

ISSN: 2038-632X

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Energy Community, topical events and perspectives between
the European Energy Union and the Ukrainian case

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October 2014 | #52

ver.2.0 | Timestamp: 201505251054

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Abstract

The paper aims at describing the current political challenges the Energy Community (EC) is currently living.

As a matter of fact, after the first period of operation several institutional and operative obstacles have been identified. Nevertheless, the real point the Energy Community will face is not only related to internal procedures but it is connected with external political dynamics that could potentially interfere with the EC future.

First of all, Ukraine is an EC full-fledged member and therefore is leading the Energy Community in an uncertain political scenario.

Furthermore, the EU project for the establishment of a European Energy Community is potentially creating a new platform for political alliances and energy relations with neighbor Countries: the possible role and competences of EC in this context is not yet defined.

Keyword

Energy Community, European Energy Union, Russia, Ukraine, Energy policies, South East Europe, southern energy corridor.



Introduction

The Energy Community (EC)¹ is currently living a deep reflection period. As a matter of fact after the first decade of operation several issues have been identified as obstacles to a full implementation of the EC Treaty.

In this regard, the High Level Reflection Group (HLRG) has been appointed to draft a possible reform's path in order to identify the steps towards a complete Treaty implementation.²

Beyond the necessary internal procedural and institutional reforms, the Energy Community is nowadays interacting with a complex international scenario that can interfere with the future of this international organization.

Indeed, the very dynamic political scenario is currently dominated by, at least, two main issues that can impact on the Energy Community.

First, the Ukrainian situation is *de facto* leading the Energy Community into a “war scenario”, considering that Ukraine is an EC full-fledged member since 2010.

1 The Energy Community is an international organization established by the Treaty signed in 2005: the Treaty is the final act of a process started from the Thessaloniki UE-Western Balkans Countries meeting that stated the intention of the parties to cooperate toward a European integration for the Balkan area. The Energy Community of South East Europe (ECSEE) Treaty is an important part of this process since the signatories committed themselves to creating a regional integrated energy market by implementing the European *acquis communautaire* and the European market principles. The Treaty has been signed by E.U., Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Macedonia, Montenegro, Romania, Serbia and UNMIK (Kosovo): after these Countries the Community has been joined by Moldova and Ukraine. Georgia and Armenia acquired the status of observers: the E.U. members obtained the status of participants. For further information visit http://www.energy-community.org/portal/page/portal/ENC_HOME; Stephan D. Hofer, *Neo-functionalism reloaded. The Energy Community of Southeast Europe*, IX Annual Kokkalis Graduate Student Workshop, Harvard University, 2007 Massari S. F. “*La Comunità Energetica del Sud Est Europa*” ISBN 978-3-639-67601-3 Press Accademiche Italiane, Saarbrücken, Germany 2013

2 S.F.Massari “High Level Reflection Group Assessment on the Energy Community of South East Europe: a possible Institutional and Strategic Scenario for the Future” Pecob's Paper Series, no. 46 April 2014.

The impossibility to predict the development of the Kiev-Moscow relations is certainly creating a non-clear political atmosphere for the Energy Community to play its role in that region.

Secondly, in the last few months a new topic has been put on the European Agenda taking into account the recent events in Ukraine case and the related risks for a secure and continuous supply to Europe.

As a matter of fact, the energy-related matters seem to be under the focus of the new European Commission more than they were in the past.

In the past months the idea to establish an European Energy Union³ has been launched by the former Polish Prime Minister D. Tusk.⁴ These two items are significantly impacting the life of the Energy Community.

This paper aim at drafting the possible political scenario and interaction between Energy Community and Energy Union and current role of EC in the Ukrainian case and reform process.

The paper is supported by two interviews to Mr Janez Kopač⁵, Director of Energy Community Secretariat, and Mrs Olena Pavlenko, President of the Ukrainian think tank DiXi group.

³ Energy has been the base of the European construction considering the first European Community of Coal and Steel (Treaty of Paris 1951) and the European Atomic Energy Agency (Treaty of Rome 1957). Nevertheless, in the subsequent Treaties, energy has not been a topic in discussion since Member States considered (and actually they are still considering) the energy-related issues as a sensitive part of their sovereignty and security. The Treaty of Lisbon (2007) has partially changed the situation since it recognized the role of the European Union with a shared competence on energy. Nevertheless, art. 194 TFUE still leaves to Member States the right to determine the conditions to exploit their energy sources, their choice between different energy sources and the general structure of their supply. The proposal behind the Energy Union seems to have a highly different basis since the Union should negotiate the gas purchase on behalf of the Member States thus determining the internal energy mix and supplies. See S. Tagliapietra "Towards a European Energy Union. The Need to Focus on Security of energy Supply", (FEEM) Fondazione Enrico Mattei, nota di Lavoro 95.2014.

⁴ At the moment Donald Tusk is the president of the European Council.

