report identified a clear need to strengthen the enforcement of competition and state aid rules in the energy sector. Stable and fair investment environment is a priority for the Czech Republic. Option 2 suggests Treaty amendment by a simple decision of a Ministerial Council and the Czech Republic would like to vote for this option to be implemented. Counselling can never bring results comparable to those brought by the legal enforcement.

Industry
Eurogas

Option 2 has been selected - Some alignment of competition and State aid law should be considered, as its implementation is relevant to achievement of an integrated energy market.

EVN
Although electricity (as this is in the main focus) commonly is seen as a commodity, it is part of the most important infrastructure. All other infrastructure elements as well as daily life depend on the uninterrupted function of power infrastructure. As electricity cannot be stored in a similar way as other commodities and the permanent close balance between consumption and covering production is inevitable, a sound and well organized allocation of roles and responsibilities, but also processes and interaction is absolutely compulsory to achieve a level playing field. As long as this is not provided for the IEM and not satisfying on a national level by committing fair and comprehensive market rules, the reference to scrutinize State aid and abuse of market position is at least missing to a significant extent. To promote investments under the title "security of supply" or even more the (economic) priority of RES, but also PPP's may only be evaluated if clear reference obligations are stipulated. The complaints about insufficient expertise of NRA'S in the complexity of the power infrastructure probably would as well, or even more, apply to Competition Authorities. Any intervention based on wrong interpretation or misunderstanding the function will shift the responsibility for consequences to these authorities. Therefore the balance in expertise between fair play and technical necessities has to be ensured. Additionally there are no links between Competition Laws and the restrictions inevitable and still only partially enclosed in the energy legal framework.

NIS
The Analytical Paper rightly point to the existing obligations under the Association Agreements, however falls short in deeper analysis of the provisions therein. Namely, Option 1 in terms of providing technical assistance is a welcome opportunity for those Contracting Parties that wish to take it up voluntarily, as it could help in strengthening the institutions dealing with competition and state aid issues. However, the involvement of the Secretariat in the process of notifying state aid and strengthening the executive and investigative powers of the Secretariat, as per proposal of the HLRG, would cause unnecessary burdens and in many cases lead to duplication of such notification which is already set up in the form foreseen in Association Agreements between the EC and the Contracting Parties. The competence and expertise of the Secretariat in competition and state aid matters is also questionable in relative terms, i.e. when compared to that of the EC.

NGOs
Same answer by 26 NGOs
A decision by a state on whether aid is compatible with the common market, may lead to abuse of state interventions through the unlawful use of public resources. Thus it is necessary to have an independent body included in the decision-making. According to Article 108 (ex-Article 88) of the TFEU, “the Commission shall, in cooperation with Member States, keep under constant review all systems of aid existing in those States (...). If, after giving notice to the parties concerned to submit their comments, the Commission finds that aid granted by a State or through State resources is not compatible with the internal market having regard to Article 107, or that such aid is being misused, it shall decide that the State concerned shall abolish or alter such aid within a period of time to be determined by the Commission“. Inclusion of Article 108 into the Energy Community Treaty with adjustments to equip the Secretariat with strong investigative and decision-making powers regarding state aid issues and aid measures would help to build a transparent aid procedure in the energy sector.

Regulator

E-Control
Experience has shown that, in particular in the areas of State Aid and Competition, national enforcement has been inefficient. A certain degree of central enforcement is therefore key. I believe that there is a need to strengthen the Energy Community Secretariat in order to ensure the achievement of the ambitious objectives of the Energy Community. Therefore, the Secretariat, which is the only permanent and independent institution of the Energy Community should be tasked with and equipped for competition and State aid law enforcement.

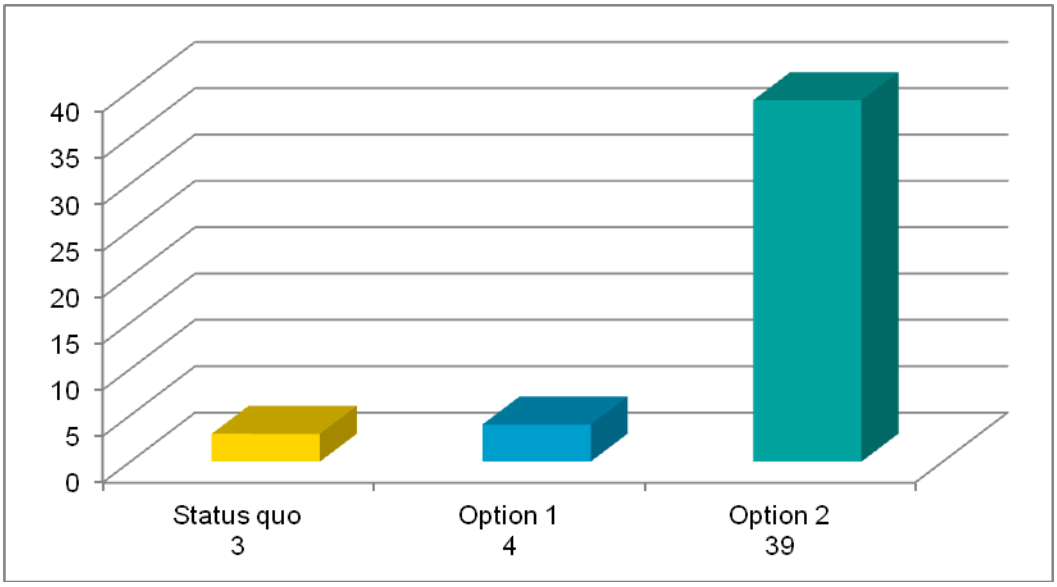
II. Introducing Rules on Public Procurement

20. Do you agree with the assessment made in the Analytical Paper?

	YES 12 / NGO 29		NO 2 / NGO		DO NOT KNOW 1 / NGO 1

Total number of responses: 45

21. Which of the three options do you support the most?
Number of responses: 46, Multiple responses: 2



22. Do you consider that additional options need to be added?

Academia
Poland
I think it should be up to the majority of the stakeholders in the Contracting Parties to choose between Option 1 & 2, unless the market participants see it as necessary, I would be cautious about implementing the new acquis, if there are problems with implementing & executing those which are already in place.

Serbia

The provisions of the Directive should be introduced to the Energy Community Treaty in order to ensure that public tenders take place in the construction of energy infrastructure. In fact the Commission's own report on the Energy Community identified the shortcoming of impact of the Energy Community Treaty on investments, which could be resolved with applying systematic and enforceable solutions. The application of public procurement rules would help to solve the problem of corruption and strengthen the rule of law in the energy sector. Public Procurement Directive 2004/18/EC's provisions are crucial not only to the energy sector, but also to unification of the of the Energy Community Contracting Parties' legislation and economies and strengthening the rule of law. It is also crucial to include a notification mechanism in cases where governments seek to avoid procurement legislation on the grounds of projects implemented under international agreements. We have witnessed several cases (Kostolac B3, Pljevlja II, undersea cable Montenegro Italy) where governments have skipped tender procedures and it is ambiguous whether local legislation allows this but if a notification procedure was in place the rules would be more transparent and applied across all parties equally.

Government
Albania
As a full alignment with the EU is the only realistic way to achieve any progress in this sensitive area. Public procurement rules in Contracting Parties are weak and transparency should be improved.

Czech Republic
Similarly, public procurement rules (Directives 2014/23/EU, 2014/24/EU and 2014/25/EU) may significantly improve investment environment by promoting transparency and non-discrimination. We support Option 2 – to incorporate these Directives into the EnC acquis.

Romania
We support option 2; it would be an extremely important step for the CP, even if in a first stage it wouldn't open up the access to this process to companies from other EU MS as well.

Industry
EVN
The situation should be evaluated first to identify main priorities. Transparency is key for a fair market. This should apply not only for procurement, but at least as far also for energy sales of state monopolies. If there is no transparent access for grid monopolies as well as suppliers or final customers to a fair, transparent and therefore liquid market, the damage to the end consumer probably is bigger than lowering the thresholds for public procurement. At the moment it seems, that in ERI-8 region it would be more important to force state-owned producers to full transparency in market participation. And this applies more for regional Member States than CPC's.

NIS
As correctly stated in the Analytical Paper, the public procurement laws of the Contracting Parties are, at large, based on the principles deriving from the EU. Given that public procurement is outside of the scope of the Energy Community, it seems sensible to leave it "as is" for the moment. Voluntary implementation of the EU public procurement rules by the Contracting Parties is welcome, but the rationale is questionable (as these rules are to a large extent applied anyhow), as well as the jurisdiction of the institutions of the Energy Community to deal with public procurement issues without Treaty amendments (even in the sense of passing a Recommendation).

NGOs
Same response by 24 NGOs
The provisions of the Directive should be introduced to the Energy Community Treaty in order to ensure that public tenders take place in the construction of energy infrastructure. In fact the Commission's own report on the Energy Community identified the shortcoming of impact of the Energy Community Treaty on investments, which could be resolved with applying systematic and enforceable solutions. The application of public procurement rules would help to solve the problem of corruption and strengthen the rule of law in the energy sector. Public Procurement Directive 2004/18/EC's provisions are crucial not only to the energy sector, but also to unification of the of the Energy Community Contracting Parties' legislation and economies and strengthening the rule of law. It is also crucial to include a notification mechanism in cases where governments seek to avoid procurement legislation on the grounds of projects implemented under international agreements. We have witnessed several cases (Kostolac B3, Pljevlja II, undersea cable Montenegro-Italy) where governments have skipped tender procedures and it is ambiguous whether local legislation allows this but if a notification procedure was in place the rules would be more transparent and applied across all parties equally.
The provisions of the Directive should be introduced to the Energy Community Treaty in order to ensure that public tenders take place in the construction of energy infrastructure, but not exclusively. These provisions would contribute to solving the overarching problem of corruption and weak rule of law in the Contracting Parties. . It is also crucial to include a notification mechanism in cases where governments seek to avoid procurement legislation on the grounds of projects implemented under international agreements. In far too many instances we have witnessed governments not having conducted tender procedures and it is unclear whether local legislation allows this. A notification procedure would make the whole process more transparent and would ensure equal application in all the countries.
The application of public procurement rules would help to solve the problem of corruption and strengthen the rule of law in the energy sector. It is also crucial to include a notification mechanism in cases where governments seek to avoid procurement legislation on the grounds of projects implemented under international agreements.

Regulator
E-Control
I fully agree with the paper, which calls for placing more emphasis on the (currently poor) public procurement rules to improve transparency. Therefore, I consider Option 2, which proposes a full alignment with the EU, as the only feasibly approach to tackle this delicate issue.

EU bodies
MEPs
It should be ensured that the Energy Community's legal framework be aligned with that of the EU in order to create a "level playing field" on environmental standards - so that SEE does not become a dumping ground for dirty energy projects and that the procurement and state aid directives are applied to increase transparency in the region.

III. Harmonisation of VAT Treatment

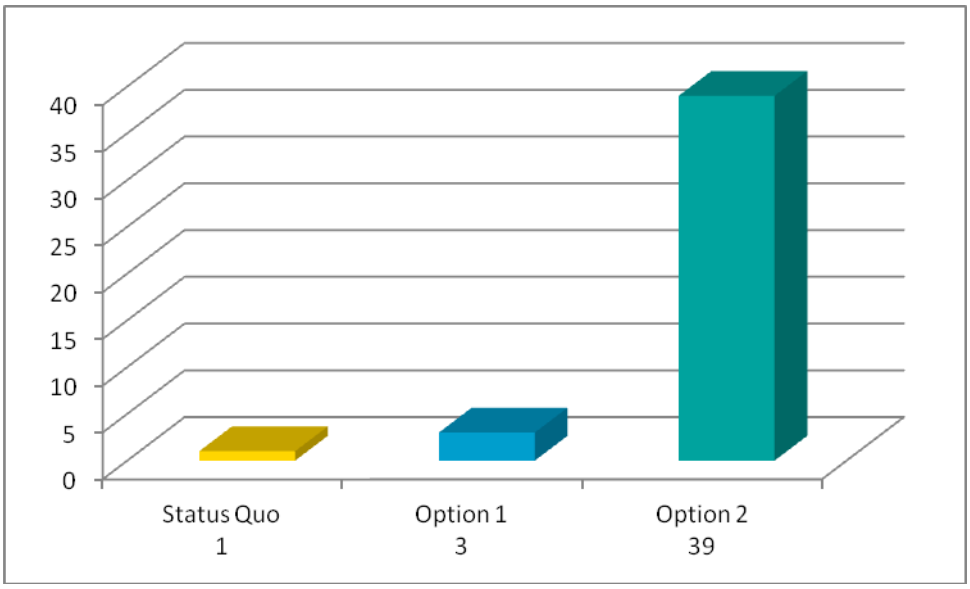
23. Do you agree with the assessment made in the Analytical Paper?

	YES 12 / NGO 27		NO 1 / NGO		DO NOT KNOW 1 / NGO 1

Total number of responses: 42

Comments
Government/Serbia
Not entirely. The need to harmonize VAT is indisputably necessary for the execution of obligations under the Treaty, both in cross-border trade in electric energy and in harmonization of the defining of the taxable transaction location during the execution of joint auctions and awarding of cross-border capacities, in general. Certainly, the exposure pertains to the need to regulate the harmonization of VAT which pertains to Network energy and the mechanisms of cross-border transfer of electric energy. Further comment pertains to paragraph 3 and 8 from introductory considerations.

24. Which of the three options do you support the most?
Number of responses: 43



25. Do you consider that additional options need to be added?

Civil society
Turkey
I partly support Option 2. There is a need for Treaty amendment to harmonize VAT treatment across the Contracting Parties but not by adopting the whole EU VAT acquis. The harmonization of the VAT treatment could be accomplished only by adding some specific clauses to the Treaty instead of pushing to transpose a set of provisions of which some are not as relevant as intended.

The amendment would be effective and coherent to allow stronger integration of the energy markets and would increase homogeneity within the pan-European energy markets.

Governments
Serbia
One should bear in mind that the problem does not pertain only to the issue of double taxation, but also to the implementation of measures which disable the evasion of taxes, and that the harmonization of VAT needs to be observed not only in respect of the Adhering parties, but also in respect of all the parties involved in the creation of a unique mechanism for cross-border transfer of electric energy.

Czech Republic
VAT rules harmonisation represents important prerequisite to allow for stronger integration of the energy markets. As we have seen, voluntary adoption of rules is not always efficient and followed and hampers creation of a common market. Therefore we think we should amend the Treaty by unanimous decision of the Ministerial Council so that every Contracting Party respects the EU VAT acquis (Option 2).

Industry
NIS
Comment for response under 23: NO, not fully. Our view is that Option 1 & Option 2 should be seen as two steps in a process of gradual harmonization of the VAT regime with that of the EU. The first step should be reaching a high level of harmonization on the basis of inter-governmental agreements, and when a reasonable level of such harmonization is achieved (i.e a nucleus is formed), considerations could be given to amending the Treaty as proposed by Option 2. The harmonization should be introduced to with respect to VAT regimes related to Network Energy. If specific issues such as those pointed out by the CAO are tabled, considerations could be given to passing specific binding Decisions applicable to that case.

Regulator
E-Control
From my point of view there is a need for amending the Treaty so that every Contracting party respects the EU VAT acquis. The problem regarding the inconsistency of VAT rules in general and double taxation cannot be solved by applying the existing legal instruments of the Treaty. Therefore, I support Option 2.

General comments on D. Ensuring level playing field and fair competition
EURELECTRIC
As the analytical paper points out, the mentioned obligations are already included into the texts of respective Association Agreements. Issues that prevent establishment of functioning liberalized energy markets and regional energy market should be addressed as a priority. However, they are usually beyond competencies of the Ministries of Energy and go under responsibilities of Ministries of Finance and tax administrations.

E. Better Enforcement and Dispute Settlement

Proposals by the High Level Reflection Group:1.7, 4.4.(5), 4.6, 4.7, 4.8.

In its final Report of June 2014, the High Level Reflection Group mandated by the Ministerial Council identified the absence of a functioning enforcement mechanism as one of the main explanations for the failure of the Energy Community to fulfil several of its key expectations such as incomplete market reforms and creating a favourable and predictable investment climate:[xiii] "*Weak enforcement mechanism constitute one of the major obstacles to implementation of the acquis in the Contracting Parties*."[xiv] "*It is fundamental for investors within the Energy Community to have a system enabling vigorous and independent enforcement in countries which may not provide for credible recourse paths for private and non-incumbent investors to pursue in case of breach of contract*."[xv]

I. Encouraging Private Enforcement

As one of the remedies to address weakness of enforcement of the Treaty the HLRG proposes "To encourage also private enforcement of the Treaty before national courts, it should be amended to the effect that provisions of Energy Community law can be relied upon by individuals even without implementation if these provisions are sufficiently clearly defined and unconditional."

The Energy Community Treaty is an agreement *sui generis* creating a new legal order confined to the energy sector. The objective and final aim of the Treaty is to integrate the energy markets of the Contracting Parties with the internal EU energy market. The Energy Community transposes EU *acquis* in non-EU countries, and requires its homogeneous interpretation (Article 94 of the Treaty). Arguably, the concepts of primacy, direct effect and State liability are applicable in the Energy Community law due to its *sui generis* legal nature. This is, by analogy, supported by case law of the Court of Justice of the European Union which recognised the direct applicability of international agreements including association, integration and free trade agreements, as well as the direct effect of the decisions adopted by institutions established by international agreements.

When it comes to direct and indirect effect (i.e. need for harmonious interpretation) and State liability, most of the Contracting Parties recognize the obligations of the State to comply with obligations arising from international treaties, and their courts are allowed to base their decisions on ratified international treaties directly. However, this does not happen in practice because of lack of awareness of the stakeholders. Most of the Contracting Parties also recognize the primacy of ratified international agreements, and of the obligations arising from such agreements over conflicting national law. However, the Contracting Parties would be expected to recognize supremacy of the Treaty and the obligations arising from its implementation over the national Constitutions as well, which is currently not the case in all countries.

Status quo: There is uncertainty or unawareness within the Contracting Parties as to whether direct effect, supremacy of Energy Community law as well as State liability apply under the Treaty.
Option 1 (Level I proposal): Encourage private enforcement of the Treaty in the Contracting Parties by means of an Interpretation (Article 94 of the Treaty) of the Ministerial Council.

Option 2 (Level II proposal): Amend Title VI of the Treaty by a clear obligation on the administrative and judicial institutions of the Contracting Parties to accept direct effect of, the precedence of the Energy Community rules over conflicting national rules, as well as liability of the State for non-compliance in line with EU law.

The option could lead to direct involvement of national administrative authorities and courts in the enforcement of the Energy Community law. They would interpret and apply the Energy Community *acquis* in disputes initiated by private parties. The Contracting Parties may also be liable to pay compensation to any private party harmed by the lack of implementation of the Energy Community *acquis.* Only serious breaches of Energy Community law would lead to State liability, but the non-transposition of a Directive or non-compliance with a previous decision of the Ministerial Council establishing a breach represents such a serious breach. The explicit recognition of these principles is expected to increase the degree of compliance with the acquis by the Contracting Parties and would also allow them to become familiar with the constitutional fundamentals of the European Union.

Any private enforcement on the basis of the Energy Community Treaty, including as described in Option 1 and 2, can only be possible against Contracting Parties, not against the European Union and/or its Member States. This is because the EU and the EU Member States are subject to the exclusive jurisdiction of the European Court of Justice in Luxembourg. In comparison to maintaining status quo, implementing option 1 or 2 could have following impacts:

Options	Legal procedures	Costs/budget	Implementation effort	Effectiveness/efficiency/coherence
Option 1	Interpretation by the Ministerial Council based on Article 94 of the Treaty	No additional costs identified	No need for legislative changes in most national systems, only for clarification purposes (direct effect, primacy, State liability)	Likely to add to the effectiveness of enforcement of Energy Community law, its efficient application in line with the objectives of the Energy Community and coherent with the logic of the Energy Community; Would increase homogeneity of law enforcement throughout the pan-European energy market by extending the principle to the Contracting Parties
Option 2	Amending Title VI of the Treaty in accordance with Article 100 (no ratification required)	No additional costs identified	No need for legislative changes in most national systems, only for clarification purposes (direct effect, primacy, State liability)	Likely to add to the effectiveness of enforcement of Energy Community law, its efficient application in line with the objectives of the Energy Community and coherent with the logic of the Energy Community as an instrument exporting EU legislation; Would increase homogeneity of law enforcement throughout the pan-European energy market; Would also give a clear and binding signal to authorities and courts to apply Energy Community law

Questions to the stakeholders:

26. Do you agree with the assessment of the above options?
27. Do you support the status quo or Option 1, or 2?
28. Do you consider that additional options need to be added? Which? What are the impacts in comparison to status quo?

II. Strengthening the framework for enforcement and dispute settlement

The existing enforcement/dispute settlement mechanism is one the Energy Community's greatest weaknesses. This was recognized by the European Commission which in 2011 demanded that the Energy Community's "*regulatory scope should be … combined with more effective implementation and enforcement*."[xvi] The Energy Council in 2011 concluded that the Energy Community should be enhanced notably by "*encouraging full and timely implementation and enforcement of the acquis, as well as the removal of technical barriers, aiming at the creation of an Energy Community-wide energy market*" as well as "*adapting the decision-making and organisational structures of the Energy Community to future challenges*."[xvii] In 2013, the Council requested that "*possible ways of improving the institutional settings and the enforcement mechanism should be considered*"[xviii]. In the same vein, the European Council recently insisted that the "*Energy Community … should be reinforced so as to ensure the application of the acquis in those countries*"[xix]. The European Parliament, in its turn, recommended "*adapting* [the Energy Community's] *decision-making to future challenges, including by setting up legal control mechanisms to deal with deficient acquis implementation*."[xx]

To address the current deficiencies in enforcement of the Energy Community acquis and dispute settlement, the High Level Reflection Group considers "*a refurbishment of the institutional architecture is necessary, in particular to enable the enforcement of the far-reaching commitments the Parties accepted under the Treaty*."[xxi] It also concluded that the current political approach to sanctions "*does not satisfy the standards of an Energy Community based on the rule of law*".[xxii]

Status quo: Enforcement of the *acquis* is addressed by the Energy Community Treaty in Articles 90 *et seq*. under the heading of "dispute settlement". Unlike in the European Union, the Energy Community currently applies only one type of legal remedy, an infringement procedure modelled on Article 7 of the EU Treaty, and does not allow for direct actions against Decisions taken by the institutions Ministerial Council, Permanent High Level Group or Regulatory Board), nor a preliminary rulings procedure aimed at facilitating the cooperation with national courts and ensuring the homogeneity of interpretation of the *acquis*. As far as the lack of judicial protection against Decisions is concerned, the current situation is likely to violate Article 6 of the European Convention on Human Rights.
Unlike the EU itself and other treaties extending the EU internal market to non-Member States – most notably the EEA Agreement – the Energy Community Treaty of 2005 also did not create a court. Instead, the deciding authority in disputes about the compliance of a Party to the Treaty with Energy Community law[xxiii] is the Ministerial Council. The Ministerial Council essentially covers all executive, legislative and judicial functions under the current governance framework of the Energy

Community. This raises questions about the separation of powers in the Energy Community, but also about the neutrality of enforcement and the proper protection for investors.
Moreover, the sanction regime currently applicable (Article 90 of the Treaty) and as presently used shows limits to deter Parties from violating European energy law, as it only envisages political sanctions. It has never been applied in practice.

Option 1 (Level I proposal): Establishing a Regional Investment Court among Contracting Parties.

As an option outside the Treaty's structures, the Contracting Parties could establish among themselves, by a separate agreement, a regional court, to which the Treaty could refer to. A similar approach was taken by the EFTA countries in the EEA. This court could focus on investment disputes, thus providing a robust and neutral alternative to litigation before national courts, or (too) costly and political sensitive arbitration cases. This court could also have the jurisdiction to award damages. The court could function in an *ad hoc* mode for a certain testing phase, thus limiting the budgetary impact. The focus on dispute resolution and the protection of investors by a regional court would address one of the shortcomings of the existing model addressed above. However, without a public authority systematizing and prioritizing cases, enforcement often takes place only randomly.

The judges of the court would need to fulfil the highest professional standards as well as independence. To provide synergies with other sectors of economic integration, a regional investment court should not be limited in its jurisdiction to cases related to Network Energy (the scope of application of the current Energy Community). Its establishment would thus exceed the Energy Community Treaty, and cooperation with other regional institutions such as the Regional Cooperation Council and CEFTA should be sought.

Option 2 (Level II proposal): Amending the current Dispute Settlement Procedures.

Below the level of Treaty amendments, changes to the current Dispute Settlement Procedures could achieve several improvements, including making the Permanent High Level Group the relevant decision-maker in enforcement/dispute settlement cases by application of Article 53(d) of the Treaty enabling the Ministerial Council to empower PHLG to take measures; strengthening the role of individuals, companies and organizations (NGOs, civil society bodies), by giving them a subjective right to address the Permanent High Level Group (also) directly with cases of non-compliance; establish procedures allowing public hearing in the relevant cases of dispute settlement procedure unless overriding interests require confidentiality;

grant national courts the right to request advisory opinions on the interpretation of Energy Community law from the Permanent High Level Group in making use of the options envisaged by current Article 94 of the Treaty; strengthening the role of the Advisory Committee issuing opinions on dispute settlement cases (which consists of three neutral expert lawyers): In case PHLG would not agree with the opinion of the Advisory Committee it would have to turn, by means of a reasoned decision, to the Ministerial Council to take a decision under Article 91.

Option 3 (Level II proposal): Creation of a Court of Justice.

This model has been successfully followed under the EEA Agreement, the other integration agreement based on the export and enforcement of EU *acquis communautaire*. The proposed

Energy Community Court would not have jurisdiction over the EU or the EU Member States and thus not impinge on the Court of Justice's exclusive jurisdiction in this respect.[xxiv]

Besides an infringement action eventually complemented by sanctions, the Court could undertake direct actions against the legally binding measures taken by the Energy Community institutions or their failure to act, claims for damages and preliminary references for national courts of Contracting Parties. Moreover, the Court's jurisdiction could be complemented by a dispute settlement procedure available to investors. The selection of judges could also follow the European model.
Any decision to amend the Treaty would require unanimity under Article 100 of the Treaty. The amendments would relate to Title V of the Treaty, which is covered by the Ministerial Council's competence to amend the Treaty under Article 100(i). From an international law perspective, the amendments would thus not require ratification by the Parties. From the national perspective, it is to be noted that the Contracting Parties' constitutions do not oppose the establishment of an international court and in most cases already accept the jurisdiction of international courts (such as the European Court of Human Rights).

Option 4 (Level II proposal): Incorporation of the EU approach to sanctions for infringements.
Compliance with legal obligations depends on the expectation of if and how these obligations will be enforced and whether and how infringements will be sanctioned. Without any consequences, a decision determining the existence of a breach by any institution (Ministerial Council, Permanent High Level Group or Court) has only political relevance. The current sanctions regime envisaged by the Energy Community Treaty (Article 92) for serious and persistent breaches does not explicitly foresee penalties.