⁵ Mr Kopač, Energy Community Secretariat Director, has been Member of Slovenian Parliament and Chairman of Budget Committee (1990-2000), Slovenian Minister of Finance (1992), Ministry of Environment, Spatial Planning and Energy (200-2004), Director General, Directorate for Energy, Ministry of Economy (2008-2012).

1. From the Energy Community to the Energy Union: a pan-European energy policy?

The process aimed at establishing the European Energy Union has been launched by Mr D. Tusk with the aim to finally create an European common dimension for the energy security issues and management. This idea quickly gained momentum and consequently the new President of the European Commission Junker appointed Mr. **Maroš Šefčovič** as Vice-President for the Energy Union.

In Tusk's perspective, the Energy Union should be based on six pillars such as:

1. The creation of an effective gas solidarity mechanism in case of supply crises.
2. Increased financing from the European Union's (EU) funds of infrastructure ensuring energy solidarity, in particular in the east of the EU- even up to 75% of projects' value.
3. Collective energy purchasing.
4. The rehabilitation of coal as a source of energy.
5. Shale gas extraction.
6. A radical diversification of gas supply to the EU.

Currently the real shape of the Energy Union and its competence on the energy-related matters are still under discussion and the first proposal of Tusk has been already modified.⁶

Considering the potential overlapping competences, the role of the Energy Community as well as its interactions with the (likely) forthcoming Energy Union should be clearly identified.

The same borders of the Energy Union could be so wide to embrace the Energy Community Contracting Parties in a pan-European

⁶ The appointed vice President *Šefčovič* in his hearing at the European Parliament announced an energy Union based on five pillars and a more assertive European energy diplomacy: <http://www.energypost.eu/brussels-gives-first-glimpse-means-energy-union/>.

perspective: this could be a very useful and strategic tool for the European Union energy security.

Besides, this could be a new way to enhance the European neighborhood policy that recently showed its lack of efficiency.⁷

Nevertheless, the main risk in the current discussion about Energy Union is to accept an Eurocentric approach by focusing the discussion only on the European internal market integration and security.

This approach does not properly take into account the real nature of the European energy security dimension and the current international political scenario. As a matter of fact the EU can create a safe climate for its interests only enhancing the external dimension and projection of its energy policies and market by implementing the EU values, legal principles and regulations. The idea to open the EU internal market to the neighbors seems to be a clear commitment of the political guidelines of the Juncker Commission.⁸

However, the establishment of the Energy Union needs clear governance and strong leadership since this process could potentially reshape the traditional energy markets and competence on energy policies. Having in mind the strict approach of Member States in appointing the Commission with sensitive topics, the question about the effective governance of the Energy Union should be probably the most important forthcoming issue.

The balance between the new supra-national institutions and policies, decision making process and national interests is the point the Energy Community tried to manage in its activities so far. Therefore the EC experience could be the best case study for the new Energy Union that will face the same problems the EC is currently facing.

The case of Energy Community, indeed, presents two aspects very near to the conceptual structure the Energy Union should adopt: as a matter of fact, the Energy Union should be focused both in the internal dimension of the energy market and the external projection of the energy policies and market integration.

⁷ N. Tocci *"The Neighbourhood Policy is Dead. What's Next for European Foreign Policy Along its Arc of Instability?"* I.A.I. working papers no. 14/16, Nov. 2014.

⁸ J.C. Juncker *A New Start for Europe: My Agenda for Jobs, Growth, Fairness and Democratic Change. Political Guidelines for the next European Commission*, by, Strasbourg, 15 July 2014. Mr Juncker stated in his speech *"I want to keep our European energy market open to our neighbours"*.

Mutatis mutandis, the EC activities are focused on the Community internal level (management of the internal common market building) and at the external level trying to continuously enlarge the Energy Community partnership.

The lessons learnt thanks to the EC experiences are therefore fundamental for the building of the Energy Union: the EC lived and currently lives and efforts that the establishment of the Energy Union will request and therefore is useful to think about EC in order to draft effective political step for the Energy Union.

First of all, the main question that should drive the conceptual shaping of a new ambitious project as the Energy Union, is how to satisfy the interests of each participant and how to attract new partners in order to strengthen the construction.

In the Energy Community case the first and main driver for the Balkans members was the achievement of the European membership: indeed this aspect is not common with the expectations of new members such as Ukraine, Moldova and, in the perspective, for Georgia that joined later the Energy Community.

Therefore, the motivations for being an Energy Union member should be probably found in a broader range of interests.

Each possible member or partner will have a specific reason to become a member: in order to allow the wider participation to the new Union it should be necessary to identify possible patterns with regard to a variable geometry structure of the Union, able to grant different levels of membership according to the will of partners to adopt rules and common regulations.

A flexible approach in membership could be a real driver to trigger the efficiency of this kind of international organization especially when several partners are involved.

The possibility to opt-in deeper and deeper levels of membership should go in parallel with possibility to be directly involved in decision-making and policies shaping processes.

Therefore, a correct balance between status of membership and participation to the decision making process is a real key factor for the success of a variable geometry organization.

The "one size fits all" principle showed its limits in the Energy Community case: the current discussion is underling how the same

approach to different situation created imbalance, misunderstanding and a negative competition between members that are living different political, institutional and economical phases.

This variable approach, on the contrary, could create an attractive factor both considering the internal market and the external projection of the Energy Union since possible different situations between EU members and neighbor Countries should rise in the joining process.

However, what is fundamental in this dynamic is to create stable and strong Institutions or to appoint to existing Institution (e.g. European Commission) with clear powers and competences.

The establishment of a common institutional framework is a typical effect of a multilateral mechanism that should really improve general benefit for each member: on the contrary, the experience showed that very often the bilateral approach in the international relation is not effective.

This is particularly true for energy relations and specifically for the European energy relations: it is clear how the common market cannot work effectively in the logic of the intergovernmental mechanism sine each member will consider and will protect the national market or interest instead to have a general overview.

Consequently, the external projection of European energy relation should not reflect the unity of the market and common interests of the participants: therefore the relations with suppliers will result less powerful and the potential beneficial effect both in the economic and in the energy security side depotentiated.

Furthermore, the leadership of a third and supranational institution could be an attractive factor for non-EU neighbor Countries since it could represent the guarantee of an objective and effective governance: the Institutions, in the framework of an effective democratic decision-making process, could equally represent the Members with a “peer to peer” approach very often missing in the bilateral relations.

Reciprocity, solidarity and interdependence could be the political proposal the Energy Union should offer to the members.

In conclusion the described structure and the effects of this model could be compared with the functionalist approach that characterized the first nucleus of the European Union.

It is really significant the path someone could read in the history of the European Union. Energy and natural resources common management

was the first challenge the new born European Coal and Steel Community faced: for very long time the European Union did not have a common policy and the only relation between members has been the regulation on competition for the common energy/gas market.

Nowadays, when the worst political and economic crisis affects the Union a new common approach to the energy-related issues management could be the first step to give EU a new impulse.

However, this ambitious target could be achieved whether new point of views and political models will be developed. This is particularly true for external dimension of the EU relations and cooperation framework.

The challenge the global energy market is introducing is a good test to verify if the European Union is able to re-launch the political path of the integration, spreading common values and principles.

*“...The Energy Union avoids a nationalistic approach that aims to maintain costly and unrealistic energy independence in an interdependent world...”*⁹

The alternative to this unrealistic scenario is reciprocity, a conscious and a fair interdependence with clear obligations and solidarity commitments. The Energy Community case shows that a good idea or a declaration of principles are not enough when they are not supported by a clear regulation and implementation mechanism. It means that the Energy Union will request a specific Court or the existing European Court of Justice should be appointed with the power to judge issues raised under the Energy Union. It means to extend the European Court jurisdiction beyond the traditional European boundaries. This aspect is definitely not secondary: the role of the Court in implement, integrate and affirm the European legal order is very well known.¹⁰

Extending this Court function to the EU non-member Countries could be a very good opportunity to implement the EU legal standards in new areas and legal orders. This will present original and ambitious challenges but it could expand the leadership of the EU legal principles in the neighboring Countries.¹¹

9 J. Delors in Foreword to “From the European Energy Community to the Energy Union: a policy proposal for the short and the long term” by S. Andura and J. Vinois, Delors Insitute.

10 A. Cassese “Diritto Internazionale”, Il Mulino.

11 European Union Law application by National Courts of the EU/Membership Aspirant Countries from South East Europe” Sept. 2014.

2. The Ukrainian case and the role of the Energy Community

The current conflict between Ukraine and Russia involving the Crimean Peninsula and the Eastern Ukrainian territories seems to have deeper reasons beyond the territorial dispute or the independence request from the Russian oriented part of the Ukrainian population.

Over the past few decades the relations between these two Countries have always been tense: it is well known how the Russian gas transit towards the European markets has been one of the most controversial issues in the Russian-Ukrainian relations.

Indeed, the misunderstanding about the price of the Ukrainian gas supply and the transit fees applicable to the Russian pipelines often jeopardized the security of the Ukrainian and European gas supply.

The commercial “cold war” between parties has quickly turned into a political, diplomatic and military conflict when the Ukrainian government deliberated to sign the European Union Association Agreement. Beyond the sensitive commercial aspects of this deed, Moscow evaluated the political meaning of the Kiev decision as a premise for the accession of Ukraine to the Western political and military organizations (European Union and N.A.T.O.).

It is general knowledge that the Russian political and commercial pressure succeeded in diverting the Ukrainian political axis toward Moscow.

In fact, the Yanukovich government refused, or at least deferred, the signature of the Association Agreement: this gave rise to the Maidan protests of the Western-oriented part of the Ukrainian population.

At the same time, after the collapse of the Yanukovich government, the East-located pro-Russian part of the population declared the independence of Donetsk and the Donbass region and the intention to join the Russian Federation, following the Crimean accession process.