By contrast, the EU in Article 260 TFEU envisages sanctions in the form of lump sum or penalty payments in cases where a Member State failed to comply with a ruling by the Court of Justice. Similar powers could be given to the institution performing judicial functions in the Energy Community (Ministerial Council or Court). As the sanction regime in the EU takes into account the capacity to pay of the state concerned, the relative low GDP in Contracting Parties would become a relevant factor in the formula. Alternatively, non-compliant Parties could be sanctioned by way of blocking the disbursement of funds by other Parties to the Treaty, and international financial institutions in which they are shareholders.

In comparison to maintaining status quo, implementing options 1, 2, 3 and/or 4 could have following impacts:

Options	Legal procedures	Costs/budget	Implementation effort	Effectiveness/efficiency/coherence
Option 1	Would require an international agreement among several or all Contracting Parties	Costs of 3-5 judges and support staff; in an initial test period, the tribunal could be set up on an ad hoc basis and with registrar services provided by the Secretariat	Minimal in all Contracting Parties, as most of them are already under the jurisdiction of international courts and arbitration tribunals (ECHR, WTO, ICSID etc.)	Potentially very effective in improving the investment climate and thus coherent with one of the main objectives of the Treaty; However outside the structures of the Treaty; Would improve enforcement gap indirectly and non-systematically, and not address lack of

				access to justice against Decisions by the institutions
Option 2	Would require changes to the Dispute Settlement Procedures by Procedural Act of the Ministerial Council (by unanimity), possible reference in the Treaty	Costs of increased activities of Advisory Committee, estimated at around € 100.000	Increased activity of the Permanent High Level Group	Potentially more efficient than status quo, but does not away with the political bias of "judicial decision-making" in the Energy Community; Would not address lack of access to justice against Decisions by the institutions; Potentially unfit to address disputes initiated by investors and NGOs
Option 3	Would require the creation of a new institution through an amendment of the Treaty (Article 100, no ratification required)	Costs of 3-5 judges and support staff; in an initial test period, the tribunal could be set up on an ad hoc basis and with registrar services provided by the Secretariat	Minimal in all Contracting Parties, as most of them are already under the jurisdiction of international courts and arbitration tribunals (ECHR, WTO, ICSID etc.)	Potentially very effective in establishing a genuine judicial function for the Energy Community and ensuring homogeneity within the pan-European energy market; Would improve enforcement record, access to justice against Decisions by the institutions and cooperation with national courts; Potentially unfit to address disputes initiated by investors and NGOs.
Option 4	Would require amendments to Article 92 of the Treaty (Article 100, no ratification required)	Costs of sanctions for individual Contracting Parties could be offset by decreasing all Parties' budget contributions accordingly	In line with the EU methodology, a number of factors including capability to pay would be taken into account when calculating lump sums and penalties	Potentially very effective in improving the enforcement record in the Energy Community and ensuring homogeneity within the pan-European energy market; Could be coupled with Options 1-3

Questions to the stakeholders:

29. Do you agree with the assessment of the above options?
30. Do you support the status quo or Option 1, 2, 3 and/or 4? Please note that these options are not mutually exclusive.
31. Do you consider that additional options need to be added? Which? What are the impacts in comparison to status quo?

II. Conditionality of financial assistance

Proposals by the High Level Reflection Group: 1.3, 2.5

The High Level Reflection Group also recommended that;
“the financial assistance should be conditioned on implementation of the acquis"

"A mandatory (non-binding) opinion of the Energy Community Secretariat should be introduced by donors in their procedures”.

Status quo: The conditionality principle has been in the focus of the International Financing Institutions (IFIs) for a very long time.

Questions to the stakeholders:

32. Whilst the issue of conditionality of financial support for non-EU stakeholders is at the discretion of the Commission, the stakeholders are invited to share their opinions and views in respect to this proposal of the HLRG.

Public Consultation Submitted Responses

I. Encouraging Private Enforcement

26. Do you agree with the assessment made in the Analytical Paper?

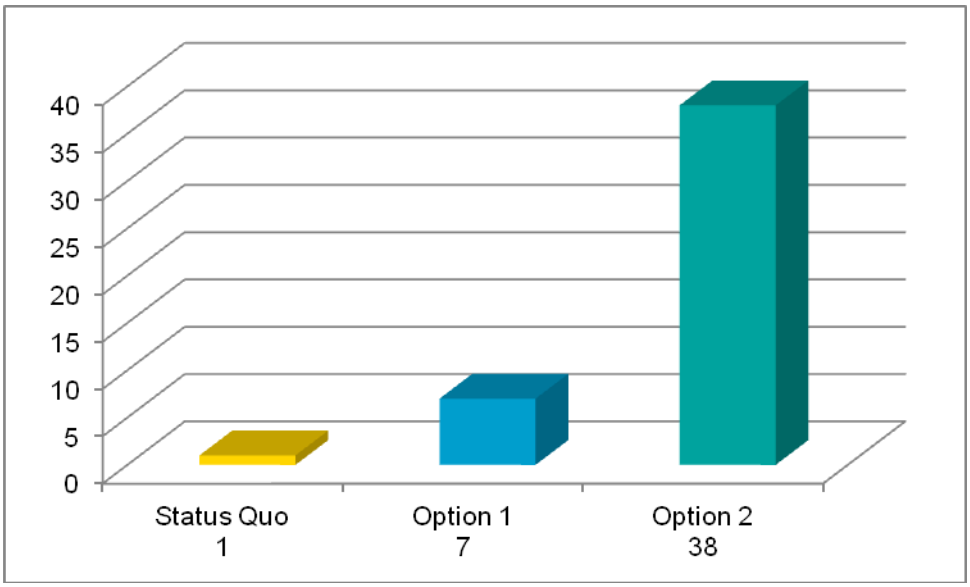
	YES 13 / NGO 29		NO 2		DO NOT KNOW 1 / NGO 1

Total number of responses: 46

Comments
Governments/Serbia
The context within which one should stimulate private enforcement, the method for its implementation, as well as the subject of complaints in case of dispute is unclear. There are only few possible cases where one could raise the question of direct enforcement of the Treaty at all (Article 41, Article 18, etc.) while the decisions of Energy Community bodies cannot be subject to private enforcement since, taking into consideration the nature of the Treaty, they relate to obligations of Contracting Parties to adjust their legal framework to the implementation of the relevant acquis. In addition, it is not clear how one could determine that the provisions are „sufficiently clearly defined and unconditional“ in order to decide formally on the subject of the decision in a possible dispute. The method of settling disputes in the field of investments and investors' protection in general, as well as in the energy field is subject to other legal acts, documents, conventions and international and bilateral agreements which are concluded by Contracting Parties and this should not be connected to the Treaty establishing the Energy Community. There is no doubt that the Treaty establishing the Energy Community is a separate international agreement which causes certain legal effects and which is a constituent part of the legal framework of the Contracting Parties. Therefore, the Treaty can itself represent the source of the relevant law in case of possible disputes, to the boundaries of the law enforced to the given dispute.
Article 6, para 2 of the Constitution of RS reads “Generally accepted rules of the international law and ratified international treaties shall be part of the legal system of the Republic of Serbia and they are directly applicable. Ratified international treaties may not be in noncompliance with the Constitution“. Thereby, without the amendments to the Constitution, only the proposed status quo would be acceptable. On the other hand, one has to bear in mind that that only ratified international treaties represent the constituent part of the legal system of the Republic of Serbia which is why the legal nature and legal effect of the decisions of the Ministerial Council on the amendment of the Treaty could be prejudiced. On the other hand, it is possible to after a private appeal of a person/company from the Energy Community against a person/company from the European Union due to incompliance with the Treaty establishing the Energy Community, is filed with the Luxembourg Court, the Court pleads as incompetent for the case. Another option is that the Court could have the European law prevail in that case, not the Treaty establishing the Energy Community or the Court could say that the provisions of the Treaty are not directly applicable which would be an example of discrimination and in conflict with the right to equal judicial protection and legal actions.

We consider the EnC Treaty to be a classic international treaty. The counter-arguments have not been provided. The characteristics of the EnC Treaty which could make it sui generis treaty in comparison to classic international treaties were not provided as well (content, legal effect, etc.). One could make a specific treaty out of it, but the purpose of that was not well-grounded.

27. Which of the three options do you support the most?
Number of response: 46, Multiple responses: 1



28. Do you consider that additional options need to be added? Comments

Academia
Poland
I hesitate between options 1 & 2. Option 2 could potentially discourage observer countries or prospective members of the Energy Community from joining it quickly.

Governments
Serbia
Status quo option is defined in a completely inappropriate manner, especially in case of assessment of the lack of awareness of Contracting Parties on the obligations arising from the Treaty. In addition, is completely inappropriate to assume that "higher awareness" on that should be on the side of potential investors or experts no matter on which grounds the experts were engaged in considering the subject of the assessment, while neglecting the internal necessity of the Contracting Parties to stimulate private investments in the energy sector to the maximum level provided by the Treaty. All the Parties were completely familiar with the issue of legislation hierarchy and the place of the Treaty in the legal systems of Contracting Parties at the time the Treaty was concluded. If there is any ambiguity about it, it cannot be overcome by any amendments to the Treaty since it is directly connected to constitutional categories of hierarchy of legal acts within Contracting Parties' legal systems.

Czech
In its non-paper on the future course of the Energy Community from October 2014 the Czech Republic stated that stronger pressure on enforcement of the acquis implementation in real terms

should be exerted. Option 2 represents the most efficient measure in this case as it would give a clear and binding signal to authorities and courts to apply the Energy Community law.

Romania
We support option 2; we consider it is the only one that could deliver a clear signal for the necessity of implementing the agreed legislation within the EC Treaty in a homogenous manner.

United Kingdom
We support Option 1 as a means of increasing the effectiveness of Energy Community law. Option 2 could be considered as a way of signalling to authorities and courts the need to apply Energy Community law.

Industry
Eurogas
The incentive to progress towards a strengthened framework for enforcement and dispute settlement should lie in its importance as a criterion in the accession negotiations.

EVN
Option 1 seems to be a good approach to gradually develop the acceptance and to gain experience in cooperation and further legal needs. Probably the gap between general European law and transposal in everyday practice may rise problems or even (political) risks in legal enforcement. The recent developments in a neighbouring EU MS demonstrates the limited protection of external investors even within the EU. The arbitrary interference by political, administrative and legal institutions there urgently has to be terminated and replaced by fair treatment. Therefore the success of such an institutional development also depends on the legal practice within the Union in application of Art. 6 of ECHR. This has to be seen as an important obligation as the electricity market only will become functioning on a regional level comprising MB and CPC's.

NIS
We disagree with the assessment made in the Analytical Paper, which skillfully plays around well-known and accepted concepts in the EU legal order (primacy, direct effect, state liability) which are however not applicable to the Energy Community in the manner described in the Analytical Paper. It goes without saying that primacy of the Treaty establishing the Energy Community, as a ratified international agreement, is undisputable. However, this does not mean primacy of “Energy Community law” if this notion entails parts of the acquis which are replicated in the framework of the Treaty, given that the directives and regulations are not acts of the Energy Community, but of the EU. Hence, the acquis that are part of the “Energy Community law” have no direct effect either (even in the EU regulations have direct vertical and horizontal effect, while directives can only have direct vertical effect if not transposed). Certain provisions of the Treaty, as an international agreement to which the EU is a party, however can have direct effect if sufficiently clearly defined and unconditional (e.g. Article 41). The same applies to Decisions of the Ministerial Council of the Energy Community (and again not to the parts of the acquis which they might be referring to). The concept of State liability is also not under question in relation to obligations overtaken (by ratifying the Treaty), but not implemented by the Contracting Parties. Any individual suffering damage stemming from the non-performance of obligations that the State overtook in an international agreement could seek compensation (state liability) if they can prove that the agreement conferred specific rights to them and that there is a causal link between the failure of the State to honor its obligation and the suffered damage. The same applies to the Decisions of the Ministerial Council of the Energy Community. We therefore do not support neither Option 1 nor Option 2 (while status

quo is not properly defined) as described in the Analytical Paper, and find that it is only viable to encourage private enforcement of the Treaty within the applicability of the principles of primacy, direct effect, and state liability as described herewith.

Regulator
E-Control
I believe that Option 1 is the right way forward. It addresses any potential lack of certainty about direct applicability and supremacy of Energy Community law. However, I doubt that this step is enough to tackle the problem. In order to remedy the problem additional steps have to be taken. One additional option could be the possibility for national courts to address a judicial institution established at the Energy Community level in a procedure corresponding to Article 267 TFEU. In addition, special programmes by the Energy Community offering trainings to national judges in Energy Community Law could be launched. Furthermore, the Energy Community could develop concepts on how the rule of law in Contracting Parties can be improved.

II. Strengthening the framework for enforcement and dispute settlement

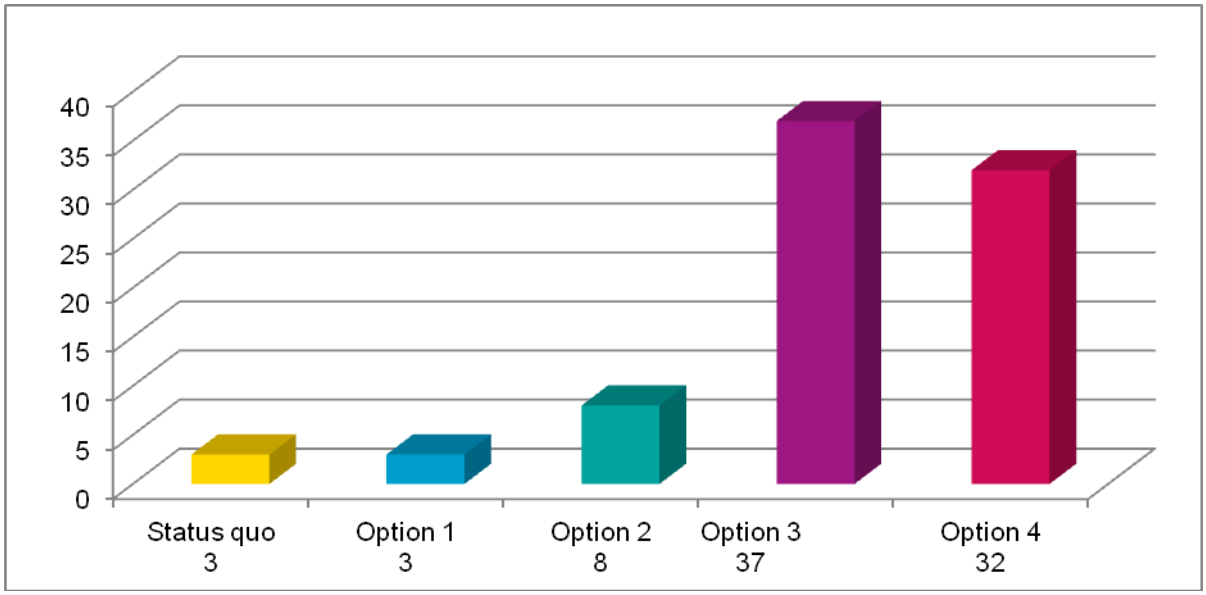
29. Do you agree with the assessment made in the Analytical Paper?

	YES 12 / NGO 28		NO 2		DO NOT KNOW / NGO 2

Total number of responses: 44

Comments
Governments*/* Serbia
To a great extent, no. The assessments were made on two completely different situations – and it seems these two are confused: a) settling disputes on obligations arising from the Treaty – which is definitely only the issue of relations between the Energy Community bodies and a Contracting Party which does not comply with the obligations – and it is regulated by the Treaty and b) regulating possible disputes against decisions of the Energy Community which, again, even if one assumes that the decisions of the Energy Community are subject to direct court protection, is connected to violation to Article 6 of the European Convention on Human Rights. It is unclear why this is connected. As it was mentioned in several replies above, the Treaty establishing the Energy Community is a specific international treaty regulating issues in the field of implementation of acquis only in one segment – Network Energy field while it is not the case with all applicable EU rules which include legal relations and legal systems of Contracting Parties. This is why any analysis which has the rules and practice in the EU, EEA and similar communities as its starting point represents a completely wrong approach for consideration of possible improvements in the functioning of the Energy Community. It would require crucial amendments to the Treaty and the establishment of considerably different relations between the Parties. That, for sure, would ask for the ratification of a new treaty.

30. Do you support status quo or Option 1, 2, 3 and/or 4?
Number of responses: Multiple responses: 30



31. Do you consider that additional options need to be added? Comments?

Academia
Poland
Depending on the (re)definition of the Energy Community's overreaching goal & its role in current EU energy policy & its neighbourhood, I'd go for option 3 combined with option 1 (if feasible), OR option 4 combined with option 1.

Governments
Serbia
Regarding the resolving of disputes in accordance with Article 92 of the Treaty, the status quo or Option 2 which will subsequently be discussed further, after clarification of open issues that are listed below. In other parts, we believe that there is no valid proposal to provide the statement for. We support the status quo because the Energy Community has a temporary character and its duration is uncertain because it depends on the speed of European integrations of each Signatory. The foundation and the time required for the formation of the practice thereof would be redundant, costly and inefficient, bearing in mind the temporary nature of the energy community. Making analogies with the EU institutions is not adequate since EU institutions are meant to last indefinitely.
In the event that a member state does not fulfil its contractual obligations in respect of the implementation of the acquis, it should be borne in mind that in this case the most effective "sanction" would be acceleration of European integration of the member state, since in case of its accession to the EU it would be subject to the sanctions of EU institutions which have an effective mechanism to force the member states to apply regulations.
In case of the previous assessment that there may occur a non-fulfillment of any obligation by any of the Parties, the specific situation and the needs of that Contracting Party should be considered and all types of assistance in accordance with the Treaty should be offered. We believe that this is alignment with the purpose of the existence of this Treaty and of the Energy Community institutions, while any kind of sanction or some other form of coercion are contrary to this basic idea.
Option 2 opens new questions and conclusions:

Will the decision on this case within the PHLG will be made as in the case of the Ministerial Council or the options in this regard will be subsequently considered (we refer to the application of Article 91)?
In what way will the decisions on the opinions of the Advisory Committee be made within PHLG?
In both cases (under 1 and 2), will the representative of the state about which the decision is to be made have the right to vote or not?
It is not clear what PHLG will do if addressed for example by an NGO with an example of the case of incompliance??
Are the national courts in any way prevented, at this point, from asking for the opinion of any of the institutions of the Energy Community? Who decides on the validity of that opinion? Will the Ministerial Council in this case, be denied the right to decide? Added value of the proposal is unclear.

FYR of Macedonia
The options for establishing ad hoc court or court of justice should not be considered in the frame of the Energy Community because it cannot be seen as a similar system with the European Union and should not be further discussed in that way. The Dispute Settlements procedure should be further applied which means that Option 2 is preferable. The decisions taking and measures taking should be left within the Ministerial council. Sanctions should not be set as penalties in form of money paying having the current socio-economic situation of the countries in the region.

Czech Republic
We agree that current regime cannot properly deter Parties from violating the European energy law, as it envisages only political sanctions. However, we do not see any added value in establishing investment court (Regional Investment Court or Court of Justice) among Contracting Parties. It would necessarily lead to financial burden on all stakeholders (Energy Community countries, EU as the main contributor to the budget...). We should also avoid creating duplicities within already existing international organisations – most of the Contracting Parties are already under the jurisdiction of international courts and arbitration tribunals (ECHR, WTO, ICSD...). Option 2 would increase financial burden but probably would not bring adequate results. Therefore we opt for Option 4, however, restricted to measures such as blocking the disbursement of funds by other Parties to the Treaty. Additional financial sanctions or blocking the access to the international financial institutions funds could have exactly the opposite effect on Contracting Parties – withdrawing from the Treaty. We should positively motivate Contracting Parties to implement requested legislation, highlighting its benefits in the first place and only then impose potential financial sanctions mentioned above.

Poland
The main shortcoming in the Energy Community is a gap between legal commitments of the Contracting Parties and implementation in practice. The Parties are obliged to implement decisions and Treaty obligations addressed to them within required period of time. Even though the Treaty legally binds the Contracting Parties in terms of their obligations under the Treaty, there is a lack of enforcement instruments that could be used while the party fails to comply with the Treaty obligation. The only sanction, envisaged in the Treaty is that the Secretariat, Regulatory Board or the Ministerial Council may suspend certain rights deriving from application of the Treaty, including the suspension of voting rights and exclusion from the meetings or mechanisms provided for in the Treaty. Bearing in mind a weak character of the enforcement mechanisms in the Treaty, there is a need to consider the introduction of a new legal instrument/procedure, which would encourage full and timely implementation of the EU acquis in the Energy Community countries.

PL believes that it is a right time to consider an establishment of a Court of Justice which would have an jurisdiction over the Contracting Parties in the context of the regulatory and market reforms being undertaken in those CPs. Due to the fact that the creation of the Court of Justice would require unanimity under Article 100 of the Treaty (without further ratification), it seems to be appropriate solution to improve enforcement mechanisms in the Treaty. Should however this option be difficult to implement alternative solutions may be developed.
An additional possible option that would not require significant amendments to the Treaty is proposal in PL response to this question 31: Enlarging the competences of the European Court of Justice over the Contracting Parties. In case it will not be possible to establish the Court of Justice for the Energy Community, the European Court of Justice might be tasked with interpreting EU law and ensuring its equal application across all the Energy Community Contracting Parties. The European Court of Justice would then have a competence to take actions related to the failure of fulfilling the obligations under the Energy Community Treaty.
Alternative preference:
Due to the fact that CPs of the Energy Community (despite Serbia and Montenegro) are the Contracting Parties of the Energy Charter Treaty, it is reasonable to convince all the CPs to become a Parties to the ECT as soon as possible to provide all the investors planning to bring Foreign Direct Investments to the Energy Community Contracting Parties an appropriate level of investment protection.
The Energy Charter Treaty contains a comprehensive system for settling disputes on matters covered by the Treaty, which is a part of the EU *acquis*. Foreign investors are protected against the political risks, such as discrimination, nationalization and expropriation, breach of investment contracts. In the context of the report of HLRG, the Investors have raised the political risks as their main concerns. The ECT could be useful here so the potential link between the Energy Charter Treaty and the Energy Community Treaty could be addressed.

Romania
Option 4 would probably represent the most efficient solution, but it would imply a high degree of involvement and acceptance from the CP

United Kingdom
We would have concerns over setting up a new legal mechanism and would prefer to use an existing mechanism that could extend its competence to cover the Energy Community. Option 2 is a more effective means of dealing with disputes than the status quo but we accept that it does not deal with all the issues related to disputes. Any action in this area would need to accept the fact that EU MSs are subject to the exclusive jurisdiction of the ECJ. While the UK agrees that stronger enforcement mechanisms are necessary for persistent breaches, it is important that the focus should be on helping the Contracting Parties to meet their obligations under the Treaty.

Industry
EVN
First this infringement procedure and sanctioning should provide satisfying results within the EU. As already mentioned the legal enforcement will be questionable as long as the EU law is not transferred to market rules defining the specific obligations in the IEM. For instance, it is not possible to fully open the market for consumers without a transparent and liquid wholesale market on a regional level. The regional level is indispensible because of the capacity and electricity volume deficits in some of the CPC's. If this market transparency is not provided, the price risk will lead to political instability, taking into account the missing economic resilience of a big share of consumers, where currently about 50% have to be declared as vulnerable.

NIS
The status quo assessment in the Analytical Paper undermines the political approach to sanctions. In our view, the closer the Contracting Party is to EU membership the heavier the weight of this approach. Option 1 is a feasible approach, yet one that falls far away from the structures of the Energy Community – even the Analytical Paper recognizes this by stating that the Regional Investment Court would "not be limited to Network Energy". Nothing prevents the Contracting Parties to the Treaty to establish such a court if they were to identify a common interest for it. On top of that, the Energy Community framework of dispute settlement is not in the realm of investor disputes (although they can approach the Secretariat with complaints), but enforcement of obligations overtaken by ratifying the Treaty (stemming out of the Treaty and the Decisions of the Ministerial Council) by the Contracting Parties. Options 3 and 4 are with inherent lack of legitimacy for deciding on financial sanctions – the Contracting Parties do not have a parallel to the EU budget – into what budget would they be paid into (Energy Community Budget?)? Blocking of funds as an alternative does not seem to be rational as a general solution (maybe only targeted at funds related to the specific area to which lack of implementation is related to). Option 2 as a concept seems to be the most workable one at the present moment, although some of the proposals do not seem to bring too much added value (PHLG to be the relevant decision making body in situations where the dispute is against a particular Contracting Party; the right of private bodies to address the Secretariat with complaints already exists; the courts cannot be "granted" the right to request advisory opinions, but rather encouraged to do so, as there is currently nothing preventing them to do so; strengthening the weight of the Advisory Committee opinion is advisable, yet the proposal would need to be revised, as we are of the opinion that the Ministerial Council should remain the decision-making body) and should thus be thoroughly revised.

Regulator
E-Control
The Energy Community Treaty neither foresees a Court of Justice competent to deal in the last instance with cases of Energy Community law enforcement through various procedures, nor offers legal redress for NGOs and investors. In addition to that, the sanction regime is clearly ineffective. I agree with the High Level Reflection Group's conclusion that the export of European legislation to third countries has to go hand in hand with the export of institutions and procedures aiming at ensuring a homogenous application and enforcement. In order to strengthen the framework for enforcement and dispute settlement I support the implementation of all proposed options. As a first step, Option 2 should be implemented immediately by amending the current Procedural Act on Dispute Settlement Procedures. In the framework of Option 1, a concept for the establishment of a regional investment court among Contracting Parties should be developed by the Secretariat together with stakeholders. In addition to that, the Ministerial Council should endorse the establishment of a Court of Justice similar to the model of the EFTA Court.

III. Conditionality of financial assistance

32. Whilst the issue of conditionality of financial support for non-EU stakeholders is at the discretion of the Commission, the stakeholders are invited to share their opinions and views in respect to this proposal of the HLRG. Please, comment below

Academia

Poland
I think the conditionality of financial support based on the implementation of the acquis (or their specific provisions) is a very good idea.

Unknown
The Energy Community should support countries with their energy strategies, screening them against EU 2030 targets and 2050 climate and energy goals, in order to ensure that only appropriate investments leading to decarbonisation and the sustainable use of renewable resources are encouraged. This can be done through coordination of technical assistance/grants from EU governments and the EBRD to make sure the studies and consequent energy strategies are conducted professionally and to increase public participation in their preparation. Incentives for the implementation of the acquis should be introduced through conditioning of disbursement of EU funds and facilities on compliance. Moreover, it is crucial not to just promote investments per se, but carefully chosen ones. This means 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.

Serbia
The Energy Community should support countries with their energy strategies, screening them against EU 2030 targets and 2050 climate and energy goals, in order to ensure that only appropriate investments leading to decarbonisation and the sustainable use of renewable resources are encouraged. This can be done through coordination of technical assistance/grants from EU governments and the EBRD to make sure the studies and consequent energy strategies are conducted professionally and to increase public participation in their preparation. Incentives for the implementation of the acquis should be introduced through conditioning of disbursement of EU funds and facilities on compliance. Moreover, it is crucial not to just promote investments per se, but carefully chosen ones. This means 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 mediumlong term.

FYR of Macedonia
It is well known that in the region the financial assistance is mostly used for transposition and implementation of the acquis. So it might be that proposal of the HLRG can have opposite effect. The opinion of the Secretariat can be used by the providers of the financial assistance but it should not be mandatory due to the fact that loans should be paid by national authorities or companies that operate in national economies.