Unfortunately, the East Ukraine case diverged from the “peaceful” Crimean solution decided by a referendum: as a consequence, a

military conflict is currently ongoing with the strong suspect of a direct Russian involvement supporting the separatists.¹²

The war in Donetsk and the Donbass region undoubtedly represents a huge area of crisis from a political point of view. The conflict is involving such a world Great Power as Russia; furthermore, the war is located just beyond the European borders in a very sensitive area in the light of the European energy security.

Besides, a possible political solution has not been reached yet and the perspective of a long-term conflict could create an unstable area (a new frozen conflict?) in the core of Europe and could definitely jeopardize the Western relations with Moscow.

Nevertheless, beyond the immediately clear reasons behind the strong Russian approach against the UE-Ukraine Association Agreement, it is necessary to analyze the general dynamics involved in the current framework.

It is possible to argue that one of the main reasons for the escalation of the conflict could be found in the current energy-related dynamics, touching geopolitical, economical and strategic interests.

As mentioned above, Ukraine is the most sensitive area for the Russian gas pipelines flowing towards Europe: the European market is Moscow’s largest and richest customer and the cash-flow from the sale of energy to Europe is the main source for the Russian energy companies.

It is well known how the incomes coming from energy supply are the most important items in the Russian national balance: furthermore, the economic resources from energy exportation are the base of the new Russian energy investments.

It is important to note that keeping the monopoly of the infrastructures and territorial control is the paramount tool for the economic and strategic prominence of Russian hydrocarbons companies: of course, this requires huge investments in new projects.

In the Russian case, the supremacy of the national Companies in the supply systems goes in parallel with national political and strategic interests since Moscow developed a foreign policy based on “energy international relations”.

¹² The Parties agreed a ceasefire in the area on September 2014 by the Minsk Protocol. The ceasefire has been violated several times despite the agreement. A fragile stability between the parties has been reached only in February 2015.

Keeping the infrastructures and supplied markets control is fundamental for the Russian economic and political aims.

In this context, the Energy Community (Ukraine joined in 2010) has been deeply focused on the implementation of policies and regulations in the energy market, pushing the Ukrainian towards a more dynamic and competitive internal energy market.

The fundamental pillar of the EC political activities in this field is undoubtedly to enhance the *unbundling*¹³ process of supply, distribution and delivery segments of the market and the legal regime to facilitate the third parties access to the infrastructures.

As a consequence, the model represented by the Russian companies (namely Gazprom for its prominent projection capacity in foreign markets) and their control of the Ukrainian market is under pressure. The Russian national companies are designed as monopolist structures managing all sectors of the markets, from the well to the final users.

It is not a case that Moscow continuously solicited Kiev to denounce the ECT Association Agreement and to leave the Energy Community.

In the Russian perspective, indeed, the EU-Ukraine Association Agreement Kiev would be the tool to finally apply the European “Third Energy Package” and EU infrastructures regulation to the pipelines running throughout Ukraine.

According to these rules, the Russian pipelines should be open to third parties, granting a non-discriminatory access, tariffs regulation, effective capacity allocation, reverse flow and competition rules.

In this context, the Russian side felt the Ukraine adhesion to Energy Community and consequently to EU legal *corpus* as a threat for the control of pipelines and, then, for the exportation to Europe: furthermore, the European regulations would impact directly on the Russian control of the Ukrainian energy market that should be open to competition and diversification of suppliers.

It is a matter of fact that the Ukraine integration in the European regional networks under the Energy Community Treaty has already brought about a concrete change in the Ukrainian supply differentiation process.

¹³ The unbundling mechanism is a specific provision aimed at enhancing the competition in the energy market. Therefore, monopolies in the market are not allowed: the tool to achieve an acceptable degree of market liquidity and accessibility is to dismantle market incumbents and to prohibit the centralization of functions and market's assets.

For instance, it is nowadays possible to import gas from Slovakia, Poland and Hungary thanks to the reverse gas flowing regulation: therefore the dependence ratio of Kiev is significantly decreasing.¹⁴

Besides, the new pipelines projects supported or proposed by the Kremlin have been systematically restrained by the continuous requests of the EU Commission to apply the competition Law to the Russian infrastructures and commercial activities in the EU territories.

It is well known the case between EU and Moscow about the South Stream pipeline which represents for Russia an alternative route to the critical Ukrainian area.

In December 2014, Mr. Putin declared the intention to suspend the infrastructure construction: several factors contributed to this decision¹⁵ but for sure one of the most sensitive was the impossibility for Russia to escape the European regulation on competition and free access.

Despite Moscow signed several Memoranda of Understanding with the transit Countries in the Balkans and it filed before the W.T.O. Court¹⁶ an arbitration case against the application of the EU Third Energy Package to the international pipelines, the Russian side perceived the EU regulation as an insurmountable threat to the complete control of the pipeline.