Civil society
Turkey
The EU acquis (not only in the energy sector) is to a large extent designed for the developed countries which have developed markets. Implementation of this acquis in the developing countries with less liberalized and immature markets is not an easy task. The financial assistance provided by the EU is a very functional instrument to enable Contracting Parties to get advance in the adoption and the implementation of the EU acquis. However it should also be taken into account that this instrument cannot always be sufficient to achieve the targeted objectives. Therefore it would be oxymoronic to condition something which is already set to achieve the same condition.

Governments
Serbia

No. We believe that the introduction of the obligation for Investors to include the opinion of EC into their procedures would not contribute to a more efficient realization of investments which are necessary in order to comply with the requirements of the acquis and requirements of the EC Treaty.
The question is not quite clearly formulated, nor sufficiently elaborated to enable providing the opinion about it. We believe that the proposed measure may have an adverse effect, having in mind that the financial aid and donor support are more needed by the member state which faces difficulties in the implementation of the acquis in order to overcome the problems.
It should be borne in mind that, for example, without a built gas pipeline infrastructure, and interconnected neighbouring gas systems - unprofitable projects whose implementation is conditional by financial assistance, it will not be possible to implement measures and upgrading of energy market liberalization in the field of natural gas.

Albania
EU should neither directly nor indirectly continue financial support to the energy sector of a Contracting Party which has been declared in breach of its obligations under Article 91 and 92 of the Treaty and all relevant donor institutions should be requested to ask the Secretariat for an opinion before granting financial support to the energy sectors of a given Contracting Party.

Czech
Conditionality of financial assistance is closely linked to the previous question. We cannot provide only the carrot without a stick. The amount of provided finances which would be proportional to the level of conformity with acquis could become such a stick. It would also solve the problem of enforcement of rules without the need for imposing further financial sanctions or establishing additional institutions such as the Court of Justice.

Poland
Poland generally supports maintaining status quo option which says that the conditionality principle has been in the focus of the International Financing Institutions (IFIs) for a very long time and should remain as it is.
Comments:
Mandatory (non – binding) opinion of the Energy Community Secretariat could be also discussed between the International Financial Institutions and the Energy Community Secretariat in order to find out whether this particular element in the procedure would indeed improve the whole process of financing infrastructure projects.

Romania
We support this approach, taking into consideration especially the substantial efforts made by certain MS in comparison to the modest results registered in others. Conditioning the financial support on the implementing of acquis (not only adoption) could constitute such an approach.

United Kingdom
Financial assistance from the donors should be conditional on implementation of the acquis.

Industry
EVN
Financial assistance will be necessary but to clarify the conditions a direct participation of EU institutions in tackling the unresolved problems is inevitable. To offer consultancy via TAIEX cannot replace expertise to serve not only consultancy and knowledge support but also reliable evaluation

of needs and limits in assistance. Enforcement would be more successful in a cooperative partnership aiming to make the power infrastructure proof for market and future.

NIS
We agree on a general note with the recommendation that “financial assistance should be conditioned on implementation of the acquis”, with a caveat that in a lot of instances the financial assistance is needed exactly for implementing the acquis (thereby it cannot be conditioned by it, but rather be set as the goal to achieve). Sometimes financial assistance takes on the form of technical assistance with the same purpose – building the capacity for proper implementation of the acquis.

Donors
GIZ: Both suggestions are serving a highly appreciated goal: a harmonized and improved support towards the Contracting Parties. The specification of the second suggestion, that the opinion of the ECS is not binding, is appreciated as well, because the relation between bilateral and non-European multilateral donors on one side and Contracting Parties on another side should not be limited.
However, it would be just consequent that the ECS has a more significant role towards support given by European institutions. Furthermore, voluntary agreements between donors and the Energy Community/ECS on support towards Contracting Parties could be envisaged (see also answer towards question 58).

NGOs
Same response by 25 NGOs
The Energy Community should support countries with their energy strategies, screening them against EU 2030 targets and 2050 climate and energy goals, in order to ensure that only appropriate investments leading to decarbonisation and the sustainable use of renewable resources are encouraged. This can be done through coordination of technical assistance/grants from EU governments and the EBRD to make sure the studies and consequent energy strategies are conducted professionally and to increase public participation in their preparation. Incentives for the implementation of the acquis should be introduced through conditioning of disbursement of EU funds and facilities on compliance. Moreover, it is crucial not to just promote investments per se, but carefully chosen ones. This means 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.

We support the conditionality principle, as well as the introduction of mandatory (non-binding) opinion of the Energy Community Secretariat by donors in their procedures. However, the Energy Community should support countries with their energy strategies,screening them against EU 2030 targets and 2050 climate and energy goals, in order to ensure that only appropriate investments leading to decarbonisation and the sustainable use of renewable resources are encouraged. This can be done through coordination of technical assistance/grants from EU governments and the EBRD to make sure the studies and consequent energy strategies are conducted professionally and to increase public participation in their preparation. Incentives for the implementation of the acquis should be introduced through conditioning of disbursement of EU funds and facilities oncompliance. Moreover, it is crucial not to just promote investments per se, but carefully chosen ones. This means 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.

Regulator
E-Control
It has been proven that conditionality of financial assistance with implementation of and compliance with the acquis is applied in a non-systematic manner. In the light of this, I believe that the energy sector of a Contracting Party, which has been declared in breach of its obligations under Article 91 and 92 of the Treaty, should not further receive direct or indirect support of the European Union. Furthermore, the Energy Community Secretariat could act as a central information point for donor institutions, by providing an opinion before financial support to the energy sectors of a given Contracting Party is granted.

General Comments E. Better enforcement and dispute settlement
EURELECTRIC
The question of enforcement is key. We understand that the EnC Secretariat is not encouraged by the results of the existing mechanism, as they are largely depend on Contracting Party readiness to cooperate and political situation in general. However, establishing additional arbitrage or court procedure might not be the most efficient solution. Financial assistance is already provided under the EU Neighbourhood policy, subject to conditionality.

F. Improving the Investment Climate

Proposals by the High Level Reflection Group: 1.3, 2.1, 2.2, 2.3, 2.5, 2.7, 2.8, 2.9.

I. Increase and managing of available funding

The High Level Reflection Group recommended that "More funding should be made available in bilateral and multilateral support, as well as in support from international financial institutions (such as the World Bank etc.) and the EU, for technical assistance as well as for investments (at least for Projects of Energy Community Interest)." and that "*A mandatory (non-binding) opinion of the Energy Community Secretariat should be introduced by donors in their procedures*".

The total investments in the Energy Community 1996-2014 amount to 4.598 billion Euros according to the Energy Community Secretariat. For the Energy Community Contracting Parties the vast majority of assistance comes from European funds in form of Instruments: Pre-accession instrument: IPA II 2014-2020 for the Western Balkans, and respectively European Neighbourhood Instrument (ENI) 2014-2020. A short description of these is provided in the Annex to this paper. WBIF (expand acronym) contracted 80.7 Million Euro worth of technical assistance for energy investments preparation from 2009 to 2013. This instrument continues to operate at least in the IPA II programming period until 2020 and it is expected to benefit from more funds available for supporting infrastructure of regional importance. The grants approved by NIF for energy investments between 2008 and 2014 amounted to EUR 31.5 million in Moldova, and to EUR 18.7 million in Ukraine. Note that these figures refer to all energy infrastructure projects supported by these mechanisms, including some PECIs.

Questions to the stakeholders:

33. The stakeholders are invited to share their opinions and views in respect to these proposals of the HLRG, taking into consideration that the level of financing of the EU Institutions and policies is pre-set for the period 2014-2020.

II. Investments-friendly area

The High Level Reflection Group requested that "An "investments-friendly area" must be created by reducing risks – and increasing transparency and predictability – on the selling of energy within the territories of Contracting Parties, also by sharing advice and experience on the regulatory frameworks, and planning and managing a coherent transition to an integrated market ".

Furthermore the Report of the HLRG notes that "Permitting procedures and criteria should be harmonized, made as clear and transparent as possible, and a maximum time for the granting of permits or authorizations by any competent authority should be established". Investors in the Energy Community Contracting Parties often complain about non-transparent awarding of concessions and permitting procedures. The non-harmonized permitting procedures and criteria

are one of the key obstacles to investment and development of the energy markets in the Energy Community. The analysis below describes the permitting procedures in the eight Energy Community Contracting Parties, based on which conclusions are proposed.

Furthermore the High Level Reflection Group requested that “the Secretariat, or a separate entity overseen by the Energy Community, should mobilize, on a contractual basis and without the need to hire a permanent team, the project development and the financial expertise required to enhance the quality and preparedness of priority projects, so that they may stand a better chance to obtain financing.”

The majority of investors in the Energy Community Contracting Parties have signalled that they are most concerned about the political and economic risks, and less about project specific risks. In these two categories, the subcategories that most concern them are: *Policy and regulatory,* and *Market* respectively*.* In order to mitigate the policy and regulatory country risk, Contracting Parties need first to increase predictability and transparency of their legal and regulatory framework. The following options are proposed to address these risks, given that the status quo would mean to continue without any changes.

Status quo: No additional measures are undertaken.

Option 1 (Level I proposal): Undertake a number of measures under current Treaty to improve investment climate:

First, it is proposed to increase the transparency of the business environment. This can be achieved by properly transposing the *acquis* under the Treaty and making all financial flows (subsidies, cross-subsidies, regulated prices) that an investor faces when investing in the Contracting Parties transparent. Secondly, it is proposed to streamline the process and limit the duration for the permitting procedure. This could be achieved by the adoption of Regulation (EU) no 347/2013 of the European Parliament and of the Council of 17 April 2013 on guidelines for trans-European energy infrastructure with certain adaptations, in the Energy Community.

Thirdly, it is proposed to improve manageability of the process to implement the Projects of Energy Community Interest. Establishing an Implementation and Monitoring Plan would create a plan with target timelines for the permitting procedures for all prioritised projects; The Secretariat could create an IT platform for monitoring the implementation of PECIs; The cost is estimated at approx. 20,000 Euro . The definition of a reference permitting process foresees the creation of a generic procedure outlining the major milestones and minimum contents of procedures. This generic procedure could be developed by the Energy Community Secretariat with technical support from a Consultant. The cost of the technical assistance may be in the range of 100,000 Euros financed through the Energy Community budget.

Streamlining environmental assessment procedures: A Guidance Document "Streamlining environmental assessment procedures for energy infrastructure 'Projects of Common Interest' (PCIs)" was prepared by the European Commission in July 2013, to help EU Member States improve their permitting procedures and could be adapted for the Energy Community purposes..

Fourthly, it is important to empower authorities. This could be through the creation of a one stop shop single authority responsible for handling a single permitting procedure for the construction and operation of a project. This measure was also retained in the Conclusions of the Ministerial Council meeting of 23 September 2014 and is part of the Regulation 347/2013/EU. Furthermore,

the integration of spatial planning into the permitting procedure could mean that spatial planning concerns would be covered in the overall permitting procedure. Improving authorities' access to experts aims to ensure that the authority responsible for the handling of the permitting procedure has sufficient access to experts and that this access is flexible. This is particularly relevant for phases of the permitting procedure requiring more resources or specialised expertise. EU Delegations could set aside, from the national IPA funds, an ad – hoc technical assistance allocation for local and central authorities, to engage short term expertise that could help with technical advice in case of permitting of energy projects.

The cost for the Contracting Parties should be very small and only related only to the organisation of the process, but the benefits could be substantial.

Fifthly, it is proposed to improve communication and address public opinion: A communication strategy focusing on the necessity and benefits of extending energy infrastructure in the EU and the Energy Community could aim to make the link clear between energy infrastructure expansions (especially prioritised projects), security of supply and the integration of renewable energy into the Energy Community energy mix. It could target three different groups: the general public, stakeholders directly affected by prioritised projects on a local level, and the authorities responsible for permitting the prioritised energy infrastructure projects.

Sixthly it is proposed to facilitate project-specific technical assistance. A range of technical assistance services could cover tailored support on specific aspects of the regulatory environment identified by the Secretariat as being problematic. Assistance could include legislative analysis, advice on drafting primary and secondary legislation, development of detailed guidelines for implementation of EIA and SEIAs in energy subsectors and of technical and environmental standards, elaboration of procurement procedures etc.

Seventhly, it is proposed to strengthen coordination among Energy Community Institutions and investors. The Investors' Advisory Panel managed by the Secretariat provides a unique forum for securing input from actual and potential private sector investors in the Contracting Parties in a coordinated manner. In addition to an exchange of information and updating on Energy Community initiatives and progress, the meetings of this panel could be designed to focus on specific topics of particular interest, for which discussion papers could be prepared by Secretariat and or the investors.

In comparison to maintaining status quo, implementing option 1 could have following impacts:

Options	Legal procedures	Costs/budget	Implementation effort	Effectiveness/efficiency /coherence
Option 1	National legislation might require changes; Extension of the acquis under current procedures	Medium See figures in the text above	Medium	Very effective, efficient and coherent

Questions to the stakeholders:

34. Do you agree with the above assessment/proposals?
35. Do you support the status quo or (a) Option 1 in full, or (b) particular aspects of Option 1; if (b), which aspects do you support?
36. Do you consider that additional options need to be added? Which? What are the impacts in comparison to status quo?

III An Energy Community Risk Enhancement Facility

The High Level Reflection Group suggested "the establishment of an Energy Community Risk Enhancement Facility (ECREF) …, to address risks such as breach of contract by public bodies, retroactive measures, discriminatory taxation, payment default by public entities, and similar risks which are a strong deterrent to both lenders and investors, and are difficult to mitigate effectively."
In terms of securing funding to close a financing gap, the easiest form of risk mitigation is a straightforward co-financing grant that reduces the amount of funds that need to be obtained through borrowing. The scale, scope and deal flow from the Contracting Parties would not make a dedicated Energy Community facility viable. Therefore the only alternative for this proposal of the HLRG seems to be meant, to seek to "piggyback" on existing or future EU funds such as Connecting Europe Facility, Marguerrite Fund and European Fund for Strategic Investments (EFSI).

As regards new EU funds, the Commission announced on 26 November a € 315 billion Investment Plan[xxv]. It announced creation of a new European Fund for Strategic Investments (EFSI) which will be set up in partnership with the European Investment Bank (EIB). The Fund will have multiplying effect building on a guarantee of € 16 billion from the EU budget, combined with € 5 billion committed by the EIB. Energy networks and renewable energy are in the focus of this Plan.

Questions to the stakeholders:

37. What is the view of the stakeholders regarding the above proposal of the HLRG?

IV. Platforms of complementary projects

The HLRG recommended that "The Energy Community could establish "platforms" of complementary or similar projects which reinforce each other (e.g., an "energy security project" or a "networks enhancement project" involving several pieces of infrastructure in several Contracting Parties or neighbouring states), perhaps structured according to a build-operate-transfer model, which could be credit-enhanced as a whole through the ECREF".

This proposal is being partly covered by establishment of the list of Projects of Energy Community Interest (PECI), in which some of the mutually reinforcing electricity transmission or generation projects have been clustered under the same PECI label.

Status quo: Implementation of PECI projects.

Option 1 (Level I proposal): Agreement of Sub-Set of Priority Projects from the PECI list.
Following joint consultations of the Contracting Parties, IFIs, interested investors and the European Commission, a sub-set of priority PECI projects that can be considered "investment ready" could be agreed. "Investment ready" in this context would mean that preparatory work for the investment has been completed – e.g. feasibility study, Environmental Impact Assessments, (at least preliminary) cost benefit analysis - and that there is a positive assessment from external financiers that the project is financially viable albeit with a financing gap.

Option 2 (Level I proposal): Clustering projects and improve monitoring of the PECIs.
Some of the PECIs mutually reinforce each other and therefore their progress could be monitored closely to see if the all projects progress well enough at a given time, to ensure an integrated final scope. In finalising the agreed subset of projects, the level of political commitment/ support in the Contracting Parties s for the individual projects could be taken into consideration and their support clearly expressed. The governments concerned should outline their willingness to facilitate the realisation of the project, including their willingness to provide finance, including the signing of necessary loans; and ensuring that the relevant regulatory and procurement procedures are followed. Such clearly expressed support is particularly vital for cross border projects where allocations of costs and benefits and sequencing and coordination of investment realisation is vital. This "prioritisation of priorities" process could take place according to objective criteria[xxvi] and could be repeated on a regular basis to ensure that there is a dynamic pipeline of investment-ready projects for which support is then actively sought in a coordinated manner by the stakeholders to close the financing gap and to assist in the realisation of the investment.

In comparison to maintaining status quo, implementing option 1 or 2 could have following impacts:

Options	Legal procedures	Costs/budget	Implementation effort	Effectiveness/efficiency /coherence
Option 1	No specific procedures required in the Energy Community	Grant co-financing from EU sources, to be quantified on a project basis	Low	Effective, efficient and coherent measures
Option 2			Some coordination effort necessary	

Questions to the stakeholders:

38. Do you agree with the above proposals?
39. Do you support the status quo, Option 1 or 2?
40. Do you consider that additional actions under this option could be undertaken need to be added? Which? What are the impacts in comparison to the status quo?

Public Consultation Submitted Responses

I. Increase and managing of available funding

33. The stakeholders are invited to share their opinions and views in respect to these proposals of the HLRG, taking into consideration that the level of financing of the EU Institutions and policies is pre-set for the period 2014-2020. Please, comment

Academia
Poland
Yes; additional, well-managed funding for both the financial support of sometimes very difficult energy market reforms (see the present situation in Ukraine) and investment projects seems to be important. One could discuss the creation of a list of projects of common interest for both the Energy Community and the EU – or at least compare both lists, and enable some projects of joint interest to apply for EU funds. This is important with regard to the greater focus announced in the EC Energy Union Strategy on regional energy markets, and especially those in Central and South Eastern Europe (scope to be defined), and its security of gas supply challenges in the field of missing/insufficient infrastructure, among other matters. The need for a full implementation of EU law at the interconnectors/border points, etc., plus the creation of a proper interface enabling effective contacts, information sharing and work coordination between the EC & the Energy Community (as suggested above in this consultation paper) would help.

Serbia/Unknown
We agree that funding should be made available to assist countries of the Energy Community to develop Energy Strategies and energy efficiency and renewable energy plans which are in line with the EU's energy, climate and environment policies and acquis. However any funds available for infrastructure investments should support only infrastructure which is in line with the EU acquis (including environmental) and with the EU's long-term climate goals. This would exclude a number of the current PECI projects, some of which are carbon intensive and others of which are planned in sensitive locations and would most likely not be able to be constructed if the sites were in the EU. It is crucial not to just promote investments per se, but carefully chosen ones. This means 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. More emphasis should also be put on residential energy efficiency projects in order to produce both social and environmentally positive outcomes.

Civil society
Turkey
As it is stated in a report prepared for Energy Community on realising priority infrastructure investments: "Difficult investment and regulatory environment is the main obstacle to realising energy infrastructure rather than availability of finance per se." In that sense, the focus should be more on the regulatory framework and the effective implementation of the regulations. More available funding would not create the expected impact. However, the coordination role to be given to Secretariat would facilitate the effective use of the available funds.

Governments

Serbia
We do not agree with the proposal of HLRG that: " a mandatory (but not non-binding) opinion of the Energy Community Secretariat should be introduced by donors into their procedures." In principle, we agree with the increase of financial aid, but the question of the conditions for donations by the member states is within the responsibility of the very donors who shall decide on providing donations. We do not see the reason why the Energy Community would influence providing donations, nor the mechanism to achieve this impact. Donors themselves define the conditions that should be met in order to obtain certain funds and they shall make decisions thereof.
We note in particular that it should be borne in mind that countries that are in the process of negotiations with the EU have been informed that these are two separate processes in relation to the Energy Community, so it is questionable the opinion of the Energy Community should be required, and not, take into account for example the citations from relevant documents from the accession process

Albania
The Contracting Parties from the Western Balkans have access to both National and multi-beneficiary IPA funds 2014 -2020. There is still room for decision to support more infrastructure projects that contribute to the creation of a true and liberalized market and increase the electricity and gas supply security. More investment support in forms of co-financing should be made available from both national and multi-beneficiary envelop, with a clear and transparent procedure for grant making, but also more support should be given to projects that are in the implementation phase through technical assistance.

FYR of Macedonia
This part is relatively elaborated in short description. It does not show directions for possible developments in this area. As it is mentioned IPA II is in final phase of agreement and there is no possibility for any further actions. Maybe worth to be mentioned is possibility WBIF to be used not only for technical assistance but maybe for financing of the concrete infrastructure project that is beneficial for more than one contracting party.

Czech Republic
We think we should not exceed already planned extent of finances for years 2014-2020. However, the management could be improved, e.g. by providing independent opinion on specific projects. This opinion should take into account views of Energy Community Secretariat as well as other stakeholders such as the European Commission, Member States or relevant NGOs.

Poland
There is an urgent need for identifying financial instruments for PECI similarly as it has been laid down in TEN-E regulation. In this context, it is reasonable to consider creating specific Energy Community Fund to be financed by different donors. Furthermore, the identification of the capital dedicated particularly for energy infrastructure projects should be conducted in close cooperation with international and financial organizations. The EU should take determined steps to strengthen cooperation with international financial organizations, which support the development of vital EnCom energy infrastructure.

United Kingdom
It is important that existing EU funds to support the neighbourhood prioritise energy issues in order to help the Contracting Parties to meet their obligations under the Treaty. Any change to existing funds would need to be considered and taken forward through the standard processes. The UK

suggests that Parties may wish to consider providing voluntary bilateral financial assistance in targeted cases.

Industry
Eurogas
It is also in the EU's interest to improve the existing energy infrastructure in the Energy Community where there is serious underinvestment in energy infrastructure. Nevertheless, we favour market driven investment, meaning that Projects of Common Interest should be compared against each other regarding their estimated cost and expected benefits for both the EU and the Energy Community. Significant interest by market participants is the most important precondition to ensure that the investment costs are justified and can be recovered in the future – otherwise private investors will not be attracted. Security of Supply is an issue in all Energy Community Contracting Parties and in EU Member States. In certain circumstances, it might be justified to support projects financially which would not be built if purely market based logic was applied. Nevertheless, also amongst these projects only the most efficient ones should be chosen to guarantee the highest benefit to the attached countries.

EVN
Any investor has to assess the economic chances and risks of an investment. And the evaluation comprises more risk elements the more it is about long-term investment. In the power industry respectively infrastructure a lot of further insecurities gained influence as non-satisfying building of the internal market, the impact of energy from externally funded RES, decreasing consumption and also difficulties in obtaining construction permits. Probably the most important question is the economic power of customers to pay prices ensuring the return on investments and the protection of investments against state arbitrary and inpredictable or even insane price regulation. Compensation of economic weakness by special funding instead of a sound economic development together with effective social targeting will only postpone sustainable state functions and further increase the problems.

NIS
We agree with the recommendation that more funding should be available in bilateral, multilateral, and support from IFIs and the EU, both for technical assistance and for investments. However, we do not support the introduction of a mandatory, yet nonbinding opinion (this is a 89ontradiction in adjecto of sort) by the Secretariat, as there is no clear rationale behind introducing such an opinion to those donors which do not seek it. Finally, we do not see any barriers for donors to seek such an opinion if they deem it fit, which is why it should in our view, if introduced at all, be voluntary.

Donors
GIZ: I fully agree with the recommendation, and would like to underline that this kind of support has to be seen as urgent, taking in consideration the wish of socio-economic stability and the needs on reforms, capacity development, and infrastructural investments in many areas of the energy sector within the Contracting Parties. Also in this context the saying "precaution is better (and cheaper!) than aftercare" is true.The proper handling of the HLRG's advise by EU institutions is under the responsibility of the competent European bodies.

NGOs
Same response by 26 NGOs
We agree that funding should be made available to assist countries of the Energy Community to develop Energy Strategies and energy efficiency and renewable energy plans which are in line with the EU's energy, climate and environment policies and acquis. However any funds available

for infrastructure investments should support only infrastructure which is in line with the EU acquis (including environmental) and with the EU's long-term climate goals. This would exclude a number of the current PECI projects, some of which are carbon intensive and others of which are planned in sensitive locations and would most likely not be able to be constructed if the sites were in the EU. It is crucial not to just promote investments per se, but carefully chosen ones. This means 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. More emphasis should also be put on residential energy efficiency projects in order to produce both social and environmentally positive outcomes.

In principle we agree, but strongly caution that all funding should contribute to a low carbon economy and be allocated with respect to sustainability criteria, which include social, environmental and economic aspects. Therefore, fossil fuel projects, unsustainable hydropower plants and nuclear related projects, research, and implementation should be excluded from any funding. Bearing in mind the current list of PECIs, we would not recommend to grant them any advantages. Indeed most of the selected projects as currently conceived would not comply with the EU's sustainability standards, nor suit the EU's long-term energy and climate vision.

Regulator
E-Control
With regard to the national and multi-beneficiary IPA funds 2014-2020, which are available for the Energy Community Contracting Parties form the Western Balkans, emphasis should be placed on the support of more infrastructure projects that 1) enhance the creation of a liberalized market and that 2) increase electricity and gas security of supply. Access to more investment support in form of co-financing should be provided. Furthermore, support should be given to projects that are in the implementation phase through technical assistance. With regard to lending mechanisms which are available for Eastern Partnership Contracting Parties it should be ensured that also technical assistance funds for project identification and preparation are disposable.

II. Investments-friendly area

34. Do you agree with the assessment made in the Analytical Paper?

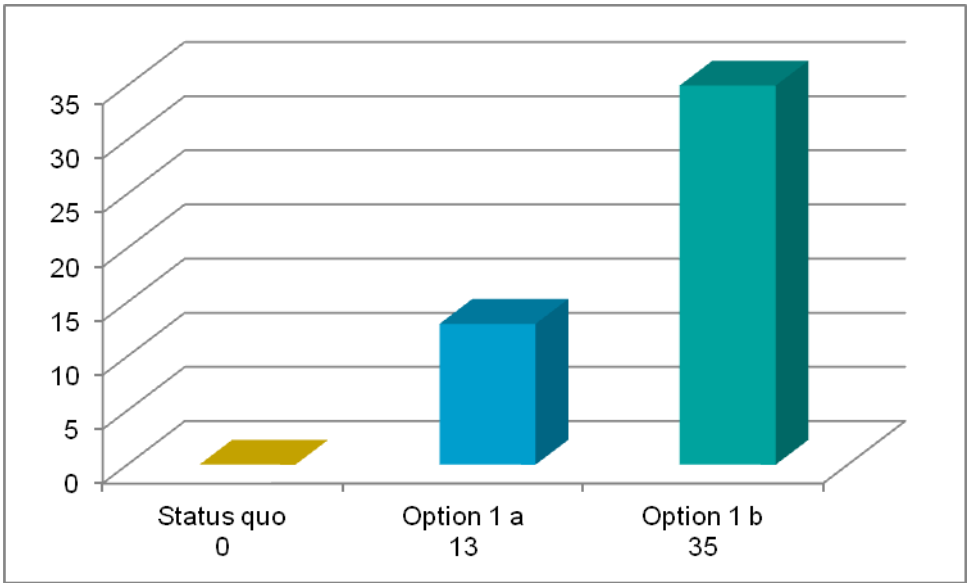
	YES 15 / NGO 28		NO 1		DO NOT KNOW / NGO 1

Total responses: 44

Comment
Government/Serbia
Partially. We agree that there should be a uniform practice and procedures for granting of permits required for implementing projects. But, we believe that through the implementation of EU legislation, the Contracting Parties shall, to the extent possible, achieve this goal, since the purpose of acquis is the very harmonization of the rights of EU member in all sectors, including in the energy sector. Changes in this direction would lead to duplication of work and the accumulation of administration, and possible confusion due to duplication of work.