¹⁴ The Ukrainian diversification process is still in progress: a Memorandum of Understanding between Slovakia and Ukraine enabling a larger gas reverse flow (8 billion cubic meter/year) has been signed in April 2014: currently Ukraine can import from Poland and Hungary about 2 billion cubic meter/year. The role of Energy Community in the achievement of the Slovakia/Ukraine M.o.U. has been underlined by European Commissioner Günther Oettinger who stated: “*Today's deal marks a milestone. It is a first step for gas flows from Slovakia to Ukraine and strengthens the ties between the EU's energy market and Ukraine. Gas via Slovakia will bring a considerable addition to the volumes that Ukraine can already import from Hungary and Poland. Deliveries from EU Member States offer Ukraine access to gas priced on the basis of fair and transparent principles. It is important in this respect that Ukraine, particularly as a member of the Energy Community, makes swift progress in aligning its legal and regulatory framework with the EU energy legislation. This will increase investor's confidence and help the country to modernize its energy sector.*” http://europa.eu/rapid/press-release_IP-14-487_en.htm.

¹⁵ Another reason behind the Russian decision to suspend the pipeline could be based on a credit crisis due to the EU financial sanctions: it is a matter of fact that the large investment plans based on new upstream infrastructures are largely supported by the Western financing system. After the sanction the Russian oil-gas companies are facing a lack of credit. See S.F. Massari “High Level Reflection Group Assessment on the Energy Community of South East Europe: a possible Institutional and Strategic Scenario for the Future” Pecob's Papers Series Bologna University no. 46 April 2014.

¹⁶ Indeed Gazprom dropped one of its arbitration case about the matter against Lithuania in April 2015 since the matter is “no longer relevant”.

As a consequence Russia seems to direct the new energy policies towards China¹⁷, Far East and Turkey.

Considering the Balkan route is no more freely available because of the influence of the EU regulation in that region and Countries' commitments under the Energy Community Treaty, Turkey is the best solution to indirectly reach the EU market.

Secondly, considering the strategic importance of the Anatolian territories for the EU alternative supply strategy¹⁸, Russia is trying to establish strong relations with Turkey through very beneficial gas supply agreements. This could advantage Moscow in strategic decisions Ankara is going to take regarding energy infrastructures policies and construction.

Therefore, it seems evident that the energy-related reforms promoted by the Energy Community are playing a very important role on the Ukrainian conflict.

The ongoing war is seriously impairing the Ukrainian energy supply and energy production; the challenge the government is currently facing is how to guarantee the national energy security.

The need to ensure the daily energy consumption is impacting on the efforts to implement the European regulation although the reforms are under discussion before the Verkhovna Rada and some of them have been already approved.

However, the political instability due to the relevant political changes occurred is not creating the strong framework requested in order to dismantle an historical monopolistic regime and the current energy situation in Ukraine is still in emergency conditions.

As a matter of fact, Ukraine was deeply dependent from the Russian gas supply: of course the state of war definitely destroyed the weak balance between Moscow and Kiev on gas supply price. Indeed, Russia suspended the Ukrainian supply asking for pending payments and increasing the gas price.

17 Russia will export to China 400 billion cubic meter of gas starting from 2018 <http://fortune.com/2014/06/20/in-china-russia-gas-deal-why-china-wins-more/>.

18 As a matter of fact Turkey will be the *hub* for the Southern Energy Corridor planned to carry to Europe the Caspian gas and oil avoiding the Russian infrastructures. Besides, Turkey could be the logistic hub for new resources potentially coming from Iran, Iraq, Middle East and from the off shore extraction field recently found in the East Mediterranean Sea.

This situation has driven in September 2014 to a gas supply *impasse* with a real shortage risk for Kiev.

Thanks to the EU guarantee and mediation, Ukraine is nowadays constantly receiving gas supply but the provisional agreement achieved in October 2014 will only be in force only till March 2015. Besides, the Ukrainian electricity framework is under pressure as well.

Considering the gas-related issues, the Kiev government is trying to encourage the natural gas replacement by electricity.

Unfortunately, the electricity production is not in a better situation: as a matter of fact the electricity generation is strongly based on coal¹⁹ and the main extraction fields are located in the Eastern Ukraine where the military conflict is active and Kiev has lost the territorial control.

Ironically, the main coal import to sustain the national power generation is currently coming from Russia and Moscow is using this advantage by stopping the shipment according to its political needs.²⁰

Besides, the Ukrainian electricity network is not as efficient as to bear a massive load increase and the risk of overvoltage fail is not only theoretical: indeed in August and December 2014, during peak periods, several local power distribution companies requested consumers to limit the electricity consumption during the peak hours to avoid network overcharge.

Secondly, the Ukrainian electrical network is not synchronized with the European grid: it creates an isolation condition for the Kiev electricity system.

Finally, another sensitive problem is arising due to market reform dynamics and energy shortage. The Ukrainian government started the process aimed at aligning the energy tariffs to the cost-reflective model, thus leaving the regulated tariffs model. As a matter of fact the retail gas price for households increased by 56% in 2014 and the government is planning a 120% further increase within 2017.

The electricity supply for households increased by a 10-40% range depending on the size consumption and the heat supply by 40% on average.

19 More information available at http://www.iea.org/publications/freepublications/publication/Ukraine2012_free.pdf.

20 More information available at <http://uatoday.tv/news/russia-stops-coal-supplies-to-ukraine-again-404695.html>.

It is clear that such increase has a direct impact on energy affordability for a large part of the Ukrainian population and a huge social protection problem has quickly arisen. Indeed, Kiev government granted by Resolution of the Cabinet Ministers no. 83 “On enhancement of Social Protection in the Context of Increased Prices and Tariffs for Utility Services” some special benefits to compensate additional costs for utilities.

In this scenario the Ukrainian civil society is not playing a passive role: after the Maidan protests the interaction between the government and civil society seems to live a new period, in the energy field as well.

As a matter of fact, think-tanks or citizens’ associations are taking part in the discussion about political and market reforms.

The Energy Community is significantly involved in this field since it is the privileged partner for several players in the Ukrainian scenario: as a matter of fact the EC is involved in the institutional debate about reforms providing advises both to governmental and civil society partners.

This approach has been fruitful considering that, after great efforts and thanks to the pressure of a part of the public opinion, Ukraine adopted a new Gas Sector Reform proposed by Energy Community in April 2015: the new law ensures the compliance of Ukrainian legal order with the EC legal framework and EU Third Energy Package.²¹

²¹ “The role of the Energy Community Secretariat in the energy reform process is a crucial one. Ukraine needs some orientation of what is right, what is wrong and needs feedback. The Commission tries to give that, the EU Delegation in Ukraine tries to give that, but the Energy Community’s role is absolutely essential for success.” Walter Tretton, Delegation of the European Union to Ukraine https://www.energy-community.org/portal/page/portal/ENC_HOME/DOCS/3672149/Final_version_amended_14_April.pdf.

ANNEX I

Interview with Olena Pavlenko President of DiXi Group

S.F.M.: *You are the President of DiXi Group, an NGO focused on the Ukrainian and international energy sector. Your activities are aimed at constantly providing information and investigative reports on the energy sector. Your organization is representative of the civil society, do you think there is a link between energy issues (production, distribution, management etc.) and citizenship? Between energy and Democracy? In this light, is there a specific Ukrainian case?*

O.P.: DiXi Group is not a “pure” NGO, we are working as a think-tank in Ukraine, trying to analyze the situation in the energy sector of Ukraine and to place Ukraine at the EU energy market level.

But answering your question – yes, there is a clear link between energy and democracy, especially in Ukraine. It is not a secret that in Ukraine, like in many post-soviet countries, including Russia, the energy sector is a big source of money laundering. Hundreds of politicians, including management of the country, were fed from this sector – through selling licenses via offshore companies, using money from State energy companies, organizations and private companies. It was a huge “tube” of money for cementing the country’s ruling class.

S.F.M.: *After the Maidan protests and change of government the Ukrainian governance and political environment changed significantly. What is the role of the civil society in this context? Are the civil society and NGOs included in the decision-making process or in consultations?*

O.P.: Maidan changed Ukraine significantly. Now you can find former journalists, civic activists and even military volunteers at the Ukrainian Parliament, government, Anti-corruption centers. They know how important is to be more open and transparent, and they are trying to keep this rule. Even such usually closed ministries as Ministry of Energy

became much more open than before Maidan. It does not mean that they became totally “clear” and “public”, but at least there are much more instruments to influence their politics.

You know that the Revolution of Dignity, which took place in 2014, was not the only revolution in Ukraine. We have a similar protest back in 2004, and it also was against the non-democratic regime. We were not successful at that time, maybe among the reasons were that not so many civic activists came to the power.

S.F.M.: Ukraine is living a sensitive moment considering the lack of supply of gas and coal. What is the real situation and what is the government doing to ensure the energy affordability?

O.P.: Concerning gas crisis, this is not the first time Gazprom blocks gas supply to Ukraine; thanks to summer negotiation in Ukraine-Russia-EU format, a so-called “winter package” was signed between Ukraine and Russia; also, the EU energy companies and countries provided significant help, organized reverse gas flow from Slovakia, Poland and Hungary. Now Ukraine infrastructures network transports Russian gas to the EU but Ukraine buys gas mostly from the EU than from Russia and these volumes are enough for internal consumption. Nevertheless, now Ukraine and Russia have to negotiate a “summer package”, which has to start from April; Russia still does not agree to start these negotiations. Concerning electricity, the situation now is more complicated. Ukraine produces electricity from gas and coal, and most coal mines are located in the Eastern Ukraine, currently under the terrorists and Russian soldiers control. They export coal to Russia (it is proved by the OSCE), and this creates a lack of coal in Ukraine. The most critical situation was in December 2014, when blackouts throughout Ukraine took place. Now Ukraine imports coal from South Africa, and it is negotiating with some countries like Poland. The aim is to modernize Ukrainian heat stations in order to use other types of coal, not only anthracite.