35. Which of the three options do you support the most?

Number of responses: 48



If (b), which aspects do you support?

Academia
Serbia/ Unknown
The following aspects should be included: Increasing the transparency of the business environment by properly transposing the acquis under the Treaty and making all financial flows (subsidies, cross-subsidies, regulated prices) that an investor faces when investing in the Constructing Parties transparent. Consultation (not one-way information) with the public. The point is not to convince the public of a pre-determined course of action, as is often currently the case, but to consult and take public and expert opinions into account. Facilitating project level technical assistance for projects which are in line with the EU acquis and longterm energy and climate policy.

Civil society
Turkey
I partly support Option 1. In order to streamline the process and limit the duration for the permitting procedure, adoption of the Regulation EU/347/2013 is the option which is difficult to attain. It should be considered that even there are still some EU Member States who are not able to comply with their commitments under the Regulation. Second and fourth proposals of the Option 1 are problematic in this sense. I support the remaining proposals.

Governments
Serbia
It is not possible to provide an opinion on the proposals because often there is agreement only with a part of the proposal, or it is not clarified in detail.
The comment has been made in reference to paragraph 3 from introductory considerations.

FYR of Macedonia
The option 1 (there is no option a or b in the document) is acceptable having in mind that the practice has shown that the procedure for obtaining permits are too lengthy and many institutions

are involved which makes investor to spend to much time and effort. The procedures should be streamlined and simplified as much as possible. However this needs great coordination of the institutions especially if one stop shop is envisaged.

Czech Republic
Stable investment environment, as already mentioned, is considered to be one of the priorities for future reform of the Energy Community for the Czech Republic. Even if the budgetary costs are relatively high, benefits clearly outweigh them. We support Option 1 in this matter, specifically proposals 1, 2, 5, 6 and 7. We do not think it is necessary to create additional IT platform for monitoring the implementation of PECIs. On the other hand, Implementation and Monitoring Plans and possible creation of a generic procedure outlining the major milestones and minimum contents of procedures could speed up the process of the implementation of PECIs. Streamlining environmental assessment procedures is also important. Concerning the one stop shop, we would like to see detailed analysis of costs and benefits (not only for the Contracting Parties, but also for the EU).

Poland
Development of the energy infrastructure plays a crucial role in creating a synergy of the EU and the EnC markets. It is therefore essential to emphasize priority character of PECI for the future of the Energy Community. We strongly believe that all actors concerned should work towards complete implementation of Projects of Energy Community Interests in the shortest possible timeframe. PECI should be given the strongest priority status to ensure timely development and interoperability of cross-border infrastructure between the Energy Community and the EU.
There is an urgent need for identifying financial instruments for PECI similarly as it has been laid down in TEN-E regulation. In this context, it is reasonable to consider creating specific Energy Community Fund to be financed by different donors. Furthermore, the identification of the capital dedicated particularly for energy infrastructure projects should be conducted in close cooperation with international and financial organizations. The EU should take determined steps to strengthen cooperation with international financial organizations, which support the development of vital EnCom energy infrastructure.

United Kingdom
The UK supports measures to improve the investment climate. It is vital to be able to attract investment to the region and to ensure that investors have the confidence to invest. Requirements relating to the permitting process should be in line with the EU acquis.

Industry
Eurogas
The market-driven investment logic mentioned above has to be accompanied by sustainable political and regulatory frameworks at national level to guarantee a predictable environment for investments and reinforce commercial confidence. We agree that there is certainly room for improvement regarding the predictability and transparency of the legal and regulatory frameworks in the Energy Community Countries. We support particular aspects of Option 1, namely - 2. Streamlining of the permitting process:This is mandatory since lengthy and uncoordinated permitting procedures often constitute one of the major hurdles for project implementation. A smooth process for the award of licences and permits would benefit investors, while a prospect of growing competitive energy markets will facilitate their decisions, and boost confidence in their returns. - 3. Improve the manageability of the Projects of Energy Community Interest implementation process: We agree on the necessity to set up streamlined permitting processes. However, a reference permitting process might be hard to implement on national level. Hence, the

obligation on the authorities to coordinate and to improve their respective permitting processes should be stressed. - 4. Empowering authorities: We support the idea of a “one stop shop” single authority for handling a single permitting procedure for the construction and operation of a project. Nevertheless, empowerment should be limited to the permitting process. Additional powers should not be granted. - 5. Communication strategy: We have a neutral view on that. - 6. Technical assistance: We support the idea of providing services e.g. in the fields of legal and regulatory advice which have been identified as problematic. Nevertheless, the consultation of such a function should not be mandatory. - 7. Strengthened coordination among Energy Community institutions and investors: We support that, but it should not be mandatory. Affirmation of gas as a major energy resource in the medium and long term, also as a facilitator of an energy transition to a lower carbon future, will drive investments.

NIS
Comment for response under 34: NO, not fully. We support increased transparency, ad-hoc technical assistance (but genuine and from new sources, and not the already available ones through national IPA funds), project specific technical assistance (with the underlying question of where the funding would come from and thus project management), and the investors advisory panel if properly designed and implemented. Other aspects all seem to be related to Regulation 347/2013/EU, the implementation of which (even with adaptations) would seriously be hampered without the underlying support from such facilities as the CEF (Connecting Europe Facility).

NGOs
Same response by 27 NGOs.
The following aspects should be included: Increasing the transparency of the business environment by properly transposing the acquis under the Treaty and making all financial flows (subsidies, cross-subsidies, regulated prices) that an investor faces when investing in the Constructing Parties transparent. Consultation (not one-way information) with the public. The point is not to convince the public of a pre-determined course of action, as is often currently the case, but to consult and take public and expert opinions into account. Facilitating project level technical assistance for projects which are in line with the EU acquis and longterm energy and climate policy.

In principle, we agree with the goal of this measure, especially in terms of making procedures and decisions more transparent and open to public. However, we are concerned with HLRG request to set “[…] a maximum time for the granting of permits or authorizations […]” as it may cause speedy, and consequently superficial and non-transparent, decision-making leading to low quality projects. To alleviate such possibility, we recommend strengthening this request by explicitly stating that “[…] and, following preparation of all required impact assessments and feasibility studies in accordance with relevant acquis defined in the Energy Community Treaty, a maximum time for the granting of permits or authorizations by any competent authority should be established”. In terms of the HLRG request that “the Secretariat […] should mobilize, […] the project development and the financial expertise required to enhance the quality and preparedness of priority projects, […]“ we strongly call for expansion of the proposed scope of expertise by explicitly naming nature conservation sector as a relevant stakeholder to be mandatorily included in the above activity. We also believe that more environmental expertise should be anchored in the Secretariat. Currently, there is only one environmental expert on a permanent position, this is not enough. We support the first measure proposed, but take the opportunity to emphasize the need to expand Environmental acquis of the Energy Community Treaty, as explained under questions 15 and 16. We also reiterate the need to move away from providing funding for projects which are not in line with the path to low carbon economy (such as those on the current PECI list).

Regulator
E-Control
I support all measures of Option 1. If the application of all measures at once is not possible, at least measures 1, 2, 6 and 7 should be introduced.

36. Do you consider that additional options need to be added? Comments?

Academia
Poland
It would be important to coordinate the activities envisaged, for example those aimed at increasing transparency in energy-related areas, with actions on a more general level aimed at fighting corruption, increasing transparency, the rule of law, institution/elite building and empowering the authorities in each of the Contracting Parties.

Serbia/Unknown
The proposals for strengthening the Energy Community acquis and improving implementation through developing relevant procedures for the notification of state aid and procurement derogations would assist also in the field of reducing corruption and uncertainty for reputable investors. Implementation of these provisions and anti-corruption action should be a condition for EU and IFI financing for the countries.

Civil society
Turkey
A new and genuine permitting regime which later could let the gradual transition to EU practice should be formed by taking specific conditions of the Parties into account. The implementation effort would be lower than Option 1. It would be more effective and efficient but less coherent with EU practice.

Industry
EVN
To step in, provide functioning market rules, identify economic and social road blockers, coordinate accompanying measures, assess results, increase business confidence and stakeholder trustfulness. Without intervention in the transitional processes legal enforcement will just lead to conflicts. Political, legal, judicial, economic social and administrative risks have to be significantly reduced.

NGOs
Same response by 26 NGOs.
The proposals for strengthening the Energy Community acquis and improving implementation through developing relevant procedures for the notification of state aid and procurement derogations would assist also in the field of reducing corruption and uncertainty for reputable investors. Implementation of these provisions and anti-corruption action should be a condition for EU and IFI financing for the countries.
Regarding the second and third measures proposed, we support the idea of streamlining the process in as much as it understands preparation of an overview document delineating generic procedures (with select milestone and minimum requirements) stemming from the legislation comprised in the updated Energy Community Treaty, and which would especially clearly refer to environmental and nature requirements. We believe that such a document would be of immense help to Contracting Parties in planning full implementation of the Energy Community Treaty and to

investors in understanding their obligations in the permitting procedure. In that sense, it should be prepared and used within the process of identifying special
needs for each Contracting Party for each legislative act comprised in the updated Energy Community Treaty (as explained under question 2). However, we express our concern that an attempt to streamline procedures in Contracting Parties, at the time when they have yet to close the gap in the Energy Community Treaty implementation and achieve a balanced and level-playing field, will ultimately prove unsuccessful and possibly detrimental. Firstly, it is necessary for all Contracting Parties to adopt and fully implement all acquis contained in the Energy Community Treaty, and especially relating to environment. In that sense,adaptation of the Guidance Document "Streamlining environmental assessment procedures for energy infrastructure Projects of Common Interest“ for the Energy Community purposes would be premature and at this point we do not support that initiative. However, we do take the opportunity to emphasize that, when appropriate conditions vis-a-vis this adaptation have been created in terms of full, transparent and comprehensive implementation of Environmental acquis in all Contracting Parties, such adaptation or drafting of a new guidance document must be done in a wide participatory process including environmental stakeholders. Moreover, we caution that, due to same reasons as listed above, limiting duration for the permitting procedure in the Contracting Parties may lead to shortened administrative procedures, but with an overall result of developing projects of lesser quality and/or with significant impacts to environment/nature that were neither considered, mitigated nor compensated for. It would be more prudent to firstly identify special needs for each Contracting Party for each legislative act comprised in the updated Energy Community Treaty (as explained under question 2), before a discussion on setting specific deadlines within permitting procedure should be broached. While we support empowerment of authorities, as proposed in the fourth measure, we caution that a one-stop shop single authority might prove a solution before its time. Permitting energy projects understands coordination of several governmental units of various governing levels, and ensuring equal consideration of them all in the shortest timeframe possible will require a well-developed and dependable communications platform to ensure swift exchange of information, as well as knowledge of decision-makers on using that kind of technology. It is our opinion that the foundation of one-stop shop single authority hinges on significant investment in communications/IT infrastructure, which should not be imposed on nor expected in the near future from the Contracting Parties. Concerning fifth, sixth and seventh proposed measures, we welcome provisions aimed at increasing communications, public participation and coordination. For wider acceptance of any project, it is essential to keep all stakeholders involved and appraised of the situation. We especially emphasize the need to reflect on energy and energy projects in relation to their impact on the environment, including nature, water, air and land. Consequently, we urge that such recognition be explicitly added in the fifth measure’s call for creation of communications strategy which should “[…] make the link clear between energy infrastructure expansions (especially prioritised projects), security of supply and the integration of renewable energy into the Energy Community energy mix, with a clear deliberation on the expected impacts of specific project on the environment“.

III. An Energy Community Risk Enhancement Facility

37. What is your view regarding the above proposal of the HLRG?

Academia
Serbia/Unknown

We are not in favour of moves which transfer the risk from the private sector to the public while the benefits of such arrangements would be mainly for the private sector. It would be more sustainable to improve the implementation and enforcement of the acquis.

Civil society
Turkey
It is quite clear that there is a certain need for risk mitigation for investments taking place in the Contacting Parties. All alternative ways to develop it should be searched and analysed as like HLRG's proposal on Energy Community Risk Enhancement Facility on which first a feasibility study should be done and it should be analysed in terms of its costs and benefits. On the other hand, the idea to piggyback on existing and future EU funds is not realistic when the need for these funds in the Member States is taken into account. There would not be so many funds left after Member States meet their needs.

Unknown: Acceptable.
Austria: Seems not to be realistic.

Governments
Serbia
The context is completely unclear as well as the objective of given proposal, also the bases for the operation of the mentioned facility and the auspices of the facility are questionable. Not in any case the formation of this body could be linked to the Art. 43 of the Treaty, therefore legal background for the introduction of this facility is also questionable.
More details on the mode of realization of this proposal are missing, therefore it is impossible to provide the final position on the proposal. In any case we agree with the condition to provide it's financing out of the Energy Community.

Albania
The best solution is to give access to Projects of Energy Community Interest, as soon as possible to existing European funds.

FYR of Macedonia
The idea is very interesting but the possibilities and options are not provided. It will be useful if the contracting parties might be in position to use the funds established within EU or the donors are able to establish new fund for contracting parties. It may be put on the table even the contracting parties to provide some percentage into the fund.

Czech
As already expressed in our non-paper, even if investment protection represents one of the most crucial issues, investments should always be protected by legal means, not by financial instruments such as proposed Energy Community Risk Enhancement Facility (ECREF). To our knowledge the facility should be a financial guarantor available for priority projects of the Energy Community which enhance either market integration or security of supply. Our aim is not to undermine the importance of such projects anyhow, but even if the projects are co-financed by the EU, they are still commercial projects with the involvement of private subjects in the first place. Therefore they should procure the guarantee of their own. We similarly should not seek additional guarantees from other European Funds.

Cyprus: The issue should be addressed by the Secretariat.

Poland
Poland shares the opinion of HLRG that the establishment of an Energy Community Risk Enhancement Facility could be useful in terms of addressing risks such as breach of contracts by public bodies, retroactive measures, discriminatory taxation, payment default by public entities. Nevertheless, due to the fact that there is lack of detailed information how this initiative could work in practice, Poland reserves its right to submit additional comments at the later stage.

Romania
It is difficult to implement such a fund in this moment. We believe we should wait to see the concrete results of EFSI before trying such an approach in EC as well.

Industry
Eurogas
We would support the extension of existing EU funds such as the CEF to projects which fulfil the conditions mentioned by us under 33) and which are beneficial for both the EU and the Energy Community. Eurogas recalls its view that investment should in principle be market-driven, but accepts that in certain circumstances, support can be given to stimulate projects of common interest that might not otherwise be built, e.g. to reinforce supply security.

EVN
Multiple risks can hardly be evaluated by investors and therefore such a facility cannot cover the urgent improvements in investment climate to achieve a certain minimum level for investment. Currently it seems, that mere legal enforcement of the Acquis will even increase the economic risk due to missing assessment of financial viability (additional costs for enhancement of production from RES). Proportionality needs to be checked, probably resulting in an adjustment of priorities and timelines.

NIS
We are of the opinion that the creation of an entity such as ECREF would be a waste of time and resources and without any added value, as it would be “piggybacking” on the existing or future EU Funds. It is also not clear how this “piggybacking” would be achieved from a legal perspective, and why would ECREF be needed or equipped to deal with it, if “piggybacking” is possible to start off with. This proposal also seems to move away from the initial formulation that ECREF would be needed “to address risks such as breach of contract by public bodies, retroactive measures, discriminatory taxation, payment default by public entities…” as it is unclear how such risks would be mitigated by co-financing grants (or any other actions by ECREF for that matter).

Donors
GIZ
First of all this suggestions is highlighting the importance of addressing respective investment risks, and underlying reasons. The activation of such kind Facility for selected Contracting Parties would be reasonable, if it would be combined with technical assistance and a monitoring-regime towards reform efforts to tackle respective risks.

NGOs
Same response by 25 NGOs.
We are not in favour of moves which transfer the risk from the private sector to the public while the benefits of such arrangements would be mainly for the private sector. It would be more sustainable to improve the implementation and enforcement of the acquis.

We do not support actions that will result in transferring the risk from the private sector to the public while the benefits of such arrangements would remain with the former. It would be more sustainable to improve the implementation and enforcement of the acquis. However, if further considerations regarding this issue ensue, whether it be the Energy Community Risk Enhancement Facility or any other mechanism, we strongly recommend that it be founded on same principles included in the WWF´s recommendations for bringing EIB energy lending policies in line with the EU´s climate goals and nature conservation policy. These are: 1) Set up a new European Investment Bank (EIB) energy lending policy consistent with EU climate change goal: (i) The EIB should reflect the EU's 2050 decarbonisation goal in a substantively revised energy lending policy that precludes investment in assets that lock in high carbon emissions and instead focuses on delivering a European zero emission energy system by 2050; (ii) The default position for the EIB should be that when assessing investment opportunities and it can be proven that the investment will lead to a lock into a high carbon trajectory in a specific Member State or accession country, the investment should not go ahead. 2) Immediately phase out EIB support for coal Given the urgency of combatting climate change there is no room for unabated new coal and lignite fired generation in the EU power system in the medium term. The EIB should stop support for coal including coal fired Combined Heat and Power (CHP), refurbishment, retrofitting and replacement of coalfired plants and coal mining operations. 3) Avoid the unsustainable expansion of gas The EIB should limit its gas lending to supporting sustainable biogas, as the EU's gas infrastructure is rapidly approaching a point where further investment may lead to lock-in of this fossil fuel. The EIB should also preclude lending to shale gas, which may have a worse GHG footprint than coal, has a record of local environmental impacts including over-use of freshwater, and competes for finance with renewable energy. 4) Ensure sustainability criteria: (i) Hydropower: The EIB should enforce sustainability criteria for hydropower lending in accordance with the World Commission on Dams' guidelines both inside and outside the EU, ensure compliance with EU legislation and make full use of independent assessments and standards (e.g. Hydropower Sustainability Assessment Protocol); (ii) Use of Environmental Impact Assessments for projects and Strategic Environmental Assessments for programmes (e.g. hydropower cascades of projects on a river) for due diligence: The EIB should improve its due diligence and project oversight. EIB projects implemented outside the EU should meet both local.

Regulator
E-Control
The most practical and quickest solution is to give access to Projects of Energy Community Interest, as soon as possible to existing European funds.

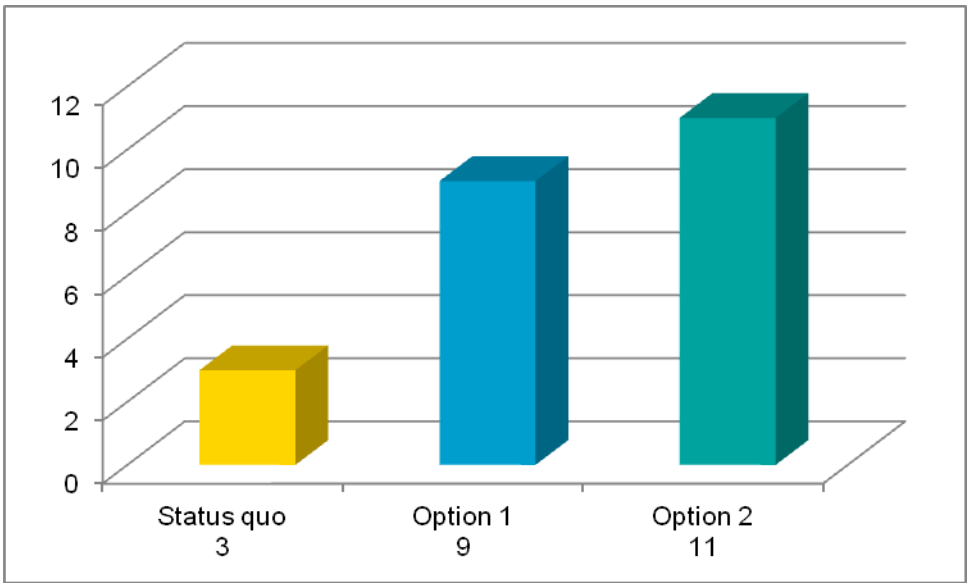
IV. Platforms of complementary projects

38. Do you agree with the assessment made in the Analytical Paper?

	YES 10		NO 4 / NGO 27		DO NOT KNOW 1 / NGO 1

Total number of responses: 43

39. Which of the three options do you support the most? (Please note these options are not mutually exclusive and may also depend on each other.)
Number of responses: 22, Multiple responses: 7



40. Do you consider that additional actions under this option could be undertaken need to be added? Comments?

Academia
Poland
I would certainly go for Option 1 at least, or if it would be easy to implement, then also Option 2

Serbia/ Unknown
The concept and list of PECIs need to be reviewed before any further support is given. PECIs need to be screened for compliance with EU legislation, including the environmental acquis, and the EU's long-term climate goals in order to avoid supporting regrettable investments.

Civil society
Unknown
Priority should be given to projects that greatly improve market opening and competition, e.g. natural gas pipelines with reverse flow resulting in removal of supply monopolies.

EU bodies/ ENTSOE

ENTSOE is mandated to produce “The TenYear Network Development Plan” (TYNDP). This is a biennial package published by ENTSOE, which presents an overview of the transmission expansion plans that are identified as necessary to ensure that the transmission grid facilitates EU energy policy goals. The goals are to; maintain security of supply, mitigate against climate change and facilitate the internal energy market (IEM). This package consists of a main document (the TYNDP), six Regional Investment Plans (RgIPs), which are developed by ENTSOE Regional Groups , and a Scenario Outlook & Adequacy Forecast (SO&AF). One of six RgIPs (Continental South East), as the TYNDP itself includes also transmission grids of South East Europe Contracting Parties of EnC, Complying with Regulations (EC) 714/2009 and 347/2013, these eight reports jointly deliver a structured, systematic and comprehensive vision for European grid development through to 2030. The reports describe the significant investments in the European power sector that are required to achieve the European energy policy goals of security of supply, climate change mitigation and facilitation of the IEM. The TYNDP assesses projects of panEuropean significance for the year 2030, using a cost benefit analysis on the return on investment. The benefits of each project that are considered for analysis include; the increase in social and economic welfare of the impacted countries, the impact on security of supply, integration of renewable energy sources (RES), the reduction of carbon dioxide emissions and the impact a project has on transmission losses, as well as the resulting technical resilience of the system. The projects assessed in the TYNDP are those that are planned over the following 10 years and the studies are done under four Visions, based on conditions at the year 2030; when it is expected that the vast majority of the projects that are required will have been commissioned. Due to TYNDP panEuropean coverage it could be a sound basis for some interaction between EC and EnC on the TYNDP in areas that may impact and be of significance to both EU Members States and EnC Contracting Parties.

Governments
Serbia
We see absolutely no rationale behind the establishment or the role of an entity such as ECREF in the process. It is necessary to clarify the proposal as well as the reflection of the proposal to the work of the Energy Community and the Contracting Parties.

FYR of Macedonia
From the last Implementation report of the Secretariat it could be noted that PECI are not developing as fast as it was expected due to the several reasons. Option 1 is more acceptable because this region with limited financial resources is not capable to support too many projects and that’s why the focus should be on several PECI projects which are mature and can proceed with implementation.

Czech Republic
We think both options are applicable and not in contradiction – we could prioritise certain “Investment ready” projects and at the same time cluster them and improve their monitoring. It will not significantly burden the Energy Community budget; co-financing of projects from the EU sources is available even today. However, this does not mean that projects should be credit-enhanced by the ECREF.

Romania
In this moment, we consider the maintaining of the status-quo would be sufficient. From this situation onwards we can move to option 1, at the moment when the EC MS will demonstrate they have all these “investment ready” projects enough well prepared.

Industry/NIS
NO, not fully. Status quo could be enhanced by Option 1 (they are not mutually exclusive by nature - as pointed out). However, we see absolutely no rationale behind the establishment nor the role of an entity such as ECREF in the process.

NGOs
Same response by 27 NGOs.
The concept and list of PECIs need to be reviewed before any further support is given. PECIs need to be screened for compliance with EU legislation, including the environmental acquis, and the EU's long-term climate goals in order to avoid supporting regrettable investments.

General Comments on F. Improving investment climate/ EURELECTRIC
EURELECTRIC fully agreees that is necessary to improve the investment environment in the region mainly through higher legal certainty. A dramatic lack of investments in the region has characterized the last decades and there is an urgent need to improve investors' confidence to attract the necessary investments. Various European electricity generation and distribution companies already invest in South East Europe, including for instance CEZ, ENEL, E.ON, PPC, EVN Verbund, and Gas Natural Fenosa. But in an alarming trend these companies are either leaving, considering leaving or exploring international arbitration. One of the main reasons is the unstable regulatory framework and the populist pressure on 'foreign' companies investing in the region, resulting in sudden taxes, withdrawal of licenses and other administrative harassment. In this respect, we believe that improving legal and regulatory framework shall be priority. We recommend incentivising risk sharing facilities and public support for priority infrastructure. Given the current political instability, parallel action is recommended to improve the regulatory environment while hedging investment risk. E.g. public private partnerships could leverage public funding and play a crucial role in attracting private investment. Supporting lending policies is of the utmost importance in order to put forward the necessary investments in due time to ensure the delivery of energy services that are secure and affordable, in a technology neutral and cost effective way.
Existing price levels in much of the EnC are not cost-reflective and thus cannot support new generation investments or responsible customer behavior, e.g. on energy efficiency. This should change. Energy poverty should be tackled through targeted social policy. Energy efficiency measures, together with a targeted social policy (vulnerable customers have to be well identified, protected and supported by tailor made welfare policies, but not supplied via a general regulated tariffs approach) are an appropriate response to energy poverty. The EnC should take the lead in developing a strategy for the region. Independent regulatory authorities, TSOs, a liberalized market, competition among actors on a regional and national level shall ensure that liberalization and public service fit together. In case of power supply failures, analysis should be carried out to identify the reasons for the failure and the corresponding measures. Transition to fully transparent costs should be encouraged and accelerated also on the supply side, so as to ensure that energy markets develop in an economically efficient way, fully reflecting the true costs of the different resources and technologies.
We agree that the Projects of Energy Community Interest (PECI) definitely deserve more than just symbolic support, as they stand for the regional integration advocated by the EU. The implementation of PECIs requires financing, predictability of regulatory framework and transparency of government initiatives in energy. Exploring business cases and the use of innovative finance through leverage should be the answer, developed in close cooperation between the EnC, DG ENER, and the EIB rather than setting up a dedicated Energy Community Risk Enhancement Facility. In addition, contracting parties can participate in TYNDPs and also in PCIs.

G Enlarging the Energy Community

Proposals by the High Level Reflection Group: 3.2, 3.3, 3.4

In line with the position of the European Parliament as well as of the Council,[xxvii] the High Level Reflection Group comes to the conclusion that the Energy Community, as "*the main multilateral instrument for organizing the European Union's external energy relations*" should be enlarged without putting any geographical limitations to that process. At the same time, the Group highlights certain countries and regions by requesting that "*the Energy Community should declare its interest in specific strategically important countries and/or regions, such as Eastern Partnership countries, Switzerland, Norway and Mediterranean countries.*"

The High Level Reflection Group proposes also that "the current "one size fits all" approach should be replaced by a differentiating scheme that would take into account specific conditions existing in various countries. The Energy Community should (a) fix realistic implementation deadlines and (b) allow for flexibility in the adoption of the law – by setting one common minimum extent to be adopted by all Members ..., with a more ambitious scheme of transposing EU acquis for core members and a possibility for Associated Members to "opt in" to implement rules pertaining to additional policy areas and to improved enforcement procedures and easier access to financing."
When considering enlargement of the Energy Community, it needs to be ensured that the region or country in question is "*able and willing*" to apply the Energy Community rules.

Status quo: The Energy Community already looks back to a history of enlargement. Born in the Balkans in the early 21th century, the organization expanded its scope and relevance significantly with the accession of Moldova and Ukraine in 2010 and 2011 respectively. Georgia is currently negotiating for accession, and there is an increasing interest in the Community by other third countries.

Option 1 (Level I proposal): To initiate a first round of exploratory talks with the countries listed above in the proposal of the HLRG.

Option 2 (Level II/III proposal): Flexible approach to membership.
The Energy Community's membership is diverse, consisting of countries aspiring to join the EU, who are themselves at different stages of the EU accession process, and countries who may never join or whose accession to the EU is not foreseeable at this time (Ukraine, Moldova and later Georgia). These countries are bound by the Deep and Comprehensive Free Trade Area and Association Agreements. It is therefore natural that these countries do not share the same ambitions regarding energy market integration and other legally binding commitments. A multi-speed Energy Community would allow those countries that are ready to do so to move ahead, while not jeopardizing the "core" Energy Community *acquis*. In addition, introducing a multi-speed mechanism may make the Energy Community more attractive for potential members, thus serving to extend the EU energy market based on common rules – one of the key objectives of the Energy Community Treaty.

In contrast to an Energy Community 'à la carte' or enhanced cooperation, which takes place in a number of areas and potentially among a number of groups of members in varying constellations, the High Level Reflection Group's proposal entails a two-tier system with two, and only two, sets of

acquis. The more ambitious set of commitments would essentially correspond to the existing *acquis* under Title II of the Treaty, while the less ambitious set of rules would yet have to be defined. This could be both a "condensate" of the existing *acquis* (e.g. by deducting such aspects as retail market opening, renewable energy targets, cross-border regulation etc.), or a genuine set of Energy Community rules to be defined. We do not want to pre-empt the discussions in the institutions on that.

In any event, implementing this solution would require changes to the Treaty. If, however, the existing Parties would just be renamed as "Members" and the future "Associate Members" would assume obligations (only) under existing Title IV of the Treaty (as enhanced and expanded in line with the proposals discussed above). Such changes could be accommodated within the ambit of Article 100, and thus would not require ratification under the Vienna Convention.

In comparison to maintaining status quo, implementing option 1 or 2 could have following impacts:

Options	Legal procedures	Costs/budget	Implementation effort	Effectiveness/efficiency/coherence
Option 1	A mandate by the Ministerial Council	No direct costs before any new accession	None before any accession	Expanding the single pan-European energy market is coherent with the goals of the Energy Community
Option 2	Fundamental amendments to the entire Treaty or under Article 100 (for Title IV only)	No direct costs before any new accession	High effort on the level of the Energy Community, low effort for the existing Parties	Effectiveness and efficiency in reaching the Energy Community goals will remain for current Members. Coherence might decrease as the ambition to reach obligations of some of the new Members might be lower.

Questions to the stakeholders:

41. Do you agree with the assessment of the above options?
42. Do you support the status quo or Option 1 or 2?
43. Do you consider that additional options need to be added? Which? What are the impacts in comparison to status quo?

Public Consultation Submitted Responses

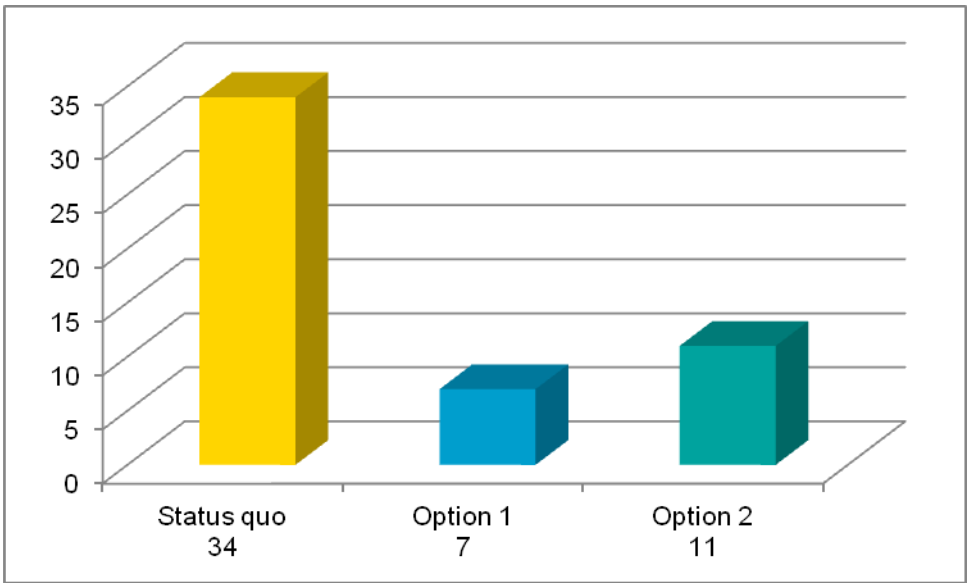
41. Do you agree with the assessment made in the Analytical Paper?

	YES 9 / NGO 1		NO 7 / NGO 27		DO NOT KNOW / NGO 1

Total number of responses:45

Comment
Government / Serbia
Above mentioned proposals are not sufficiently clear and it is necessary to express them in the more clear manner and especially to show how those proposals would reflect on the future work of the Energy Community Secretariat, EnC Task Forces i.e. Contracting Parties in the organizational, legal and financial sense.
Each enlargement out of the context defined in the Treaty and beyond the objectives, which Contracting Parties had at the time of the signing of the Treaty and especially beyond the determined tasks defined by the Art 2 of the Treaty would require significant revision of the Treaty on completely different basis, which would mean the conclusion of the completely new Treaty, bearing in mind the scope of revisions.

42. Which of the three options do you support the most? (Please note these options are not mutually exclusive and may also depend on each other.)
Number of responses: 52, Multiple responses: 5



43. Do you consider that additional actions under this option could be undertaken need to be added? Comments?

Academia
Poland
It is important to list Turkey as an important prospective member of the Energy Community (especially while Director Kopac is publicly, directly addressing the prospects of its membership). Further enlargement, for example to include Norway & Switzerland (or also Mediterranean countries) – both of which would constituting yet other groups of countries compared to the present Contracting Parties – would require quite profound reflection on defining the concrete short-term objectives, and then might require a more substantial discussion on the scope and function of flexibility which would be necessary.

Serbia/ Unknown
While we believe that meeting the standards are more important than the geographic location of a prospective signatory party we do believe that the Energy Community already has significant and sufficient challenges in getting the current signatory parties to meet the standards and conditions set out in the legal framework. This does not preclude the possibility that at some future date - when all the current signatory parties have met the full requirements of the Energy Community legal framework - that the lessons learned for this process could not be applied to other areas.

Civil Society
Turkey
I support Option 1 and Option 2. I think they are not mutually exclusive. Energy Community should be open to the countries which are willing to have same market rules with EU and to be integrated with pan-European energy market. On the other hand, the peculiarities of the potential candidate countries should be considered. They should be given the chance to opt out of some provisions of the Treaty which are designed to create a deeply integrated regional market. A multi-speed Energy Community would constitute an example for the EU which has the same idea in its enlargement agenda. If a new membership statute as "Associate Member" is introduced, decision making processes within the Community should be examined ex novo. It requires Treaty change under Title VI.

Unknown
Turkey should also be one of the priority states to engage. Two-tier membership is acceptable on the condition that it's clearly defined as a transition phase, e.g. associate members legally commit to automatically assume regular membership obligations after certain number of years (individually defined in each accession treaty).

Governments
Serbia
Since the given options are changing the objective of the establishment of the Energy Community from the creation of the pan European regional market and its integration in the European market to the enlargement of energy market of the European Union. Enlargement of the Energy Community, in the manner proposed, would create extreme complexity of operation and have a negative impact on the viability of the concept, especially given the state of development of the region. It requires additional consultations.

FYR of Macedonia
The proposal of the HLRG is not understandable. It does not clearly show benefits of the existing contracting parties for possible enlargement with the countries that do not have EU aspirations. One of the fundamentals of the Treaty is this region to achieve the level when will become part of the single European energy market. This can not be achieved if the countries have flexible deadlines and periods for implementation of the acquis and even not to have obligation to implement the whole acquis under the Treaty. Before the option is chosen it needs deep analysis to be undertaken about the further enlargement strategy and process.

Czech Republic
The Czech Republic does not support the proposal for a certain strategic enlargement areas declaration. We think all the EU neighbouring countries should be allowed to accede to the Energy Community assuming that they are willing and able to fully and timely implement all the required Energy Community acquis. Declaring such a strategic interest may discourage other countries from joining the Energy Community. Taking specific country conditions into account, the Czech Republic is not sure whether flexible membership approach as proposed by the HLRG would bring more benefits. On the contrary, we think multispeed Energy Community could lead to further disintegration of the organisation. If a country would like to adopt more acquis, it may do so on a voluntary basis. Coherence is a core priority in this matter.

Poland
To maintain the enlargement of the Energy Community consistent with the previous directions and last round of accessions. Natural consequence of the modernization and evolution of the organization should be natural enlargement of the Energy Community to the neighboring countries, which provide that they demonstrate willingness and ability to implement EU legislation within agreed period of time. In order to preserve the original dimension of the Energy Community, future geographical extension of the organization should be limited to the countries facing similar challenges with respect to energy market development and security of supply, namely regions such as the Black Sea and the Caspian region.
In the same time, Poland wishes to inform that its position on the proposal of introducing different types of membership (Members and Associated Members) has not changed and is negative. This solution would have a negative impact on the organisation in causing legal distinctions and different pace of the reforms in the specific Contracting Parties.

United Kingdom
The UK could support Option 1 to initiate a first round of exploratory talks with the countries listed above but would not support Option 2 – a flexible approach to membership/ a multispeed Energy Community. The UK agrees that the Energy Community should be open to those countries able and willing to implement fully the Energy Community legislation. Engagement with Middle East and North African countries could be challenging because of the political complexities but the UK would encourage the pursuit of rules based agreements with them. However, further expansion in the short term should be a lesser priority than a focus on implementation and enforcement of the acquis by the existing Contracting Parties. It is important that the principle of full regulatory implementation is not diluted. There has to be a level playing field for all members of the Energy Community.

Industry
NIS
While we agree with the statement that the expansion of the Energy Community should not have geographical presets, it should also not be limitless. Namely, geographical scope as such is only

one aspect, and in our opinion not the most relevant one. Even on the example of expanding the Energy Community to Ukraine and Moldova, serious differences between the initial Contracting Parties and the two newcomers have shown up and hamper the goal of creating a pan-European energy market (if nothing else, and among a number of other issues, the technical realities do not currently allow for full integration). Hence there is already a need for introducing some sort of two-tier system, but this raises a number of issues (how the system would be established? what would the criteria for being a member of this or that level be? who would be assessing the criteria? could a change of membership status be allowed? etc.). However, this carries within itself the danger of gradual dispersion of the institutions of the Energy Community, as two groups of significantly differing members (Members and Associate Members) would have a minimal common agenda, and the whole process would thus become cumbersome and hard to manage. Norway and Switzerland are then again a third-tier as they are much more advanced in many respects in the application of the acquis and, generally speaking, probably have a differing perspective and sphere of interest to that of the Contracting parties. It is also interesting to see that the proposal seeks to replace “Parties” (EU and Contracting Parties) with “Members”, which although welcomed on a general note on our side, still implies that there would have to be a differentiation between the Members (EU on the one hand, and Contracting Parties, on the other) due to the nature of the Treaty.

NGOs
Same response by 26 NGOs
While we believe that meeting the standards are more important than the geographic location of a prospective signatory party we do believe that the Energy Community already has significant and sufficient challenges in getting the current signatory parties to meet the standards and conditions set out in the legal framework. This does not preclude the possibility that at some future date - when all the current signatory parties have met the full requirements of the Energy Community legal framework - that the lessons learned for this process could not be applied to other areas.

Regulators
E-Control
I support both Option 1 and 2. As the Energy Community is a very promising instrument of external energy policy I would welcome endeavours from the Energy Community institutions to start and intensify exploratory talks with the Mediterranean countries, Switzerland and Belarus. I also believe that relations to Turkey should be revitalised. I strongly believe that it makes more sense to follow a two-step integration process for countries of strategic interest. By insisting only on a core set of rule for associating countries of strategic interest to the Energy Community, it can be avoided that these countries are rejected due to an incomplete implementation of the entire acquis, which is most likely unrealistic. By following this approach, the Energy Community’s distinct features, namely independent institutions and the rule of law, should be respected.

MEDREG
As the Association of Mediterranean Energy Regulators and a project founded by the European Commission, MEDREG acts as a recognized counterpart of the European Union concerning energy regulation in the Mediterranean. It should also be recalled the role played by other initiatives, such as the Union for the Mediterranean, in setting the regional energy policy framework of the area. In this capacity, MEDREG has been promoting close contacts with the Regulatory Board of the EnC to realize joint initiatives (as the annual roundtable of the two organizations) and propose topics of common interest, as MEDREG and ECRB share various members. MEDREG believes that ECRB could provide a relevant example for the evolution of the energy regulation in the Mediterranean region, most notably in terms of institutional setting and concerning cross-

border energy investments . However, the specific development needs of Mediterranean energy markets cannot be met by an enlargement of the EnC Treaty. The Mediterranean region should pursue its own integration path under the existing regional institutional framework. The consideration of the HLRG could be better implemented by reinforcing and fine-tuning cooperation between MEDREG and ECRB. MEDREG has recently approved a Strategy for the period 2020-2030 and has updated its 3-year Action Plan. Both documents can be downloaded from the Association's website. ECRB is welcome to provide a feedback on these documents in occasion of the 2015 joint roundtable of the two organizations. In addition, MEDREG is available to discuss with ECRB about possible joint activities concerning the members shared by the two institutions.

General Comments on G. Enlarging the Energy Community
Industry/EURELECTRIC
We recommend the EnC to stay with their mandate - to create operational 8th region energy market. We believe that before this main goal has been achieved enlargement the EnC is premature. The focus has to be on solving the most burning regional and national issues first, especially governance, regulatory authorities' strength, a proper energy market, liberalisation.

Regulators/ CEER
CEER fully supports the objectives and work of the Energy Community, as the central vehicle for assisting countries in implementing the 3rd Package provisions and striving to take their full place in the European Internal Energy Market. CEER applauds the continuing role of the Energy Community to facilitate the implementation of these commitments, which we see will be increasing important in the coming years. CEER would like to underline its commitment, as outlined in the Bridge to 2025 Conclusions Paper, to support and work with our neighbouring NRAs. For this reason, we established in 2012 the category of CEER Observers, offering EU candidates and non-EEA EFTA regulators the opportunity to participate fully in CEER's broad range of activities. Indeed, Montenegro and FYROM have already joined our ranks. We are going further, by offering parallel treatment within CEER to NRAs of third countries involved in ACER's work, namely Energy Community NRAs. We have also extended our training courses (designed and conducted by expert practitioners in the regulatory field) to the staff of ECRB members.

H. Cooperation with ACER and ENTSOs

Proposals by the High Level Reflection Group: 4.1, 4.9.

The following section targets the discussion of options for the realization of the HLRG report's proposals 4.1 In essence, this addresses more efficiently linking the Energy Community and EU institutions by: Tightening the links between the Agency for the Cooperation of Energy Regulators (ACER[xxviii]) and the Energy Community Regulatory Board (ECRB); Representation of the Contracting Parties Transmission System Operators (TSOs) in ENTSO-E and ENTSO-G. The HLRG in Proposal 4.9. suggest that "*In the light of progressive integration of markets, the membership of Contracting Parties' (Members') energy regulators in Energy Community Regulatory Board (ECRB) should be gradually phased out and replaced by Contracting Parties' regulators' membership in ACER, while keeping the ECRB for energy regulators from Associated Members.*"

I. Strengthening of the ECRB and cooperation with ACER

Status quo: ECRB is an institution of the Energy Community established by Articles 58 to 62 of the Energy Community Treaty. It is composed of one representative of the national regulatory authority (NRA) of each Energy Community Contracting Party and the European Commission representing the European Union and acting as Vice-President[xxix]. In contrast to ACER, ECRB essentially has an advisory role unless empowered by the Ministerial Council to take "Measures"[xxx]; this can include empowerment for issuing a binding decision[xxxi].

The Ministerial Council decision on the implementation of the 3rd package foresees ECRB taking a decision on exemptions for new gas or electricity interconnectors[xxxii] in case the competent Contracting Parties NRAs cannot agree on a common position or mutually agree to transfer the decision to ECRB.

Option 1 (Level I proposal): Granting ECRB similar competences as ACER.

With respect to legal procedures, realisation of option 1 would require a Decision of the Ministerial Council[xxxiii]. Some competences of ACER, such as the adoption of Framework Guidelines, cannot be mirrored within the Energy Community.

Budgetary impact would be limited only to the extent ECRB can execute its additional tasks within the existing framework, i.e. operating as non-permanent body benefitting only from reimbursement of Contracting Parties' NRAs' participation at ECRB meetings and support by the ECRB Section at the Energy Community Secretariat. Serious execution of (additional) decisive powers call for a more solid institutional set up including an organisational structure mirroring ACER.

In any case, beyond the existing Energy Community *acquis,* future incorporation of additional EU *acquis* would need to respect the concept of granting ECRB decision-making functions on the same level as ACER[xxxiv]. Any related legal measures would require a Decision of the EnC Ministerial Council[xxxv] but would not call for adjustment of the EnC Treaty but the already existing

possibility for the Ministerial Council to empower ECRB to take legally binding decisions can be executed via according adaptation of the relevant EU *acquis communautaire* in the course of its incorporation into EnC *acquis communautaire*[xxxvi].

Option 2 (Level II proposal): Legislation specifying competences of ECRB and ACER as adopted under Title IV of the Energy Community Treaty in consequence of which the laws of the Parties would need to be adapted.

Under the current legal set up, institutional competences of ACER and ECRB are limited to the EU and EnC respectively. As a result, e.g., obtaining an exemption for a project involving both Member States and Contracting Parties is not a straightforward process: in case the concerned EU NRAs do not agree on the exemption decision, decision making is transferred to ACER; the same procedure applies in case of disagreement between two or more Contracting Parties' NRAs where ECRB steps in as decision making body. However, no such rules are defined for the case of disagreement between EU and EnC NRAs, in case an interconnector spans the territories of Member States and Contracting Parties.

The Treaty itself provides a suitable tool for establishing a legally sound solution: new pieces of legislation related to competences of ECRB and ACER on the Member States/Contracting Parties interface could clarify competences and be adopted under Title IV of the Energy Community Treaty. Such a measure would be legally binding on both the EU and Energy Community member countries in consequence of which the Parties would need to adapt their legislations. Articles 84 and 85 Energy Community Treaty require the Measure by the Ministerial Council to be based on a proposal of a Party to the Energy Community Treaty[xxxvii] and unanimous acceptance of the body taking such a Measure. In this context reference is made to proposal 1.5 of the HLRG report for more systematic use of Title IV "*in order to design a genuine set of rules and institutions governing fully integrated pan-European energy markets*" [xxxviii].

Option 3 (Level I proposal): Better representation of Contracting Parties' NRAs in ACER and improving the effectiveness of ECRB.

From an EU point of view, the conditions for third countries[xxxix] participation in ACER are codified by Article 31 of Regulation (EC) 713/2009. Namely, the third country has to:
conclude an international agreement with the EU that also specifies, in particular, the nature, scope and procedural aspects of the involvement of those countries in the work of ACER, including provisions relating to financial contributions and to staff;
adopt; and apply Community law in the field of energy and, if relevant, in the fields of environment and competition.

The European Commission has issued further guidance in a Commission Staff Working Paper[xl] that, e.g., highlights a truly independent National Regulatory Authority as an essential prerequisite[xli]. These conditions are prerequisite for the participation in the following bodies: ACER Working Groups and Working Group Task Forces, ACER Administrative Board (observership, without voting rights) and ACER Board of Regulators.

The Regional Initiatives for Electricity[xlii] and Gas[xliii] (ERI, GRI) are governed by ACER. Aside a mandate of the European Commission to develop regional Work Plans 2011-2014 and so-called cross-regional Roadmaps in order to promote the early implementation of Network Codes and market integration towards the completion of the Internal Energy Market, ERI and GRI build on voluntary structures and are not ruled by Regulation (EC) 713/2009 or other legislative acts.

Applying Title III of the Treaty could allow solving issues arising between neighbouring EU countries and Contracting Parties[xliv].

Option 3 does not require substantial legal and/ or implementation efforts, nor does it double institutional structures. Option 3 also addresses the final target of the Energy Community of ensuring integration within the EU energy market by ensuring involvement of Contracting Parties delegates in the activities of ACER that are supposed to directly affect the Contracting Parties, namely the development of Third Package related Network Code / Guideline Regulations.

Acknowledging the limited human resources of Contracting Parties NRAs for meaningful contribution to ECRB deliverables, the ECRB Work Program could in the future better target realistic deliverables and focus on more strategic activities that promote ECRB as a strong and independent regional voice of Energy Community NRAs.

The term of the ECRB President currently is limited to one year, renewable only once[xlv]. The underlying concept of this rule is the promoting of ownership of the ECRB activities and understanding of its procedures by rotating leadership. However the need for forming ECRB into a stronger regulatory voice calls for more continuity of its management. The existing limitation to a maximum two year term also unduly restricts longer term strategies. The term of the Chair and Vice-Chair of ACER's Board of Regulators is two-and-a-half years without limitations on its renewal[xlvi]. It would be appropriate to also establish a longer term for the ECRB President (e.g. two years).

In terms of legal procedures realisation of option 3 would require change of the ECRB Internal Rules of Procedure related to the term of its President. The procedures for amendments of the ECRB Internal Rules of Procedure are defined in its Article 13 paragraph 3[xlvii].

In comparison to maintaining status quo, implementing the below options could have following impacts:

Options	Legal procedures	Costs/budget	Implementation effort	Effectiveness/efficiency/coherence
Option 1	Procedural Act by the Ministerial Council empowering the ECRB	Extensive costs if ECRB is turned into a permanent body	Considerable	Depends on the commitment by the NRAs
Option 2	Adoption under Title IV of the current Treaty	Minor	Limited	Depends on the activity of the NRAs
Option 3	Change to internal rules of ECRB, MoU	None	Small	Depends on the activity of the NRAs

Questions to the stakeholders:

44. Do you agree with the assessment of the above options?
45. Do you support the status quo or Option 1, 2, or 3?
46. Do you consider that additional options need to be added? Which? What are the impacts in comparison to status quo?

II. Involvement of Energy Community TSOs in ENTSO-E and ENTSOG

Representation of TSOs in ENTSO-E is not assessed in details since, in contrast to the gas sector, the majority of Contracting Parties electricity TSOs are already members of ENTSO-E or have initiated related discussions. Also, ENTSO-E has even established a Regional Group South East Europe that reflects the specificities of the 8th Region. A Contracting Party TSO delegate is a Member of the Board within ENTSO-E.

A TSO from a Contracting Party can apply for an Observer status to ENTSOG, on a voluntary basis. So far, two Energy Community TSOs hold such status and a third one has started an initial procedure, while the other (5) TSOs have not yet considered applications. However, according to the ENTSOG's Articles of Association of 25 October 2012, Observers are entitled only to attend the meetings of the General Assembly without having voting rights. Further, the Rules of Procedure of 13 December 2012 do not allow Observers to participate in the working groups, which are core to fulfil the ENTSOG tasks foreseen by the Third Energy Package, namely developing the Network Codes (NC), ten year network development plans (TYNDP) and Gas Regional Investment Plans (GRIPs) et al.

A Member status - the full fledged membership - to ENTSOG is defined by the Third Energy Package (Article 10 of Directive 2009/73/EC and Article 4 of Regulation (EC) 715/2009) and by the ENTSOG's *Articles of Association* (Article 7 and Article 1/43), which require that only certified transmission system operator from an EU Member State can be a member to ENTSOG.

Another status option is an Associated Partner. Associated Partner is entitled to participate in the General Assembly without voting rights (same as an Observer), while the participation in Working Groups is possible if granted by the ENTSOG Board. The condition to be certified according to the Third Package remains.

Benefits of more active and efficient involvement of the Contracting Parties' TSOs in ENTSOG would be manifold. TSOs from the Contracting Parties would have an opportunity to cooperate directly with other TSOs, including those from EU MSs, exchanging experiences and acquiring their know-how. The involvement of the Contracting Parties TSOs will also help TSOs form the neighbouring Member States to establish better cooperation along the same transit routes, based on common rules. A status of a Member will ensure direct involvement in the preparation of the Network Codes and other documents, fostering transfer of knowledge on the EU acquis and providing a legitimate framework to argument own positions and capacities in regards to implementation Regulation (EC) 715/2009. From other side, the better and continuous involvement of the Contracting Parties' TSOs will enable ENTSOG to have a comprehensive overview over entire European gas transmission network – in regards to actual operational rules in place, challenges and development plans.

The existing arrangements above (in the current framework) may not be sufficient to accommodate TSOs of Contracting Parties in the Membership of ENTSOG, even in the case of implementation of the Third Energy Package by the Contracting Parties and certification of TSOs. Therefore it is proposed to request ENTSOG to adapt its Articles of Associations allowing Observer participation to the working groups, on the case by case basis.

Questions to the stakeholders:

47. Do you agree with the above assessment?
48. Do you support the above request?
49. Do you consider that additional options need to be added? Which? What are the impacts in comparison to status quo?

Public Consultation Submitted Responses

I. Strengthening of the ECRB and cooperation with ACER

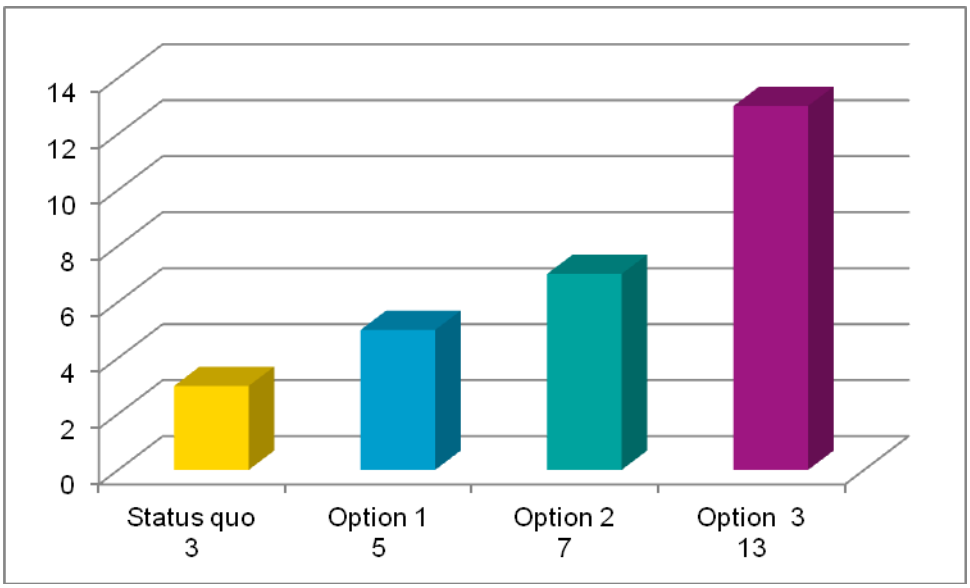
44. Do you agree with the assessment made in the Analytical Paper?