S.F.M.: A set of reforms of the energy sector are on the discussion table in Ukraine. What are the main characters of the reforms you are currently discussing? Do you think Ukraine will benefit from market liberalization?

O.P.: Maybe the main reform for Ukraine is fighting against corruption that is the main concern in energy sector as well. I hope that with support of volunteers and the civil society, the traditional negative schemes will be destroyed, and the money flow will be more transparent.

Concerning market liberalization, currently a new draft of the Law on Gas Market has been developed and it should be approved by the Cabinet of Ministers. This draft Law is in line with the EU Third Energy package: when it will be implemented in Ukraine, it will make gas market more open and it will attract not only Ukrainian, but European gas market players as well. Ukraine is a big market with many energy consumers and some of them, like industries, are already buying gas at European prices. The same scenario could be drafted for the electricity market: the liberalization process will decrease the level of influence of the monopolist and incumbent companies.

S.F.M.: Ukraine is an Energy Community full-fledged member. What is the role of the Energy Community in the Ukrainian energy reform process?

O.P.: First, Ukraine’s obligations as Energy Community member are official obligations and this is a good instrument to force the Government to adopt necessary legislation. Taking into account that the Ukrainian bureaucracy is very inefficient, this is the only possibility to press on the Government for changes.

Second, the Energy Community Secretariat is very helpful in enforcing a national lawmaking process. Just an example; last year the Secretariat provided to the Ministry of Energy a draft law on the gas market and a draft law on the electricity market. There are not so many experts in Ukraine who can “see” how the markets will work under Third Energy Package: therefore the Secretariat help is very useful and significant.

S.F.M.: The Ukrainian Parliament has just voted in new government. The new cabinet includes three foreign experts in pivotal Departments. What is your opinion regarding the new government? Is the new cabinet in condition to launch an effective reform path?

O.P.: The composition of the new Government is not ideal; there are a lot of concerns about several ministers and their deputies. But the idea to appoint foreign experts is generally supported by Ukrainians and NGOs; there is a hope that these people will be able to fight corruption. To evaluate the new Government, we have to wait for March-April when the first possible results could be achieved.

Interview with Janez Kopač Director of Energy Community Secretariat

S.F.M.: Ukraine is an Energy Community full-fledged member: however, many observers considered the accession of Ukraine as Kiev's attempt to create an international lobby against the Russian gas pipeline South Stream, not in line with the Ukrainian interests. It is well known that many Contracting Parties have signed controversial Memoranda of Understanding with Moscow supporting the construction of said pipeline and frustrating Kiev's expectations in the Energy Community. Nevertheless, in the light of the ongoing conflict, how is the new Ukrainian leadership considering the Country's membership in the Energy Community? Does the Ukrainian government feel the Energy Community membership as a tool in the current conflict?

J.K.: Ukraine joined the Energy Community in 2011. I think Ukraine was above all interested in EU financing and loans to refurbish the internal infrastructures system and to reform the energy legal framework. For sure, Kiev was not attracted by the European membership perspective as it is for the Balkans EC Contracting Parties. Anyway, the debate on the Ukraine accession is still open and several negative opinions on the Energy Community enlargement to Ukraine came from many observers and players. The criticism is based on the idea that the Energy Community was not conceived to extend its boundaries beyond South East Europe. Besides, considering that Ukraine is significantly bigger than other Contracting Parties, this could create imbalance in the Energy Community. Furthermore, the Energy Community would have to encompass only Countries in the EU pre-accession phase, disregarding the Countries under the EU Neighborhood policy. I personally think that the enlargement of the Energy Community to Ukraine, Moldova and, soon, to Georgia is a paramount strategic and political achievement not only for the Energy Community but for the EU as well.

As a matter of fact, the current debate in EU seems to be reflecting on the present Neighborhood policy's approaches, trying to find more inclusive paths for the areas beyond the EU borders.

Anyway, when Ukraine joined the Community it accepted all the obligations under the Treaty without reservations. Nevertheless, over the past years the transposition and implementation process of the *acquis communautaire* has not been properly accomplished.

The current political situation is not allowing further reform since the main task for the Ukrainian government is to ensure coal and natural gas supplies to support the internal consumption and to face the winter energy-demand peak.

However, in spite of the international pressure, neither Yanukovyc's government nor the subsequent ones denounced the Energy Community Treaty. It should be mentioned that there is a growing part of the Ukrainian civil society, the business environment, intellectuals, journalists, civil servants, and market players that are taking care of the energy-related issues in their Country. The Energy Community supports their efforts and promotes the dialogue and discussion on these matters.

S.F.M.: The possibility to establish an Energy Union is nowadays in the Agenda of the European Commission: do you think the Energy Community will benefit from this discussion? Which possible dynamics could arise from the Energy Community-Energy Union interaction?