	YES 12 / NGO		NO 3 / NGO		DO NOT KNOW 2 / NGO 26

Total number of responses: 43

Comments
Government /Serbia
Above all, we think that the participation of certain Contracting Parties (that are fulfilling the conditions from the Regulation 713) in the work of ACER is very important, especially from the aspect of further development and integration in the European market, except that they should not have the status of the observer but the member status. On the other hand the existence of the ECRB should not terminate, but the ECRB should continue its work with the modified jurisdictions that shall relate to the specific regional issues in which all countries from the region, Contracting Parties, shall participate.
We do not support the separation of the ECRB from the Energy Community Secretariat.

45. Which of the four options do you support the most? (Please note these options are not mutually exclusive and may also depend on each other.)
Number of responses: 28, Multiple responses: 5



46. Do you consider that additional actions under this option could be undertaken need to be added? Comments?

Civil Society
Turkey
ECRB, as the representative of Contracting Parties' NRAs, should get involved in the activities of the Agency as an Observer in order to follow the developments in the European energy markets closely. It requires no cost and low implementation effort and would increase the coherence.

Austria: Phasing out of ECRB and representation of Energy Community Regulators in ACER.

EU Bodies
ACER
1. Strengthening of the ECRB
In contrast to the Agency, the ECRB has primarily been assigned an advisory role and can only have decision-making powers subject to its empowerment by the Ministerial Council. Indeed, the ECRB has been empowered, by Decision D/2011/02/MC-EnC of the Ministerial Council incorporating the 3rd Package, *inter alia*:
- to issue opinions, upon request from the EnC Secretariat, on the TSOs certification decisions issued by Contracting Parties' NRAs, including certification decisions in relation to third countries;
- to take decisions regarding exemptions, in case of disputes between Contracting Parties' NRAs.
In these specific areas, the ECRB has been empowered with a role similar to the one assigned to the Agency in the EU.
Furthermore, the upcoming adoption and adaptation of Regulation (EU) No 347/2013 by the EnC may foresee an involvement of the ECRB in the implementation and monitoring of Projects of Energy Community Interest (PECI), as well as an active role in the implementation of the permit-granting process. In this way, the ECRB would play in the EnC a role similar to, or possibly even more prominent than the one performed by the Agency in the EU.
However, there are tasks assigned to the Agency where it seems difficult to envisage a similar role for the ECRB. The Analytical Paper already acknowledges that the tasks of the Agency related to Framework Guidelines cannot be mirrored within the EnC. Other Agency's tasks related to the network codes, to monitoring the activities of the European Transmission System Operators (ENTSOE and ENTSOG) and to providing opinions on the TYNDPs are also not suitable for replication by the ECRB. It is equally difficult to envisage for the ECRB a role similar to the one of the Agency in the implementation and operation of wholesale energy market monitoring under REMIT, with respect to which, even when REMIT were to be implemented in the EnC, there would still be clear benefits in a pan-European approach to monitoring and to the coordination of national actions.
Therefore, the assignment to the ECRB of competences and responsibilities similar to those of the Agency should be considered on a case-by-case basis, in order not to create unnecessary duplications or inconsistencies with the current EU institutional framework for the Internal Energy Market.
On the basis of the Agency's experience it may also be appropriate to consider whether an enhanced role for the ECRB requires putting in place checks and balances, as well as requirements for its independence, similar to those of the Agency, and a stronger structure to support the ECRB's work. The latter could be achieved, *inter alia*, through the appropriate enhancement of the resources of the ECRB Section of the EnC Secretariat and its closer coordination and oversight by the President of the ECRB.
The Agency agrees that specific attention should be devoted to the current decision-making powers of the Agency and ECRB in case of disputes between NRAs, respectively in the EU and

among EnC Contracting Parties, and how these powers would apply when both EU NRAs and NRAs from Contracting Parties are involved. In this respect, the Analytical Paper provides the example of an exemption for a project involving both Member States and Contracting Parties. While disagreement between EU NRAs will be referred to the Agency and disputes between Contracting Parties' NRAs will be addressed by the ECRB, the Analytical Paper recognises that it is not straightforward to identify how possible disputes between EU NRAs and Contracting Parties' NRAs could be handled. It should be noted that similar situations may arise in the future when cross-border issues other than exemptions are dealt with jointly by EU NRAs and NRAs from Contracting Parties.

The Agency highlights that there is currently a legal gap in this area, in that neither the EnC Treaty nor the EU energy acquis properly address cross-border issues between the EU and the EnC nor the competent body for the treatment of such issues. The Agency calls on the Commission to fill this gap by amending the relevant legislation at its earliest convenience. This should be done without prejudice to the competences of the Agency with regard to EU NRAs.

From a substantive point of view, the Agency considers that:

-any robust dispute-resolution process should be based on a single entity being responsible for the final decision, with appropriate safeguards to ensure that all relevant interests are properly taken into consideration and that the decisions are subject to judicial review;

- the trend is for NRAs of Contracting Parties to gain greater involvement in the Agency (see Section 2.2 below and also Proposal 4.9 of the HLRG3), while EU NRAs cooperate within the Agency where they also have a formal role in the BoR. Therefore, it seems reasonable that, at least in prospect, in case of a dispute between one or more EU Member States' NRAs and one or more ENC Contracting Parties' NRAs over a cross-border issue, the Agency is called to decide on such a dispute.

As outlined in the previous section, the Agency is the competent body established, *inter alia*, to be in charge of dispute settlement procedures as regards the single energy market in the EU. It is, therefore, the one equipped with the experience, the resources and tools to address similar issues involving both EU NRAs and NRAs of the ENC Contracting Parties which aim to comply with the acquis in order to ensure a consistent treatment.

Moreover, the recent "Energy Union Communication" from the Commission4 proposes "a significant reinforcement of the powers and independence of ACER to carry out regulatory functions at the European level", which is likely to require amendments to the Agency's founding Regulation. The widening of the responsibilities of the Agency to deal with cross-border issues involving both EU NRAs and NRAs of the ENC Contracting Parties could, therefore, also be seen as part of the implementation of the Energy Union strategy.

This said, where the Agency is called to deal with such issues, a procedure needs to be developed so that the NRA(s) of the ENC Contracting Party(ies) involved in the dispute participate(s) in the procedure for the formation of the Agency's decision on an equitable basis with the NRA(s) of the EU Member State(s) involved in the same dispute.

The Agency would also like to support maintaining the nature of the individual Titles in the Energy Community Treaty unaltered. However, the Agency considers important that Title III is properly amended to reflect the new borders between the EU Member States and the Contracting Parties (i.e. Poland and Slovakia should be included in the geographical scope of Title III of the EnC Treaty and Austria should be removed from the same list).

2. Cooperation with the Agency

According to Regulation (EC) No 713/2009, article 31, "[t]he Agency shall be open to the participation of third countries which have concluded agreements with the Community whereby they have adopted and are applying Community law in the field of energy and, if relevant, in the fields of environment and competition. Under the relevant provisions of those agreements, arrangements shall be made specifying, in particular, the nature, scope and procedural aspects of

the involvement of those countries in the work of the Agency, including provisions relating to financial contributions and to staff".
In this context, the issue of the participation of Contracting Parties' NRAs in the Agency has already been addressed by the Commission's Staff Working Paper of June 20115. The Agency, in its "Bridge to 2025" Conclusions Paper, proposed that "Third countries committed to the implementation of the energy *acquis* should be able to participate in the Agency and its activities pursuant to Article 31 of its founding Regulation. As a minimum this would mean joining the Agency's Working Groups, as well as being involved in the Regional Initiatives activities. It could also mean – subject to the agreement of the European Commission - participating, as observers, in the meetings of the Board of Regulators". Practical arrangements for the implementation of these proposals were outlined in a letter from the Agency to the Commission of 26 November 2014.
In that letter, the Agency expressed its readiness:
- to allow participation in its Board of Regulators, as observers, to the NRAs of those Third Countries, including EnC Contracting Parties, who, subject to a European Commission assessment (to be communicated to the Agency), have fulfilled and continue to fulfil the requirements specified in Article 31 of Regulation 713/2009;
- to allow participation in its Working Groups of NRAs of those Third Countries who do not yet fully fulfil the requirements of Article 31 of Regulation 713/2009, but are considered on track in meeting these subject to a European Commission's assessment, with the expectation that this will be achieved within a reasonable period of time (6 to 12 months).
This approach was also reflected the Commission's Recommendation6 by which the Agency was invited to cooperate with the EBRB and the NRAs of EnC Contracting Parties in the application of the Internal Energy Market rules for gas and electricity.
The Agency has not yet received the Commission's feedback to its proposals, but still considers that they constitute a pragmatic approach for the implementation of the provision in Article 31 of Regulation (EC) No 713/2009 and proportionate to achieving the objective of greeter involvement of the Contracting Parties' NRAs in the work of the Agency.

Governments
Serbia: All three options are acceptable with the certain modifications of the given proposals.

FYR of Macedonia:
It should be pointed out that ECRB should not be imagined as an institution with same responsibilities and powers of ACER due to the nature of the Treaty. The contracting parties should work in other to represent themselves, through the NRA, in ACER. It is true that ECRB should be strengthened not only the length of the mandate of the president but the importance of its work to be recognized. This is something that ECRB should work on. The proposals that contracting parties are part of ACER and ECRB is for "associate members" is not acceptable and does not give positive picture to the Energy Community.

Czech Republic
The Czech Republic supports closer linkage between ACER and ECRB. However, we have to highlight several issues in this matter. Firstly, proposal of the HLRG counts with two categories of Members and Associated Members. As stated above, the Czech Republic does not support this division. The ECRB should be preserved as it serves as an advisory body for national regulators. We think the Option 3 could ensure furthest coherence with the EU rules, such as the implementation of the 3rd package and at the same time brings no additional costs. We may also support extension of the ECRB President´s term to 2 years, based on the presumption that the President may serve only two terms.

Poland
Poland strongly emphasizes on the need to conduct a comprehensive discussion on this issue in parallel to the discussion on the Energy Union.

Romania
We support option 3 as the one offering the best chances for a real integration of CP in the institutions with regulatory responsibilities.

Industry
Eurogas
Option 3. As the role of ACER is under consideration in the context of Energy Union work, Option 3 offers an appropriately flexible approach, binding the ECRIB closer to ACER's work. A stronger cooperation with ACER would be beneficial for integrating markets, but ACER should not lose focus on finalising the EU market, and should be guaranteed the necessary resources for any expansion of its activities.

EVN
NRA's of CPC have different priorities from MS NRA's. The active participation would request a knowledge of the very various specific positions of NRA's represented in ACER. Most of the TSO's are already member of ENTSO-E. Priority should first be given to make NRA's more independent from Governments as well as state-owned companies like TSO's, generators, public providers and increase their expertise. One aspect could be how to make the system used more efficient by changing or developing tariff structures reflecting more the large ratio of capacity dependent costs or reasonable cost allocation.

NIS
We disagree with the suggestion of the HLRG that the "…ECRB should be gradually phased out and replaced by Contracting Parties' regulators' membership in ACER, while keeping the ECRB for energy regulators from Associated Members". Namely, the ECRB is needed to uphold the institutional balance within the framework of the Energy Community and it should neither be phased out nor kept just as an institution of Associated Members (we disagree with the introduction of this category as such). We find that option 2 is the only one that can provide the necessary certainty and institutional stability to deal with issues related to the interface of EU member States and Contracting Parties (and which are under the remit of ACER or ECRB). Option 3 is actually not a genuine proposal as it replicates the possibility already provided for in Regulation (EC) 713/2009 – a possibility which entails the signing of an international agreement between the EU and a Contracting Party individually, as well as full implementation of energy acquis (and if relevant, environment and competition) – which represent very tough conditions indeed. Hence, we do not recognize on what basis the Analytical Paper states that "…option 3 does not require substantial legal and or implementation efforts". We find the discussion on the mandate of the ECRB Chair to be minor and misplaced in this section, as the role of the Chair as a primus inter pares is not of primary importance, and the changes can be handled by amendments to the ECRB Internal Rules of Procedure.

II. Involvement of Energy Community TSOs in ENTSOE and ENTSOG

47. Do you agree with the assessment made in the Analytical Paper?

	YES 18 / NGO		NO 1 / NGO		DO NOT KNOW 2 / NGO 25

Total number of responses: 46

48. Do you support the request on ENTSOG to adapt its Articles of Associations allowing Observer participation?

	YES 10 / NGO		NO 1 / NGO		DO NOT KNOW 3 / NGO 25

Total number of responses: 39

49. Do you consider that additional options need to be added? Comments?

Academia
Poland
Maybe ENTSOG could adapt provisions similar to those of ENTSOE, which made it possible for the majority of the Contracting Parties electricity TSOs to obtain memberships. Maybe also a visible EC focus on Central and South East European gas issues (interconnectivity, the CESEC idea) could be an factor easing the implementation of the needed changes in this area.

Civil Society
Turkey
I do not support the request which only asks for a loose involvement of Contracting Parties' TSOs as Observers in ENTSOG. ENTSOG should adapt its Articles of Associations allowing Contracting Parties' TSOs to be full Members of ENTSOG. It is inevitable to integrate the regional markets, which is prerequisite for a completed pan-European internal market; to establish better cooperation, especially on the interconnections, between TSOs and to facilitate the transfer of knowledge on the EU acquis. It would require amendments on the ENTSOG's Articles of Associations; no cost; medium implementation effort for ENTSOG and increase the effectiveness, efficiency and coherence.

Austria
European Commission to actively support the membership of all Energy Community CP TSOs in ENTSO-E / ENTSO-G.

EU Bodies
ACER
The Agency supports the proposal in the Analytical Paper, and its justification, for an enhanced cooperation between the TSOs of Contracting Parties for gas and ENTSOG. In the short term, the option for Contracting Parties' TSOs to become Observers in ENTSOG, with the possibility to participate in its Working Groups (subject to the ENTSOG's Board approval) seems the most realistic one. In the medium term, a revision of ENTSOG's Articles of Association may be needed,

in particular if the Observers option does not provide the needed benefits in terms of a pan-European cooperation.

ENTSOE
ENTSOE agrees with the assessment in general but clarifies that the mentioned Regional Group is in charge of market issues while there are two other Regional Groups involving partly Continental Europe (for system operation issues) or mostly Continental South East (for system development issues) with the South East Europe Contracting Parties of EnC. In addition it would be helpful, for streamlining cooperation of ENTSOE (member TSOs and the Secretariat) with EnC (and EnCS in particular) in all areas of common interests or responsibilities, to introduce a framework that will allow for efficient use of resources on both sides.

Governments
Serbia: We support participation in ENTSO –G, based on the principle of quality and rights.

Albania
We believe that Contracting Parties' transmission system operators should be entitled to become full members of ENTSO-G under the same conditions as applied by ENTSO-E.

FYR of Macedonia
Direct involvement of the TSO in these two associations is beneficial and the TSO should work in order to be part of them. The proposal ENTSO-G to adapt Articles of Association allowing observers to participate of the working group should be supported and Secretariat to be encouraged to take aggressive actions in order to fulfill this.

Czech Republic
Similarly, we support involvement of the Contracting Parties into ENTSO-E and ENTSO-G. We think that the possibility of Observers to participate in ENTSO-G Working Groups should be granted but only on a case by case basis. This should ensure that no EU Member States' interest is endangered in any aspect (protection of sensitive information). We support the proposal to request ENTSO-G to adapt its Articles of Associations.

Poland
PL strongly supports the direction of gradual involvement and cooperation between the Contracting Parties' TSOs in ENTSOG and ENTSOE. Due to the fact that existing legal basis may not be sufficient to accommodate TSOs of Contracting Parties in the Membership of ENTSOG (even in the case of implementation of the Third Energy Package by the Contracting Parties and certification of TSOs, Poland supports the proposal to request ENTSOG to adapt its Articles of Associations allowing Observer participation to the working groups.

Industry
Eurogas: The answer to question 47 is on the assumption it has been agreed with entsog.

EVN
Progress in market integration currently is driven in bilateral cooperation and/or by regional initiatives of TSO's and requests a very high degree of system harmonization and complex algorithms to coordinate congestions and balances. Furthermore the other market participants have to be integrated in elaboration of market rules.

NIS
The obvious option which proves that the EU legal framework allows for it is to achieve the same level of participation of gas TSOs from the Contracting Parties in ENTSOG, as the electricity TSOs from the Contracting Parties have in ENTSO-E. Both ENTSOs have their basis in the Third Energy Package, the same roles and responsibilities in their respective energy sectors, hence the differing treatment towards Contracting Party TSOs in gas and electricity is indefensible on the legal plain.

Regulators
E-Control
Bearing in mind that the Energy Community does not foresee bodies similar to the ENTSOs, I believe that transmission system operators of Contracting Parties should have the right to become full members of ENTSO-G. This membership should be based on the same principles applied by ENTSO-E, namely the requirement of Third package compliance. This approach would also enhance the desired homogeneity in the pan-European internal market and would be in line with the principle of nondiscrimination.

General comments on H. Cooperation with ACER and ENTSOs
EURELECTRIC
As for improving the regulatory framework, the participation of the EnC countries in existing institutions and structures including ACER, ENTSO-E and ENTSOG is crucial and should be closely monitored by the European Commission. While the ongoing cooperation with ENTSO-E functions rather well, for launching comprehensive cooperation with ACER it is key to enhance the independence of the national regulators in the region. In order to be able to integrate the EnC members, ACER and ENTSO-E also need to be staffed in such a way that this ‘connection’ role can be assumed. In addition, we would like to highlight the importance of energy education. There is a need to shape strategy further by providing dedicated training for key energy decision makers within the Energy Community in order to improve competence and share knowledge and information between the EU member states and the EnC members. In our paper published in 20141, EURELECTRIC recommended developing a specific EnC school for energy regulation or an alternative programme for executive education which could help improve the qualification of senior staff in government bodies, regulatory authorities, TSOs, etc. EURELECTRIC has been working together with the Florence School of Regulation and the EnC on the initiative to set up a dedicated training course.

I. Reforming current Energy Community institutions

Proposals by the High Level Reflection Group: 4.3, 4.4.(1)-(4), 5.1 (Stakeholder proposal)

The High Level Reflection Group suggested that "As part of the process of increasing the ownership of the Energy Community by Contracting Parties, the budget contribution system should be reviewed, in view of increasing the share of the budget coming from the Contracting Parties. This increase in contributions of the Contracting Parties could consist in offering secondments at the Secretariat, a possibility to also further develop human resources in the Contracting Parties' authorities."

I. Energy Community Budget Contribution System

The principles underlying the establishment of the Energy Community budget are set out in the *Budgetary Procedures* as well as in Annex IV of the Treaty. Following these provisions, the budget is formed by contributions of the Parties[xlviii] to the Treaty, each of which is determined by the level of contributions set out in Annex IV of the Treaty[xlix]. In that manner, Parties take part in the Energy Community annual budget according to the amounts of their contributions which are approved by the Ministerial Council simultaneously with approval of the income and expense budget for the forthcoming fiscal year. System of contributions, i.e. Annex IV, is subject to amendments in the context of accession of a country either to EU or to the Energy Community. In practice so far, Annex IV has undergone several amendments based on the relevant decisions of the Ministerial Council.

Status quo: Current system of budget contributions, i.e. applicable also for the biennium 2014-2015, results in a split of contributions at a level of approximate 95% from the European Union and 5% from the Contacting Parties[l]. Currently, Participants and Observers, as defined in Title IX of the Treaty, do not contribute to the Energy Community budget.

Option 1 (Level I proposal): All Parties to the Treaty offer on voluntary basis a number of secondments of staff to the Secretariat.

Option 2 (Level II proposal): Increase of contribution of the Contracting Parties, including in offering secondments of staff.

In future, Budget Contribution system could fix the level of financing of the European Union at a - proposed – fixed level of e.g. 80%[li]. The outstanding budget share of 20% could be split between the Contracting Parties. The minimum contribution level could be introduced. As a consequence of the proposed changes, the budget contributions by the Contacting Parties would be increased. It provides different possibilities of joining the Energy Community with different types of membership (members, associated members, observes) and different levels of financial responsibility.

In comparison to maintaining status quo, implementing option 1 or 2 could have following impacts:

Options	Legal procedures	Costs/budget	Implementation effort	Effectiveness/efficiency /coherence
Option 1	Minor (administrative decisions of the Secretariat)	Increase of costs for the Contracting Parties	Low	Positive impact increasing ownership of the Contracting Parties
Option 2	Amendments of the Treaty by a decision of Ministerial Council necessary	Increase of costs for Contracting Parties	Low	Positive impact increasing ownership of the Contracting Parties

Questions to the stakeholders:

50. Do you agree with the above proposals under option one?
51. Do you support the status quo or Option 1 or 2?
52. Do you consider that additional actions under this option could be undertaken and need to be added? Which? What are the impacts in comparison to status quo?

II. Making the Ministerial Council more strategic and upgrading the Permanent High Level Group

The High Level Reflection Group proposes to make the Ministerial Council "focus on strategic issues and leave as many decisions as possible to the Permanent High Level Group" and that "the Permanent High Level Group should be strengthened so as to exercise its function of the Energy Community's plenipotentiary, high-level and permanent collective decision-making body."
Status quo: No changes in current work of the Permanent High Level Reflection Group (PHLG). The group meets four times a year and prepares the Ministerial Council meetings.

Option 1 (Level I proposal): The PHLG could function similarly to COREPER and the Ministerial Council could encompass different constellations of ministers representing Contracting Parties.
A possible example for the division of work between Ministerial Council and the Permanent High Level Group is the division of work between COREPER and Council of Ministers in EU. The Permanent Representatives Committee (or COREPER) is responsible for preparing the work of the Council. COREPER occupies a pivotal position in the EU decision-making system, in which it is both a forum for dialogue (among the Permanent Representatives and between them and their respective national capitals) and a means of political control (guidance and supervision of the work of the expert groups). It thus carries out preliminary scrutiny of the dossiers on the Council agenda (proposals and drafts for acts tabled by the Commission). It seeks to reach agreement at its own level on each dossier, failing which it may suggest guidelines, options or suggested solutions to the Council.

In current setting PHLG endorses documents that are afterwards submitted to the Ministerial Council and discussed again often in full length. There is no codified principle that the PHLG can decide to submit some files as not requiring further discussions (A points).

In comparison to maintaining status quo, implementing option 1 could have following impacts:

Options	Legal procedures	Costs/budget	Implementation effort	Effectiveness/efficiency/ coherence
Option 1	Procedural Act or Decision of Ministerial Council	None	Low	Positive impact as the effectiveness of PHLG could increase

Questions to the stakeholders:

53. Do you agree with the assessment of the above proposal under option one?
54. Do you support the status quo or Option 1?
55. Do you consider that additional actions under this option could be undertaken and need to be added? Which? What are the impacts in comparison to status quo?

III. Strengthening the institutional capacity of the Secretariat

The High Level Reflection Group also proposes that "the institutional capacity of the Secretariat should be strengthened in terms of providing assistance related to law implementation, including the monitoring of implementation. The Secretariat should carry out a coordinating role in managing EU technical assistance in energy sectors, including investment promotion.**"**

Status quo: The Secretariat assists in reviewing and drafting primary and secondary legislation. This part of its work has constantly increased over the years. For instance, the Secretariat under so-called Implementation Partnerships engages in drafting legislation jointly with Ministries and regulatory authorities. Furthermore, the Secretariat – by its own resources – has drafted primary energy legislation aimed to transpose the Third Package to half of the Contracting Parties.

The Third Package also envisages very resource-intensive tasks for the Secretariat in the certification of transmission system operators and exemptions for new infrastructure. Moreover, the number of enforcement cases initiated by the Secretariat – many of them upon investors' complaints - is constantly increasing. The same goes for administrative tasks such as public procurement and contract management, but also the preparation of the institutions' decisions and procedural acts.

Option 1 (Level I proposal): Increasing the capacities of the Secretariat by voluntary secondments of staff by the Parties.

Option 2 (Level II proposal): Increasing of funds to the Secretariat to increase capacities to organise training programmes and assistance in implementation of the legislation and investment projects.

This option could include reinforcement of the legal unit, experts on communication and coordination of donors' assistance, staff for monitoring the implementation status of the

investments listed as Projects of Energy Community Interest. Following the increase of staff in the area of energy policy, increase in human resources in the general area of work might also be necessary (administration/finance/ human resources/IT).

In comparison to maintaining status quo, implementing options 1 and 2 could have following impacts:

Options	Legal procedures	Costs/budget	Implementation effort	Effectiveness/efficiency/ coherence
Option 1	Revision of administrative rules of the Secretariat by a Procedural Act	Costs for Parties seconding staff	Low	Potentially positive
Option 2	Decision of the Ministerial Council	Medium	Low	Potentially positive

Questions to the stakeholders:

56. Do you agree with the above assessment?
57. Do you support the status quo or Option 1, or Option 2?
58. Do you consider that additional actions under these options could be undertaken and need to be added? Which? What are the impacts in comparison to status quo?

IV. The future role of the Fora

The High Level Reflection Group further suggests that **"**the Energy Community Fora should be re-examined case by case in terms of their efficiency, role and relevance. They could be replaced by pan-European Fora also open to the stakeholders in the Contracting Parties, and/or by participation of experts from Contracting Parties in the existing EU Fora. The role of civil society and business in the institutions should be strengthened by granting them an observer role in the PHLG**."**

Title V Chapter IV of the Energy Community Treaty determines Fora as part of the institutional setting of the EnC. The Energy Community Treaty makes explicit reference to the Electricity and Gas Forum[lii]. According to Article 66 of the Energy Community Treaty meetings of the Electricity Forum are to be held in Athens. The Gas Forum venue is determined by a Procedural Act of the Ministerial Council[liii]: at its June 2007 meeting, the Ministerial Council decided that the Gas Forum will meet in Maribor.

Article 63 of the Energy Community Treaty defines the task of the Gas and Electricity Fora rather broadly as to "*advice the Energy Community*". In practice, they have become discussion platforms for ongoing and upcoming legal, regulatory and practical developments of the Energy Community gas and electricity sector. The Fora bring together representatives of ministries, industry, regulators, industry representative groups, donors and academia and adopt their conclusions by consensus and forward them to the attention of the PHLG[liv].