J.K.: The idea of a European Energy Union is not new and it has been recently re-launched by former Polish Prime Minister Mr. Donald Tusk. In Tusk's vision, the structure of the Union should be based on six pillars and the Energy Community should be one of them. The new President of the European Commission Junker appointed a Vice President for the Energy Union. At the moment, the discussion on this matter is at the very beginning and different models and solutions are under evaluation. From his first statements, it seems that the structure proposed by Vice President Šefčovič should be based on five pillars.

Nevertheless, what really surprised me is the approach to the matter. Actually, in one of the last meetings we had in Brussels on the Energy Union, the Pan-European perspective was totally absent from the

discussion table. The main discussion topics were focused on European supplies and European internal market completion. In my opinion, the Energy Union should be something wider, including the neighboring Countries that are a fundamental part of a wise and effective European energy security policy.

S.F.M.: The Kosovo status has been one of the most serious constraints in the international relations in the last few years. Has the work of the Energy Community been effected by this issue?

J.K.: As for the Kosovo case, I can say that in the last two years, at least, we had no serious issue or incidents between the Kosovo and Serbia representatives. It is true that in the past, when the Kosovo government sent its representatives to our working meetings, the Serbian part left the discussion table but thanks to progress of Serbia towards the EU membership, the approach has significantly changed. One thing worth noting is that some days ago I received a formal letter from UNMIK: UNMIK objects that it is the only entity entitled to represent Kosovo in the Energy Community's official international meetings since it is and remains the signatory to the Treaty.

S.F.M.: Considering your personal experiences in the Slovenian Government and Parliament I would like to formulate a question about the dynamics related to the Yugoslavian breakup. In particular, I would like to ask your opinion on the role of the commercial banks and National Banks in the collapse of the Yugoslavian internal market and as trigger for the breakup. Actually, the importance of this topic is confirmed considering the latest European Court of Human Rights' decisions on Ljubljanska Banka and Serbian Investabanka cases.

J.K.: The banking system has undeniably played an important role considering that the activities carried out by retail banks were usually performed on a cross-border basis. The Slovenian banks were very well considered in the Yugoslavian savings banks system and in retail operations, especially in Croatia where an important part of the activities of the Slovenian banks was based. What I can say is that no one in Slovenia was thinking about the independence from Yugoslavia

up to some months before it happened. At that time, we were thinking about some confederate scheme but still in the Yugoslavian perimeter. Therefore, what happened after the Yugoslavian breakup in the banking system was absolutely not deliberate. Besides, the situation was exacerbated by the war. The Slovenian banking system was significantly involved in credits and loans to Croatian enterprises and to the Croatian industrial sector. Most of those loans were not reimbursed considering the war brought about several damages to the Croatian production system.

S.F.M.: *The British journalist Tim Judah has coined the term “yugosphere” to define a cultural, economic and social community that is still linking people and Countries who lived the Yugoslavian experience. Do you think this perspective is correct? In your experience, does the yugosphere really exist?*

J.K.: I definitely think so. Actually all people born in the 70s have a common background of cultural and educational experiences. I am Slovenian but I have grown-up listening to music coming from Sarajevo and travelling to Belgrade, Zagreb and Sarajevo as well. The military service was a way to visit the Country and the language factor enhanced the cultural melting pot. Besides, I think that most of the people who lived those times preserve a good memory of them for their tolerance, a certain degree of widespread wealth and a functional State. Nowadays there are still economic links between some Countries such as Bosnia and Herzegovina and Croatia which strengthen the regional exchanges. Actually, the sense of belonging to a common cultural world is not so felt by the younger generations: they are more attracted by Western Europe and they are not travelling the Balkans as previous generations did in the past. Nevertheless, there are still some common traits in the music because sometimes bands or singers are known in the whole region.

S.F.M.: *Does this common background help the area political relations and communications?*

J.K.: Very often I felt a familiarity between politicians coming from former Yugoslavian Countries. Nevertheless, this is true in the personal approaches, in official meetings but not in international relations. For instance, when they are thinking to the European Union membership they are fully concentrated on the bilateral relation with Brussels. This is true for Slovenia and Croatia as well: although they are EU full-fledged members and they have a common history, common borders and, maybe, common interests they are not coordinating their positions at the European discussion table.

S.F.M.: *Before the war, Sarajevo was the symbol of a cosmopolitan ethnic and religious peaceful coexistence. In your opinion, was the determination to destroy the symbol of a possible coexistence the reason of the violent attack on Sarajevo?*

J.K.: I do not think so. I lived in Sarajevo before the war and I met several people from this cosmopolitan élite that turned into efficient parts of the war apparatus. They belonged to the most important humanistic and progressive class of Sarajevo’s cultural environment and they became part of the intellectual class that supported the war, crimes against humanity and propaganda. Besides, several ordinary people who lived in Sarajevo took an active part in the war and participated in the Sarajevo siege as well.



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