Electricity, Gas and Oil Forum

Status quo: The Electricity Forum is the oldest institution within the Energy Community structures. The role of the Athens Forum evolved over the years. In the period from 2002 until 2006, when the Energy Community was legally enforced, the reforms in the energy sector of the countries in South East Europe were modelled and ruled by the so-called "Athens Process" defined through the First and the Second Athens Memorandum. In this political framework the Athens Forum was the core event for coordination of all questions related to the creation of regional electricity market and development of corresponding legal and regulatory environments in the region. In addition to its advisory character, the main attributes of the Athens Forum are its broad scope of participants and its broad scope of topics (targets).

The Gas Forum today represents a platform where more than 120 participants, from the industry, ministries, regulators, donors, NGOs and academia exchange their views regarding the implementation of the Energy Community Treaty objectives, focusing on regional cooperation between Contracting Parties and their neighbouring Member States.. The scope of involved stakeholders has been broadening, which has been particularly relevant about the business. Nevertheless, the Forum was open not only to the regulators, governments, TSOs, traders, international organizations, but also to the NGOs and independent experts who follow the gas markets. The Forum's agenda has been related to gas infrastructure, security of supply, internal gas market – in both European Union and in the Contracting Parties.

The Oil Forum in today's setting is an opportunity for oil experts, high-level representatives from governments, public and private oil companies and investors to talk and exchange of experience between them. The Oil Forum serves as a mechanism for pursuing and promoting a joint energy policy in this area.

Option 1 (Level I proposal): No change of the format and role of the Fora however improvement of the results with the available means for example by aligning the topics with the EU Fora, more strategic choice of topics and clearer output e.g. in the form of discussion papers.

Option 2 (Level II proposal): Contracting Parties will participate directly in the EU Fora in Florence for electricity, for gas in Madrid and in Fossil Fuels Forum in Berlin, equally with EU stakeholders. The Energy Community Fora will be abolished.

Option 3 (Level II proposal): The Energy Community Fora will be held back to back with the EU Fora, once a year providing an opportunity to have a joint session of both Fora ("Grand Forum").
In terms of legal procedures abolishment of the Energy Community Fora or change of the place where they are organised (in case of electricity forum) would result in major legal impacts and require changes to Article 63 Energy Community Treaty. Linking the Energy Community Fora with the EU Fora would improve coherence with the developments and the discussions within the EU. However, abolishment of the Energy Community Fora is likely to lead to a situation that topics specific for Energy Community Contracting Parties would not have a platform where they could be discussed.

In comparison to maintaining the status quo, implementing option 1, 2 or 3 could have following impacts:

Options	Legal procedures	Costs/budget	Implementation effort	Effectiveness/efficiency/coherence
Option 1	No impact	None	No new efforts	This option brings limited improvements
Option 2	Change to the Treaty	Possible moderate increase of costs	None	Positive impacts in terms of bringing Contracting Parties sectors closer to the EU; Negative impacts in terms of lack of a Forum to discuss Energy Community specific topics
Option 3	Some impact due to change of venue in case of the Gas Forum; in case of the Athens Forum – change to the Treaty	Possible moderate increase of costs	None	Positive in achieving the aims of the Energy Community

Questions to the stakeholders:

59. Do you agree with the assessment of the above options?
60. Do you support the status quo or Option 1, 2 or 3?
61. Do you consider that additional options need to be added? Which? What are the impacts in comparison to status quo?

Consumer platform

Status quo: Consumer protection has been a central aspect of Energy Community activities since its beginnings. While the Treaty itself provides rather general reference to social issues[lv], the gas and electricity related acquis in particular contain explicit consumer protection elements: Article 3 of the Directives 2009/72/EC and 2009/73/EC make an explicit reference to public service obligations and customer protection. Accordingly, the Contracting Parties must protect final customers and "*in particular ensure that there are adequate safeguards to protect vulnerable customers*". Beyond that, Directives 2009/72/EC and 2009/73/EC list comprehensive consumer protection obligations in each their Annex 1. Consumer protection is also a key objective for execution of NRA tasks. The activities of the Energy Community Regulatory Board (ECRB) put focus on consumer related regulatory aspects from its beginnings via a dedicated Customer Working Group.

Two options can be identified for providing an adequate platform for discussion of consumer related aspects apart from keeping status quo:

Option 1 (Level I proposal): Establishment of an Energy Community consumer platform.

Option 2 (Level I proposal): Access to and involvement of Energy Community stakeholders in the European Citizens Forum (London Forum)[lvi], dedicated to consumer related topics of the gas and electricity markets.

The topics discussed at the EU Citizen Forum in essence do not differ from the consumer related aspects of interest for the EnC. In the light of this, it seems most efficient to not double related discussions but combine them. This certainly addresses best the objectives of the EnC, namely to ensure coherent development with EU market discussions.

In comparison to maintaining status quo, implementing option 1 or 2 could have following impacts:

Options	Legal procedures	Costs/budget	Implementation effort	Effectiveness/efficiency /coherence
Option 1	No specific action needed	Costs related to administration and travelling	Small	Positive
Option 2	No specific action needed	Costs related to administration and travelling	Small	Positive

Questions to the stakeholders:

62. Do you agree with the above proposals under option one?
63. Do you support the status quo or Option 1 or 2?
64. Do you consider that additional actions under this option could be undertaken and need to be added? Which? What are the impacts in comparison to status quo?

V. Future involvement of civil society and business in the institutions

The High Level Reflection Group proposes that **"**The role of civil society and business in the institutions should be strengthened by granting them an observer role in the Permanent High Level Group".

Status quo: No explicit involvement of civil society organisations (CSOs) in policy-making process.

Option 1 (Level I proposal): CSOs granted formal observer status at the PHLG meetings.
The Environmental Task Force already involves representatives from civil society and business on a regular basis and its experience shows that their active involvement in the Energy Community processes brings significant benefits. On the other hand, enhanced civil society engagement could also result in certain drawbacks. Two notable issues to consider are the capture of the process by unrepresentative groups and decreased efficiency of the decision-making process. However, both potential drawbacks could be avoided by having an efficient structure for CSO engagement in

place which ensures diversity in the interest groups represented and efficiency of the decision-making process. The budgetary impact would be minimal and only visible in terms of slightly increased catering and possibly larger meeting facilities. Reimbursement of travel costs would probably not be necessary, as most CSOs have a budget (albeit limited) for participating in international meetings.

In comparison to maintaining status quo, implementing option 1 could have the following impacts:

Options	Legal procedures	Costs/budget	Implementation effort	Effectiveness/efficiency/coherence
Option 1	Procedural Act needed	Small given no reimbursement of costs	Some	Positive

Questions to the stakeholders:

65. Do you agree with the above proposals under option one?
66. Do you support the status quo or Option 1?
67. Do you consider that additional actions under this option could be undertaken and need to be added? Which? What are the impacts in comparison to status quo?

VI. Creating an Energy Community Parliamentary Assembly (ECPA)

In July 2014[lvii] and September 2014[lviii], Parliamentarians of the Energy Community Contracting Parties called for the establishment of an *Energy Community Parliamentary Assembly* (ECPA), which would bring together Members of Parliament of the Energy Community Contracting Parties and Members of the European Parliament.

Status quo: Continuing non-institutionalized cooperation with Parliaments.

Option 1 (Level I proposal): Establishment of an Energy Community Parliamentary Assembly. Through the activities of the ECPA, Members of Parliament would be better informed about the laws in the pipeline and the reasons for why their adoption is necessary to meet the Energy Community goals. Moreover, Energy Community Parliamentarians would be in a better position to oversee the energy policies of Governments and apply political pressure so that policies follow the Energy Community's goals. The ECPA would thus serve to improve the current deficit in the implementation of the Energy Community acquis. With the establishment of the ECPA, Members of Parliaments of the Contracting Parties and the European Parliament would have a greater ownership of the Energy Community process. The Assembly could serve to exchange information and best practices regarding the implementation of energy law.

The establishment of an Energy Community Parliamentary Assembly would make the Energy Community better equipped to meet its objectives, notably by increasing political support for the implementation of the acquis, increasing sense of ownership of the organisation and increasing democratic legitimacy of the organisation.

In comparison to maintaining the status quo, implementing option 1 could have the following impacts:

Options	Legal procedures	Costs/budget	Implementation effort	Effectiveness/efficiency /coherence
Option 1	Procedural Act needed	Costs of organizing an event	Some	Positive

Questions to the stakeholders:

68. Do you agree with the above proposals under option one?
69. Do you support the status quo or Option 1?
70. Do you consider that additional actions under this option could be undertaken and need to be added? Which? What are the impacts in comparison to status quo?

Public Consultation Submitted Responses

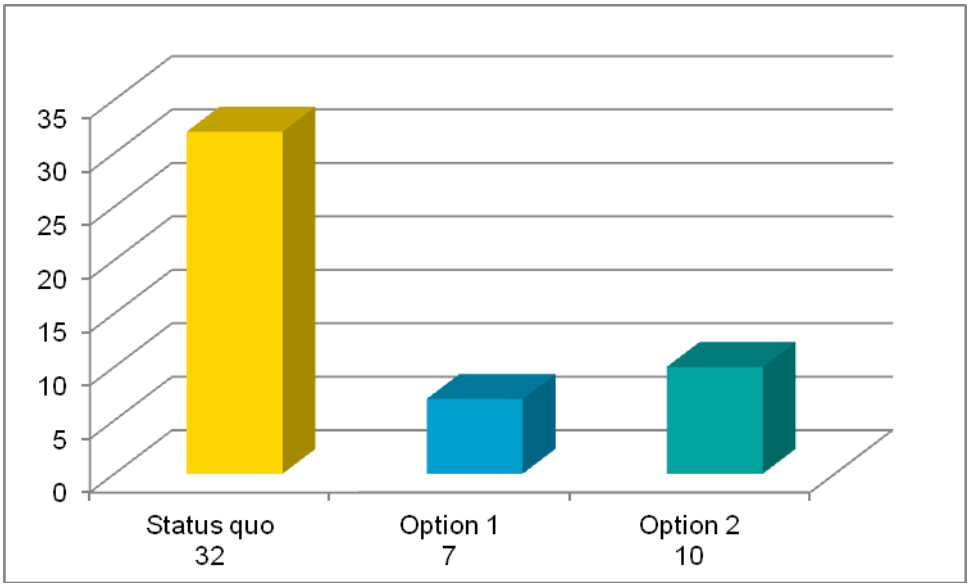
I. Energy Community Budget Contribution System

50. Do you agree with the proposals under option one?

	YES 11 / NGO		NO 3 / NGO 27		DO NOT KNOW 2 / NGO 2

Total number of responses: 45

51. Which of the three options do you support the most?
Number of responses: 48, Multiple responses: 1



52. Do you consider that additional actions under this option could be undertaken and need to be added? Comments

Academia
Poland
Before introducing any of these changes I'd consult on them with the Contracting Parties directly, explaining what exactly the renewed role of the Energy Community would be, and what their increased role in it would be. I'd also consider introducing the possibility of short-term suspension (in very specific, very well-defined circumstances) of their obligation to contribute to the Energy Community budget.

Civil society
Austria: To increase financial contribution but also value out of EnC membership.

Donors
GIZ
Within many Contracting Paties' national institutions/Ministries, there is often a situation of being understaffed, in terms of quantity and experience of personal. Any secondment system should take this fact in consideration and not weaken national capacities. The same time, the aspect of strengthening of Contracting Parties' personnel skills by seconding experts seems to be very relevant. This approach could be supplemented by establishing a work-shadowing system (between Contracting Parties, participating countries, and the ECS).

Governments
Serbia
Status quo: Declaration in terms of acceptance of Option 1 will be possible only after additional elaboration of the proposal and cost estimation.

Poland
Poland supports the proposal to maintain current system of budget contributions. The EU should still remain main contributor to the Energy Community budget. The split of contributions at a level of approximate 95% from the EU seems to be reasonable also nowadays.

United Kingdom
Any change to budget contributions would need to be considered under the standard budget negotiating procedure. The UK could support Option 1.

Industry
NIS
Comment for question 50: YES, but the proposal has to be elaborated (How is the need for seconded staff announced by the Secretariat? Contracting Parties is too wide a term: ministry staff? NRA staff? Industry staff? Other institutions? What is the selection process and criteria when more candidates for a post are "offered"?)

Regulators
E-Control
I support Option 2 which opts for the increase of contribution of the Contracting Parties, including offering secondment of staff. I see no reason for changing the current budget distribution key by fixing the EU's contribution at a level of 80% as it is proposed in the analytical paper. As the Energy Community is a very valuable instrument for the EU when promoting market reforms and regional integration, a reduction of budget contribution would send the wrong signal.

MEDREG
Given the global difficult economic situation, in order to succeed the increase of contribution should be binding and take the form of secondment.

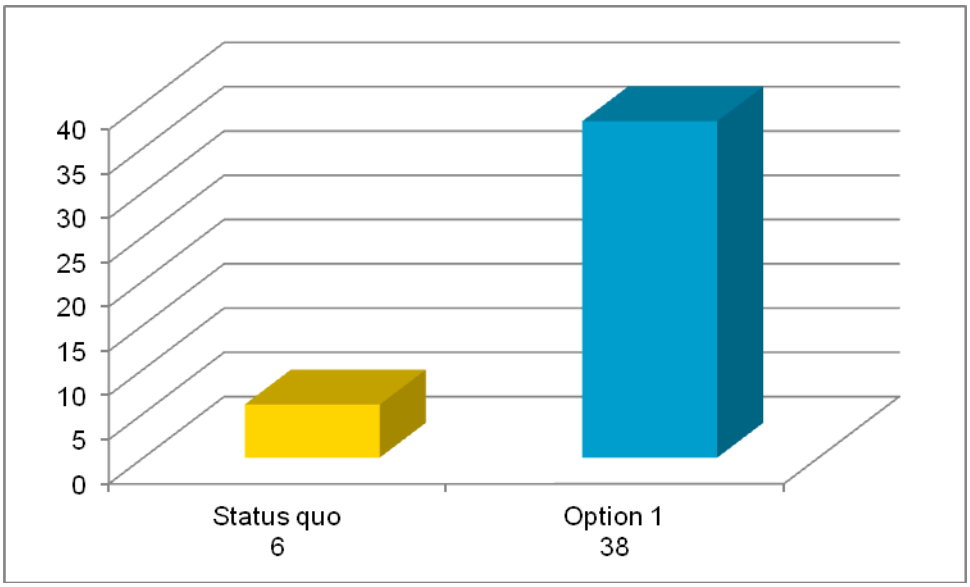
II. Making the Ministerial Council more strategic and upgrading the Permanent High Level Group

53. Do you agree with the assessment of the proposal under option one?

	YES 13 / NGO 27		NO 1 / NGO		DO NOT KNOW 1 / NGO 2

Total number of responses: 44

54. Which of the two options do you support the most?
Number of responses: 44



55. Do you consider that additional actions under this option could be undertaken and need to be added? Comments?

Civil society
Turkey
In order to provide a stable, consistent and functional decision making body, the members of PHLG should be authorized fully and permanently by their national institutions. It requires no additional legal procedure and cost, but low level of implementation effort while increasing the effectiveness and the efficiency of PHLG.

Governments
Serbia
As explained, it is not clear what it is the estimation of the effective growth of the PHLG based upon. According to our opinion and without of any other positive effect it would come to the restriction of Ministerial Council to decide on any question in full capacity. It is necessary to additionally elaborate this option in order to enable better identification of positive and negative aspects of the proposal.
An analogy is drawn between PHLG and COREPER, but COREPER is not an EU decision-making body.

Poland
Existing competences of each institution, including Ministerial Council, Permanent High level Group, the Secretariat, the Regulatory Board and the Fora, seem to be well adopted for the challenges ahead the Energy Community. Nevertheless, we acknowledge that there is need to make existing institutions function better in practice. If the HLRG, the Secretariat and the

Commission think that this solution might be useful in terms of increasing the effectiveness of PHLG and the Ministerial Council, Poland thus is ready to support this proposal.

United Kingdom
We agree that it would be helpful to streamline the institutions of the Energy Community to ensure a division between strategic and technical decisionmaking.

Romania
Option 1 it is absolutely necessary for a more flexible activity of the EC institutions and for making EC MS more responsible in this process

Industry
NIS
The PHLG already prepares the work of the Ministerial Council (and the parallel with COREPER in this sense exists, but COREPER is not an EU decision-making body). The fact that issues prepared by the PHLG are discussed often in full length by the Ministerial Council points to the need of better communication between the PHLG representatives and their respective ministers, rather than changing the decision-making powers of the PHLG and the Ministerial Council. Additionally, it is interesting that the HLRG finds that the Ministerial Council should focus on strategic issues, thus suggesting that the Ministerial is overburdened by numerous decisions which hinder it from dealing with strategic topics. On the other hand, the strategic issues of the Energy Community are rather limited in scope and dictated by the developments in the strategic and policy stances of the EU.

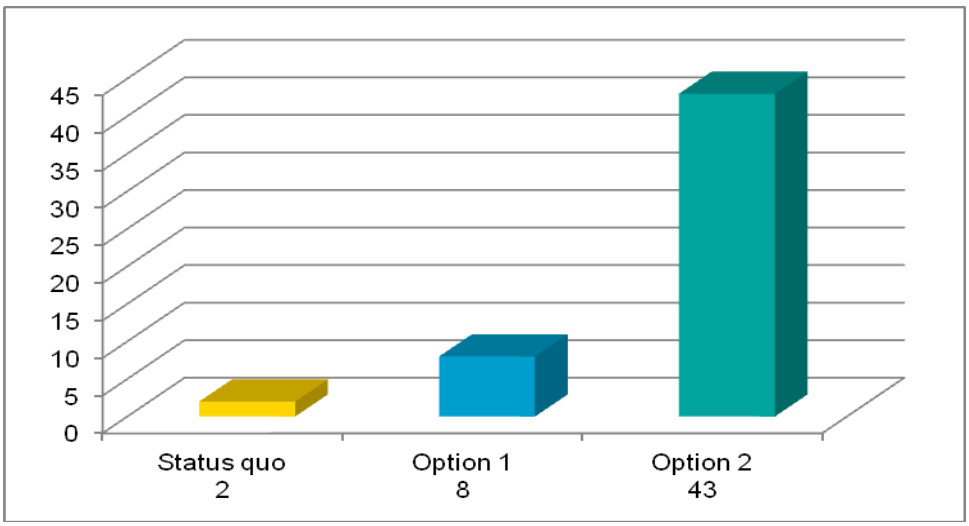
III. Strengthening the institutional capacity of the Secretariat

56. Do you agree with the assessment made in the Analytical Paper?

	YES 16 / NGO 27		NO / NGO		DO NOT KNOW / NGO 2

Total number of responses: 45

57. Which of the three options do you support the most?
Number of responses: 52, Multiple responses: 4



58. Do you consider that additional actions under this option could be undertaken and need to be added? Comments?

Academia
Poland
I think here – as in most of the other points – it is very important issue to precisely define, via direct discussions with the EC & other EU institutions (plus the Contracting Parties), what the Energy Community (and so its Secretariat)'s concrete role in EU energy policy, Energy Union strategy, etc. should be; what the strategic interests are right now behind integrating the Contracting Parties and potential future members of the energy/gas markets with the EU; what time-frame is foreseen, etc. That would also be a good moment for a clear division of labour and defining the Energy Community (& its Secretariat)'s role in the EU's bilateral energy relations, for example with Ukraine (in - foreseen in the Energy Union's strategy - upgraded Strategic Partnership). That would help to map the future tasks for the Energy Community Secretariat, and so ensure that its institutional capacities are suited to its actual needs.

Unknown/ Serbia
We propose that where needed additional highly competent staff be recruited, not necessarily from within the Energy Community Contracting Parties if the expertise does not exist, and thus improve the capacity of the Secretariat not on a voluntary basis, but on a permanent one. The institutional set-up is something that can best be judged by success in the Treaty's implementation. It is widely agreed that many obligations have so far not been well-implemented, and one of the reasons for this is the lack of monitoring and enforcement capacity of the Secretariat, especially in the environment and social fields. Having one environment specialist and one person covering both oil and social issues cannot bring the desired results. While implementing this option may involve additional costs with new staff members, the effectiveness and efficiency of the measure will be immediately visible by reducing the existing burden on the very few experts in the Secretariat (particularly environmental and legal ones) and byspeeding up the processes in which they are involved (i.e. solving inquiries regarding cases of non-compliance or addressing transposition of acquis).

Civil society

Turkey
Country desks for the monitoring of acquis alignment should be formed in addition to other new or reinforced units such as legal unit or investment coordination unit. It would cost at a medium level and requires low level of implementation effort while increasing the effectiveness and efficiency of the Secretariat.

Austria: Stronger involvement of EnC CPs in programs being organized by EC.

Donors
GIZ
In line with the advice of the HLRG to give the Energy Community a more influential role on technical assistance (Improving the Investment Climate), European Union's assistance on energy and environmental issues available for the Contracting Parties, should be programed by the Community in future. An enlarged ECS should get a leading executive role in the project implementation together with the respective Contracting Party.

Governments
Serbia
It is certainly necessary to prepare human resource capacity, technical and financial for the Secretariat as well as enough resources to fulfil its obligations; but **it** cannot be referred to as strengthening of its '' institutional'' capacity, beyond the position according to article 67 of the Contract
Option status quo: Option 1 has not been elaborated. It is difficult to estimate the costs.

Czech Republic
The Czech Republic is of an opinion that if the decision to increase the Contracting Parties´ contribution to the budget is adopted, we may support Option 2. This would not lead to increase of the EU funding in absolute terms – as the percentage share of the EU contribution decrease to 80 %. In addition to voluntary secondments / internships at the Secretariat (as stated in the previous section), experts serving longer terms should be hired. This would ensure continuity of work and real expertise at the Secretariat.

Poland
PL strongly supports the Option 2 (level II proposal): Increasing of funds to the Secretariat to increase capacities to organise training programmes and assistance in implementation of the legislation and investment projects.
A number of options may be envisaged to strengthen the EU support for the Contracting Parties in their transposition efforts. One of them could be the enhancement of Legal Service of the Energy Community. Additional staff might be selected and designated amongst the European Commission experts. The main purpose of strengthening legal service would be significant improvement of the assistance of the EU to EnC countries, which could further facilitate the work of their national administration.
Participation in the meetings of the Energy Community institutions requires significant knowledge of the evolution of the EU energy sector among national experts. Therefore the European Commission/Secretariat should consider launching several rounds of training programmes and/or workshops in Brussels and/or Vienna for the country representatives in order to improve their ability to deal with technical nature of the implementation processes.
The Energy Community should also consider strengthening and broadening secondment programmes and internships at the Secretariat and the European Commission dedicated for national experts from the Contracting Parties. Some of the problems with the implementation of the

EU acquis come from the lack of expertise and knowledge how to conduct serious market and regulatory reforms. Secondment programmes should be launched to allow experts from the Contracting Parties to work as secondees at the Secretariat and the European Commission. The result of this commitment from the EU would help the country representatives to better cope with the obligations arising from the Treaty.
Therefore, Poland supports potential targets of strengthening the institutional capacity of the Secretariat as it was proposed in the analytical paper: reinforcement of the legal unit, experts on communication and coordination of donors' assistance, staff for monitoring the implementation status of the investments listed as PECI.

Romania
Option 1 will bring more added-value to the EC MS representatives, eventually even establishing a mandatory number of persons as secondment staff.

United Kingdom
We recognise the value of strengthening the Secretariat to enable it to provide more technical assistance and to monitor more closely the implementation of the acquis and can support Option 1 Increasing the capacities of the Secretariat by voluntary secondments of staff by the Parties. However, the question of increased funding would need to be considered under the standard budget negotiating procedure.

Industry
EVN
A (voluntary) partnership initiative between market functions of MS and CPC (TSO, DSO, MO, NRA, suppliers) could help to bring things forward. This should be organized on the level of management by frequent meetings and discussions, on an employment level by a timely limited exchange programme of about 6 months, where professional specialists may gain experience in the different business environment. The language may be some barrier and probably would be the main challenge in organizing such an exchange.

NIS
Option 2 has always been a possibility, but would need a detailed elaboration in order to be assessed properly.

NGOs
Same response by 25 NGOs
We propose that where needed additional highly competent staff be recruited, not necessarily from within the Energy Community Contracting Parties if the expertise does not exist, and thus improve the capacity of the Secretariat not on a voluntary basis, but on a permanent one. The institutional set-up is something that can best be judged by success in the Treaty's implementation. It is widely agreed that many obligations have so far not been well-implemented, and one of the reasons for this is the lack of monitoring and enforcement capacity of the Secretariat, especially in the environment and social fields. Having one environment specialist and one person covering both oil and social issues cannot bring the desired results. While implementing this option may involve additional costs with new staff members, the effectiveness and efficiency of the measure will be immediately visible by reducing the existing burden on the very few experts in the Secretariat (particularly environmental and legal ones) and by speeding up the processes in which they are involved (i.e. solving inquiries regarding cases of non-compliance or addressing transposition of acquis).

Regulators
E-Control
The Secretariat as being the only permanent and independent institution of the Energy Community has acted as a promoter for development and reforms. In order to ensure the successful development of the Energy Community also in the future, I believe that the currently understaffed Secretariat should be strengthened by increasing its (human) resources and competences. Increasing the capacities of the Secretariat by voluntary secondments through the Parties alone cannot ensure long-term stability.

CEER
CEER welcomes the proposals for the provision of additional financial assistance regarding training programmes for the key personnel of the Energy Community Institutions and countries. We believe in the value of exchange of best practice, for example through CEER's working groups and task forces, as well as access to continued professional training as important tools for developing the capacity of regulatory staff. CEER would be very pleased to work with the Energy Community to welcome ECRB regulators to its various training courses and to develop tailored courses to address the specific issues/needs of the regulators in the region. Strengthening the capacity and budget of the Secretariat in this area would, we hope, also facilitate the participation of such personnel in on-going training courses, such as those that CEER has initiated and is pursuing. CEER would encourage the European institutions and the Energy Community Ministerial Council to consider allocating specific budget funds for capacity building of regulators in the region, so that they may participate in professional training courses on regulatory matters. EU funds could also be mobilised to finance the organisation of tailor-made courses on specific issues of interest to regulators in the Energy Community, both in terms of securing expert lecturers and funding the attendance of the participants.

MEDREG
The independence of the Secretariat is pivotal for the success of the whole Energy Community. The Secretariat should be in the condition to fully exercise its role. While secondment is very important to provide a continuous exchange between the Secretariat and the staff of Contracting Parties, it should be complementary to the core work of the Secretariat, which should take place through dedicated human and financial resources.

EU bodies
MEPs
It should be ensured that the Energy Community is adequately resourced to not only carry out its existing work but also to enhance its cooperation with civil society at all levels within the Energy Community and to increase its capacity to monitor progress and investigate breaches' by signatory parties.

IV. The future role of the Fora

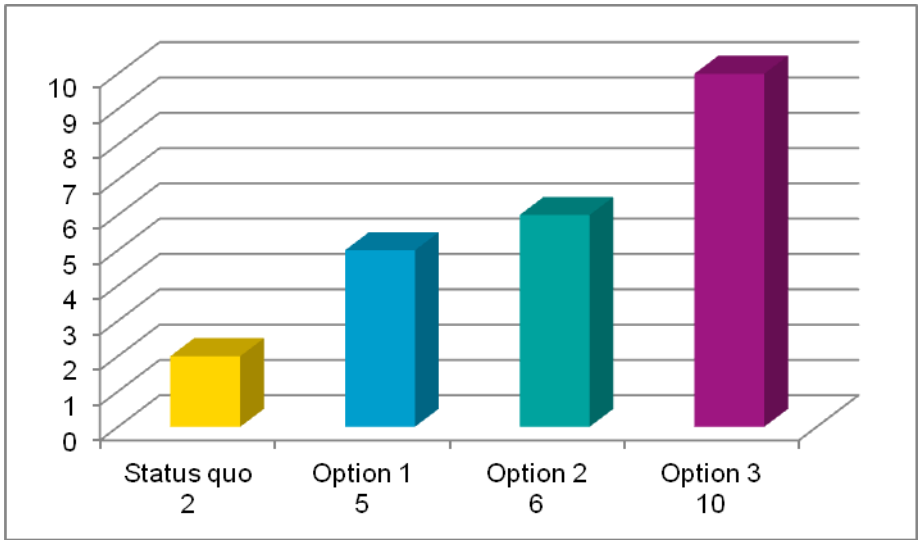
Electricity, Gas and Oil Forum

59. Do you agree with the assessment made in the Analytical Paper?

	YES 13 / NGO 25		NO 4 / NGO		DO NOT KNOW / NGO 2

Total number of responses: 44

60. Which of the four options do you support the most?
Number of responses: 23, Multiple responses: 5



61. Do you consider that additional actions under this option could be undertaken and need to be added? Comments?

Academia
Poland
Maybe option 1 could be supplemented by the increased participation of Energy Community representatives in EU forums?

Civil society
Turkey
The efficiency of Fora should be improved by following the model of EU Fora; however they do not have to be held back to back with the EU Fora. There has always been need for platforms where Contracting Parties could discuss their specific issues stemming from their immature and developing market structures which constitute their main difference from EU markets. Energy Community Fora should continue to be held together with the participation of Contracting Parties in the EU Fora. It would not require any additional legal procedure, cost or implementation effort at the Energy Community side. It would increase coherence in the most efficient way.

Donors
GIZ Appointed institutions of the Contracting Parties should get access to “Concerted Action Groups” which are having an analytical exchange on the implementation of certain Directives.

EU Bodies
ACER
The Agency recognises the value, going forward, of having common discussions between EU Member States and their NRAs and the ENC Contracting Parties and their NRAs on issues related to pan-European energy markets (e.g. in the context of security of energy supply). On the other hand, there are issues which are still specific to the EU or to the EnC. The opportunity of holding

common and separate discussions in an efficient way may call for the EU and the EnC Fora to be organised back to back (Option 3), especially for gas.

Governments
Czech Republic
Taken into account costs and benefits of each option, we consider the Option 3 to be most effective. Additionally, Contracting Parties could also possibly attend EU Fora, if suitable.

Poland
Option 1 (Level I proposal): No change of the format and role of the Fora however improvement of the results with the available means for example by aligning the topics with the EU Fora, more strategic choice of topics and clearer output e.g. in the form of discussion papers.

Romania
Option 2 – even if EC MS will not have the possibility to discuss specific problems, some EU MS, especially in the central-east region may have similar issues. Participating to these forums may constitute a good exercise for exchanging experience and identifying solutions for similar problems.

United Kingdom
The UK's view is that Option 3 should be considered as it integrates EU and Energy Community fora while providing fora for discussion of Energy Community specific issues.

Industry
Eurogas
The assessment is limited as it only summarises the way the Energy Community Forums function. The role and conduct of the Energy Community's Gas Forum is very different from that of the Madrid Forum, and this needs to be considered. The Energy Community Forums should continue. Representatives of the Energy Community Secretariat and, when appropriate for the Agenda, Contracting Party experts can attend the Madrid Forum.

Regulators
CEER
Regarding the future role of the EnC Fora (Section I, paragraph V), CEER believes that both the Electricity and Gas Forum should be retained but linked closer to the EU Fora by taking place back-to-back. As suggested in Option 1, improvement of the results through a more strategic selection of topics (including some alignment of topics together with the EU Fora) and more visual output (for example in the form of discussion papers) could add to their value.
We also consider that the successful practice of inviting EnC participants to the corresponding EU Fora (London, Florence, Madrid) has a high added value both for the EU and the EnC. To this end, the agenda of the EU Fora could be enriched with the systematic inclusion of one topic related to the evolutions in the Energy Community in the corresponding energy field (customers, electricity and gas). Especially on topics related to consumer protection, CEER supports the proposal for the establishment of an EnC consumer platform as well as the access to and involvement of EnC stakeholders in the European Citizens' Energy Forum (London Forum) (i.e. Options 1 and 2).

MEDREG
MEDREG considers that a more strategic choice of topics and a higher diffusion of the Fora results could enhance the activity of the EnC. MEDREG would be happy to envision a cooperation between MEDREG and EnC in fine-tuning -as much as possible the topics of the respective Fora.

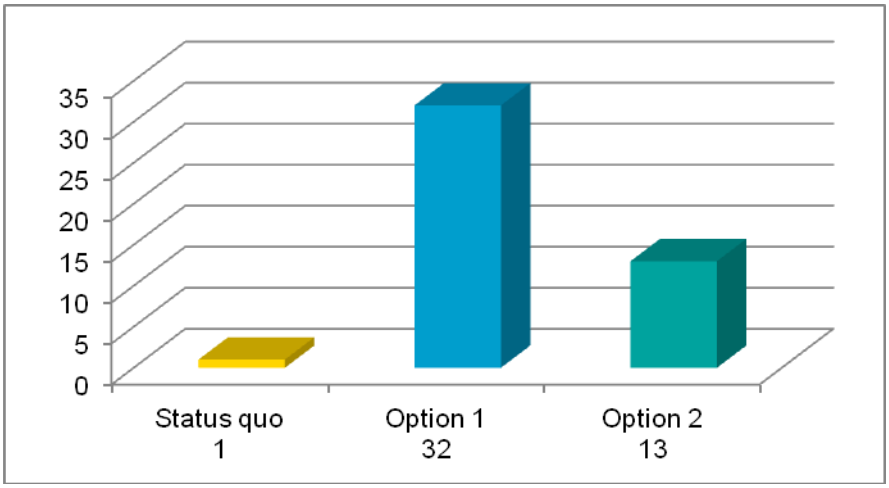
Consumer platform

62. Do you agree with the assessment made in the Analytical Paper?

	YES 14 / NGO 26		NO 1 / NGO		DO NOT KNOW / NGO 2

Total number of responses: 43

63. Which of the three options do you support the most?
Number of responses: 45, Multiple responses: 2



64. Do you consider that additional actions under this option could be undertaken need to be added? Comments

Academia
Poland
I would opt for the establishment of an Energy Community consumer forum which would be held back to back with a European Citizens Forum. That kind of solution would enable both joint discussions of EU-wide consumer related aspects and separate discussions of specific Energy Community consumers problems. I would also look for special attention (a formula?) to be paid to consumer problems related to the ongoing liberalization and increases of energy prices in the Contracting Parties, which may constitute one of the key challenges for ensuring the effectiveness and the public acceptance of the foreseen/ongoing reforms.

Serbia
Public awareness activities should be implemented in order to help the establishment of the Energy Community consumers' platform.

Governments
Serbia
Option 2 is acceptable, since it is the same considering the expenses as the option 1 (small) but having in mind new experiences and the themes, it is incomparably better and useful for the member countries.

Czech Republic

Concerning the area of consumer protection, we do not see any need to establish additional platform to cover this topic. This would necessarily lead to additional costs. We support Option 2 in this matter.

Poland
Option 2 (Level I proposal): Access to and involvement of Energy Community stakeholders in the European Citizens Forum (London Forum), dedicated to consumer related topics of the gas and electricity markets.

Romania
The two options may be implemented in parallel, offering the possibility to the EC consumers to have a platform of discussing specific EC issues, but offering in parallel the possibility to observe how similar issues are treated/solved within EU.

Industry
Eurogas
The Energy Community should do more work on customer-related issues. Representatives of a consumer platform could be invited to attend the Citizens Energy Forum. The emphasis of a platform's work should be on the delivery of a competitive energy market which delivers benefits for all consumers, including the most vulnerable.

NGOs
Same response by 23 NGOs
Public awareness activities should be implemented in order to help the establishment of the Energy Community consumers' platform.

EU bodies
MEPs
It should be ensured that a stronger focus is given to the Social aspects of the Energy Community, especially the binding character of the Memorandum of Understanding on social issues should be strengthened, the involvement of social partners in the monitoring of the implementation of the Energy Community and its effects should be enhanced through effective mechanisms for information and consultation, more should be done to tackle energy poverty and for the protection of users, especially vulnerable ones, and to improve working conditions and equal opportunities.

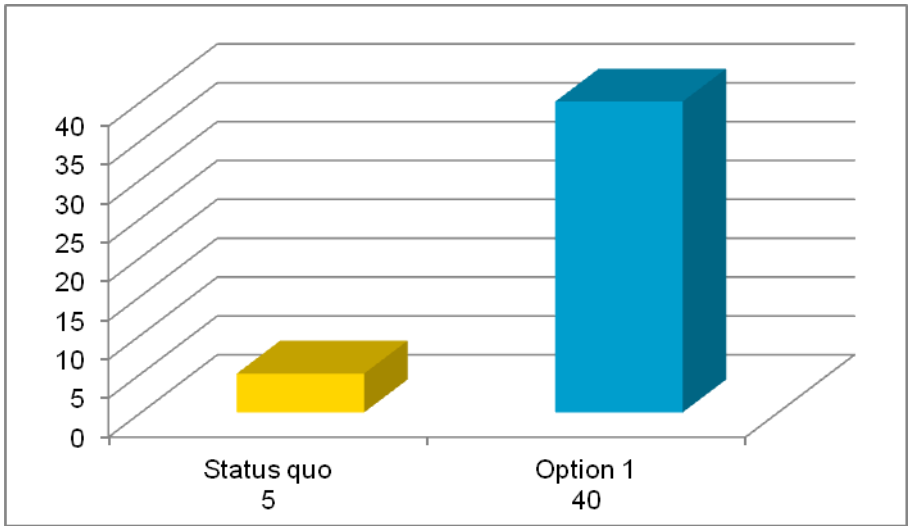
V. Future involvement of civil society and business in the institutions

65. Do you agree with the proposals under option one?

	YES 14 / NGO 26		NO 3 / NGO		DO NOT KNOW / NGO 1

Total number of responses: 44

66. Which of the two options do you support the most?
Number of responses: 45



67. Do you consider that additional actions under this option could be undertaken and need to be added? Comments?

Academia
Poland
I would support option 1, on condition that the conditions/scope etc. of the CSOs' engagement and their exact role in the PHLG meetings were very precisely detailed. This would be especially important in the most politicized areas of their work (such as the gas sector).

Unknown/Serbia
To make the best of CSOs' fields of competence, they should be granted full access to all the Task Forces and coordination groups within the Energy Community. Judging from the positive outcomes of their participation in the Environmental Task force meetings in which they have provided input that further supported the Secretariat in elaborating guidelines for implementation of specific legislation (to give one example), it is clear that CSOs' contribution is needed and valuable, while the process itself would ensure transparency of functioning of the Energy Community's institutions and bodies.

Civil society
Turkey
The involvement of representatives from civil society and business in the Task Forces or Working Groups could be promoted. It does not require any legal act, additional cost and implementation effort.

Unknown
Involving CSOs is good idea, but care should be taken about who is invited - it's not so easy to decide who is a genuine CSO and who isn't.

Governments
Serbia
Yes, but in the restricted numbers of questions which are comparable to the participation of the civil society. The Environmental question should certainly be recognized as an exemplary for the

participation of the civil organizations; although some forms of the participations should be given to non- representative groups and so provide the diversification of the interest groups.
Certainly, only in a measure that it could not influence the work efficiency of PHLG. In that sense, in view of the example of the Group for the environmental protection, it is our opinion that NGO work and other interest groups should be focused on the Work Groups and in connection with Forums which anyway function as the working bodies of PHLG.
All together we are of the opinion that the participation of the NGO and other interest organisations should be considered beneath the level of PHLG.
Status quo in relation to the work of PHLG, and option 1 in relation to the work of the Working Groups.

Czech Republic
In the Czech Republic´s opinion, no structure for the CSO involvement could ensure full diversity and equal representation of all the society groups. As mentioned, involvement of the CSO in the PHLG meetings could even decrease efficiency of the decisionmaking process. We support preservation of the status quo.

United Kingdom
Option 1 should increase transparency and encourage further efforts by the Contracting Parties.

Romania: It is mainly a decision of the CP.

Industry
EVN
Business representatives respectively association representatives should participate as observers.

NIS
Numerous examples corroborate the identified danger of capture of process by unrepresentative groups and deteriorated efficiency of the decision-making process. Hence, direct granting of the status of an observer at PHLG meetings to representatives of civil society is unwanted. However, a platform in which the CSOs would be “de-briefed” on the discussions and decisions taken at the PHLG could be considered (not as frequent as the meetings of the PHLG themselves, but maybe on an annual basis). Business should be able to participate on an equal footing with the CSOs

NGOs
Same response by 25 NGOs
To make the best of CSOs’ fields of competence, they should be granted full access to all the Task Forces and coordination groups within the Energy Community. Judging from the positive outcomes of their participation in the Environmental Task force meetings in which they have provided input that further supported the Secretariat in elaborating guidelines for implementation of specific legislation (to give one example), it is clear that CSOs’ contribution is needed and valuable, while the process itself would ensure transparency of functioning of the Energy Community’s institutions and bodies.

We strongly support CSO involvement in all aspects of the Energy Community institutions work. With their different fields of competence, CSOs can provide added value to the work of Task Forces and coordination groups within the Energy Community, as evident from involvement with the Environmental Task Force. We also strongly urge that any deliberations on official inclusion of CSOs in the further work of the Energy Community be open to public, so as to be subject to a well-rounded and comprehensive discussion of the benefits of and mechanisms for CSOs involvement.

Regulators
E-Control
I believe that the involvement of civil society and CSOs in the Energy Community should be increased. At the same time, transparency and participation rights in more general terms should be enhanced. Therefore, I support Option 1 which proposes formal observership of CSOs at PHLG meetings. When granting this, confidentiality issues should be taken into account.

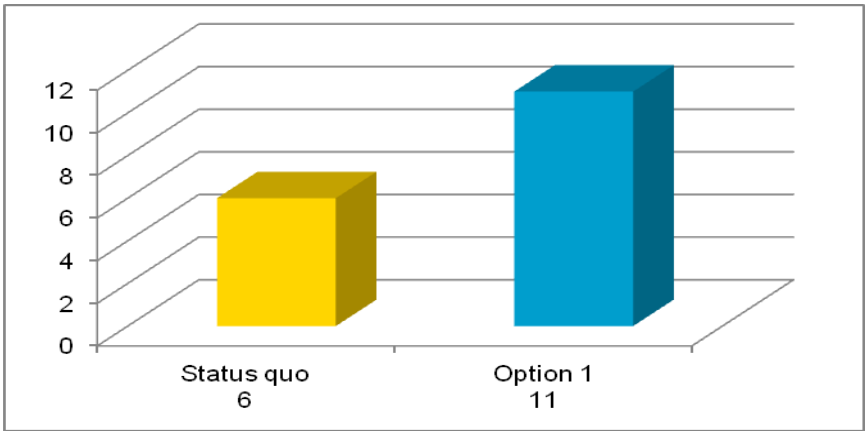
VI. Creating an Energy Community Parliamentary Assembly (ECPA)

68. Do you agree with the proposals under option one?

	YES 10 / NGO 26		NO 4 / NGO		DO NOT KNOW 1 / NGO 1

Total number of responses:42

69. Which of the two options do you support the most?
Number of responses: 16, Multiple responses: 2



70. Do you consider that additional actions under this option could be undertaken need to be added? Comments?

Governments
Serbia
Yes, under the condition that the status and the competence of this body should be specified as well as its position within the Energy Community. The work and activities of the members of this body in the parliaments of the Contracting Parties, is not the question which should be within competence of the Energy Community bodies, although, having the body would certainly add to outrunning the problems which appear because of inadequate information for the narrow or broad public or from inadequate understanding of within Contracting Parties.It may be more acceptable if there could be a platform, instead of the body in the Parliament
It is our opinion that option 1 should be accepted because according to the Energy Law, the work of the Agency Council is controlled by the General Assembly of the Republic of Serbia. In such a case the participation of the members of parliament on the level of the Energy Community, would

contribute to better understanding of very sophisticated regulatory questions. Final agreement with the option 1 will depend on more precise description of the suggestion

Czech Republic
The Czech Republic acknowledges that higher political support is needed to attain the EnC goals. However, before creating a position on the establishment of the Energy Community Parliamentary Assembly, a thorough analysis of costs and benefits is needed, we do not consider analysis made in the report as sufficient.

Romania: Maintaining the current situation.

United Kingdom
Support subject to consideration of costs/benefits, as it should increase transparency and impetus for reform.

Industry
NIS
If the ECPA were to be established, it would first of all be advisable to consider changing the name so that it is clear that it is not an institution having any “legislative” or decision-making powers, but rather a forum in which parliamentarians (EU and national) meet to exchange information and best practices. The benefit for the national parliamentarians would primarily be to improve the current deficit in transposition (not implementation) of the acquis.

Regulators
E-Control
I support the establishment of an Energy Community Parliamentary Assembly as proposed in Option 1. By establishing such an institution, which could be based on the model found in the EEA Agreement, the currently existing imbalance between legislative, executive and judicative powers within the Energy Community could be corrected.

General Comments on I. Reforming current Energy Community Institutions
EURELECTRIC
EURELECTRIC believes that:
- whilst there can be need for coordination of all technical support and programmes like TAIEX and Twinning financed by the EU for contracting parties in energy sphere, bureaucratic overstretch should be avoided.
-there shall be separate Fora for the EnC as their questions are still very different from what is discussed in general EU Foras.
-the issue of vulnerable customers should be developed within the EnC as one of the key problems for the region, with respect to all the specifics. We do not recommend to combine it with London Forum.
-business community is already well involved in the EnC work and discussions already. It could be equally useful to have wider discussions including business as second half of the EnC Ministerial Councils.
-it has proved more efficient to address national parliaments directly on bilateral basis to advocate for the implementation of acquis.
Finally, EURELECTRIC recalls that social dialogue is the backbone of industrial relations in the electricity sector. The role of social partners - trade unions and employers representatives – is set become even more important the Energy Community too. We therefore encourage the Energy

Community to strengthen the relationship between trade unions and employers representatives across the member countries.

GLOSSARY

BAT	Best Available Techniques
EEA	European Economic Area
EIA	Environmental Impact Assessment
GHG	Greenhouse Gas(es)
HLRG	High Level Reflection Group
PHLG	Permanent High Level Group

ABBREVIATIONS OF LEGAL ACTS/MEASURES

Treaty	Treaty establishing the Energy Community
Procedural Act	Procedural Act 2014/02/MC-EnC of the Ministerial Council of the Energy Community of 23 September 2014 regarding the Report of the High Level Reflection Group of 11 June 2014
IED	Directive 2010/75/EU on industrial emissions
AQD	Directive 2008/50/EC on ambient air quality
ELD	Directive 2004/35/EC on environmental liability
SEA Directive	Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment
FQD	Directive 98/70/EC relating to the quality of petrol and diesel fuels and amending Council Directive 93/12/EEC as adapted by Directive 2009/30/EC
ETS Directive	Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading
LCPD	Directive 2010/80/EC on the limitation of emissions of certain pollutants into air from large combustion plants
EIA Directive	Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment
IPPC Directive	Directive 2008/1/EC integrated pollution prevention and control
WID	Directive 2000/76/EC on the incineration of waste

[i] It is understood that Level II refers to all amendments to the Treaty made in the basis of Article 100 which provides that The Ministerial Council may, by unanimity of its Members:
(i) amend the provisions of Title I to VII;
(ii) decide to implement other parts of the acquis communautaire related to Network Energy;
(iii) extend this Treaty to other energy products and carriers or other essential network infrastructures;
(iv) agree on the accession to the Energy Community of a new Party

[ii] http://www.energy-community.org/pls/portal/docs/3178024.PDF

[iii] See European Council conclusions of 23 and 24 October 2014.

[iv] http://www.energy-community.org/pls/portal/docs/3256053.PDF

[v] http://www.energy-community.org/pls/portal/docs/3362209.PDF

[vi] See Interpretation under Article 94 of the Treaty No 2014/01/MC-EnC by the Ministerial Council of the Energy Community

[vii] OJ L 311, 31.10.2014, p. 82–84

[viii] https://www.energy-community.org/portal/page/portal/ENC_HOME/DOCS/3456147/Policy_Guidelines_1-2014_final.pdf

[ix] This paper will analyse only a gas demand entity (aggregator), as the most pressing energy security of supply issue is the strong dependence from a single external gas supplier.
[x] Article 43 of the Energy Community Treaty says "The Energy Community may take measures necessary for the regulation of imports and exports of Network Energy to and from third countries with a view to ensuring equivalent access to and from third country markets in respect of basic environmental standards or to ensure the safe operation of the internal energy market"
[xi] Article18 EnCT.
[xii] Article 18(2) EnCT: "Any practices contrary to this Article shall be assessed on the basis of criteria arising from the application of the rules of Articles 81, 82 and 87 of the Treaty establishing the European Community"
[xiii] An Energy Community for the Future, p. 10.
[xiv] An Energy Community for the Future, p. 19.
[xv] An Energy Community for the Future, p. 8.
[xvi] Commission Communication: The EU Energy Policy: Engaging with Partners beyond Our Borders, 7.9.2011, COM(2011) 539 final
[xvii] Council of the European Union, Conclusions of 25 November 2011, 17615/11
[xviii] Council of the European Union, Conclusions of 4 December 2013, 16797/13
[xix] European Council Conclusions of 27 June 2014, EUCO 79/14
[xx] European Parliament Resolution of 23 October 2013 on the European Neighborhood Policy: towards a strengthening of the partnership, (2013/2621(RSP).
[xxi] An Energy Community for the Future, p. 19.
[xxii] An Energy Community for the Future, p. 20.
[xxiii] As defined by Article 1 of Procedural Act No 2008/01/MC-EnC of the Ministerial Council of 27 June 2008 on the Rules of Procedure for Dispute Settlement under the Treaty ("the Dispute Settlement Procedures") as "*Treaty obligations or … Decisions*".
[xxiv] In Opinion 1/91, the Court of Justice was concerned that "the EEA Court will have to rule on the respective competences of the [Union] and the Member States as regards the matters governed by the provisions of the agreement."
[xxv] See for details: http://ec.europa.eu/priorities/jobs-growth-investment/plan/index_en.htm
[xxvi] For example the Investment Plan of the Commission concentrates on projects that can start at latest within the next three years, i.e. a reasonable expectation for capital expenditure in the 2015-17 period, have high socio-economic returns, and concerns EU value-added projects in support of EU objectives
[xxvii] The Report quotes the European Parliament, which in autumn 2013 called "for further expansion of the Energy Community via the Eastern Neighborhood Policy in line with the objectives of the Energy Community on the basis of mutual interest". The Council of the European Union requested that "the Energy Community should be promoted as a framework for energy relationships with countries in the Western Balkans, Eastern Europe and other neighboring countries willing and able to implement the relevant EU acquis."
[xxviii] www.acer.europa.eu.
[xxix] Article 59 and 61 EnC Treaty.
[xxx] Article 58 EnC Treaty. The Ministerial Council has, so far, not made use of the possibility to grant the ECRB decisive powers.
[xxxi] Measures can have the form of a recommendation or binding decision (ref. Article 76 EnC Treaty).
[xxxii] Article 17 para 5 Regulation (EC) 714/2009; Art 36 para 4 Directive 2009/73/EC as incorporated in the EnC acquis communautaire and adapted by Ministerial Council Decision 2011/02/MC-EnC.
[xxxiii] Articles 25 and 100 lit (i) in conjunction with Articles 47 and 76 EnC Treaty.
[xxxiv] E.g. in case of disagreement of NRAs on cross-border cost allocation (*ref.* Commission Regulation (EU) No 984/2013, OJ L 273 of 15.10.2013, p 5 et seq; or Regulation (EC) 347/2013 (OJ No L 115 of 25.4.2013, p 39 et seq).
[xxxv] Articles 25 and 100 lit (i) in conjunction with Articles 47 and 76 EnC Treaty.
[xxxvi] As already practiced in context with the incorporation of the 3rd package in the EnC *acquis communautaire* that grants ECRB decisive powers related to decisions on exemptions for new interconnectors

[xxxvii] According to the preamble of the EnC Treaty, Parties to the Treaty are the European Union and the Contracting Parties.
[xxxviii] See explanation on application of Title IV in section B
[xxxix] I.e. non-EU countries.
[xl]Commission Staff Working Paper interpreting Article 31 Regulation (EC) 713/2009 of 20.6.2011 (SEC(2011) 546 final). It has to be noted that this document is not legally binding but only sets guidance for the Commission's interpretation of Article 31 Regulation (EC) 713/2009.
[xli] Ibidem, para 8.
[xlii]http://www.acer.europa.eu/Electricity/Regional_initiatives/Electricity_Regional_Initiatives/Pages/Electricity-Regional-Initatives.aspx.
[xliii] http://www.acer.europa.eu/Gas/Regional_%20Intiatives/Pages/Gas-Regional-Iniciatives.aspx.
[xliv] See section B on application of Title III
[xlv] Article 3.10 ECRB Internal Rules.
[xlvi] ACER Board of Regulators, Rules of Procedure, Article 3.2.
[xlvii] Article 13 paragraph 3 reads "Based on practical experience with these Rules, the President or Vice-President or any Member of the ECRB may propose to the Board any useful and necessary amendments to these Rules. In accordance with Article 60 of the Treaty, any amendments to these Rules are adopted by a Procedural Act of the ECRB, which shall act by two-third majority of the votes cast, including a positive vote of the European Union.
[xlviii] See Preamble of the Treaty
[xlix] Art 73 of the Treaty
[l] Currently 8 Contracting Parties; applied methodology results in the split of the share among the EU (94,54%[l]) and those of the Contracting Parties ranging from 0,04% (Montenegro) to 3,92% (Ukraine);
[li] this share of secured budget contributions allows to cover personnel and fixed costs
[lii] Unlike the Energy Community Fora, which were designated by the Treaty, the EU Gas and Electricity Fora were established as ad hoc institution to advise the EU energy institutions.
[liii] Article 66 EnC Treaty.
[liv] Article 65 EnC Treaty.

[lv] Article 2 of the Treaty mentions social stability together with economic development as one of the primary interests of the Parties, for which access to stable and continuous energy supply is essential. Chapter IV of the Treaty envisages further promotion of the social aspects of the energy *acquis* related to the provision of energy to citizens and affordability.

[lvi] http://ec.europa.eu/energy/gas_electricity/forum_citizen_energy_en.htm.
[lvii] http://www.energy-community.org/portal/page/portal/ENC_HOME/NEWS/News_Details?p_new_id=9321.
[lviii] http://www.energy-community.org/portal/page/portal/ENC_HOME/NEWS/News_Details?p_new_id=9463.