

The COVID19-crisis in the Energy Community

The Secretariat 's Contribution to containing the Impact

State of play

The current crisis following the spread of the COVID19 virus all over Europe puts unprecedented stress on the health systems in the first place, but also on every citizen and the economy as a whole. In this crisis, the energy sectors seem to be still functioning well, including in the Energy Community Contracting Parties. Currently, electricity – and where existing also: gas – production and supply continues in a stable manner and without disruptions in all of them. There seems to be no reason to worry about the level of fuel reserves and the hydrological situation in the imminent future, both in the Balkans and in Eastern Europe. Besides production, the transmission and distribution networks currently function without problems. As in other European countries, the Contracting Parties are taking measures to protect the health of employees in power plants, utilities and system operators as critical infrastructures. In the oil sector, the import of petroleum products has become more difficult due to border controls and restrictions in response to COVID19.

Demand for electricity (to a lesser extent gas, for reasons of seasonality) has dropped in many Contracting Parties as well, as a result of the measures taken by governments aimed at containing the spread of the virus. Industry and SMEs are particularly affected. This has brought spot prices down all over Europe, but also brings uncertainty for future market developments. As regards households, many of which now serve as home offices, consumption increases. As the crisis continues, rates of non-payment are going and may go even higher up in the Contracting Parties. Authorities and/or utilities in many Contracting Parties have pledged to ensure that customers with payment arrears will not suffer from supply suspension or be disconnected during the crisis. Utilities and network operators are already cash-strapped, and are now requesting budgetary support (as companies from many other sectors). There is a high risk that non-payments on any level affect liquidity in all supply and value chains (including production facilities, the mining industry, energy trading and supply, network operators etc.). This will have negative effects also on ongoing and future investments and on security of supply.

While the crisis and the containment measures are currently still ongoing, the focus shifts to future measures and funds needed for an economic recovery. Evidently, the energy sectors will have to play an important role in the recovery process. The membership in the Energy Community will serve as a guarantee that this process is being conducted in line with European law and policy, including the Green Deal.

The Secretariat's support

The Secretariat will support the containment and management of the crisis recovery by exhausting all regulatory and financial flexibilities available under the *acquis communautaire*, and by providing support swiftly and non-bureaucratically. The following serve only as examples:

Impact assessment of national action: Given the risks associated with crisis-inflicted interventions for essentially all objectives pursued by the Energy Community Treaty (open and integrated markets, security of supply, sustainability, investments etc), the Secretariat offers its expertise and advice to all national stakeholders in charge, especially with regard to assessing the economic and financial

impact of such measures. The power sector and the entire value chain associated with it deserve particular focus. The Secretariat may open a special platform to facilitate the exchange of experience and views on this.

Security of Supply: Despite there is no imminent crisis, the Secretariat in consultation with the Security of Supply Coordination Groups, will monitor the situation closely. This includes measures by authorities and companies linked to COVID19. Moreover, in isolated working environments, sensitive information including operation and control signals are often communicated remotely and susceptible to cyber-attacks. In the electricity and the gas sectors, there is a certain risk that the crisis will affect the coming heating season, due to postponement of the maintenance work or inability to procure across borders equipment and gas on time. The Secretariat will adapt the Energy Community website to display the status regularly and prominently. In case the situation deteriorates, the Treaty envisages a solidarity mechanism which will be triggered and used.

Oil prices: The prices of the petroleum products in Contracting Parties have generally reflected the decline in the price of crude oil in the international markets. Where this is not the case, the Secretariat is ready to support the competent regulators (such as competition authorities) to assess possible instances of market distortion.

Energy poverty: The economic consequences of the COVID19 crisis will affect also energy consumers, may hit the vulnerable ones hardest and increase their numbers. The Secretariat will support Contracting Parties that, in striving for market reforms and the energy transition, no customer is left behind, that vulnerable customers are properly addressed and that their basic energy services are guaranteed. It is vital that households and essential services and production facilities have access to high-quality energy services at least on the level of guaranteed minimum standards and at affordable tariffs. The Secretariat will support development of measures, both short- and long- term, protecting vulnerable customers and addressing energy poverty in a broader context. The Secretariat will also monitor customer complaints vigilantly in this period and will undertake to reach out to customer organizations in order to inform energy users of their rights and obligations. Moreover, the Secretariat will play a proactive role in the Energy Community Coal Regions in Transition initiative (with the World Bank, the European Commission and the College of Europe), including with regard to requalification and integration of affected workers in the job market.

Public Service Obligations: Individual Contracting Parties already use the current crisis as a reason for postponing already scheduled price liberalization steps or competitive procurement procedures for electricity, and notified to the Secretariat. On the one hand, well-designed public service obligations may indeed serve as an instrument to be used to temporarily deal with crises. On the other hand, badly designed interventions into the normal functioning of energy markets may cause or reinforce market failures. They may further delay the evolution of regional electricity and gas markets in the Energy Community, and hence catching up with the rest of Europe. The Secretariat will assist Contracting Parties in designing compliant schemes intended to contain the impact of the crisis or help overcoming its consequences. To ensure this, the Secretariat should be notified in advance, whenever possible.

Force majeure and payment default: The force majeure principle usually allows for termination or adjustment of obligations assumed (also) under energy contracts. Contracts potentially affected include wholesale trading contracts and PPA with producers of renewable energy (e.g. on account of lower consumption on retail level). Premature termination may aggravate the crisis-inflicted problems in the energy supply chains. Besides, private investments such as power generation or infrastructure projects may encounter financial difficulties or delays, which in turn may cause adverse

reactions by their contractual partners, including authorities and state-owned companies. To find fair and balanced solutions and to avoid the risk of lawsuits, the Secretariat will help finding quick and pragmatic solutions in the framework of its dispute resolution and negotiation center. It will also share European best practice on how to address payment defaults and its impact on the supply chain stability, which is currently under development.

Permitting procedures: In order to help investors in important sectors such as infrastructure or renewable energy projects, Contracting Parties should make utmost efforts to facilitate ongoing permitting procedures, cutting red tape and showing flexibility, while maintaining the objectives and principles of the *acquis* (e.g. on environmental impact assessment). The Secretariat can help in general and in specific cases, including through sharing best practices, advice to contractors and authorities or facilitating negotiations.

Large Combustion Plants: Many Contracting Parties designated several of their large coal-fired power plants for the so-called opt-out regime, which allows them to continue operating for a limited period. A number of these plants are rapidly approaching their time limits, with some of them even expected to consume their remaining operational hours by the second half of 2020. Strict compliance with this regime is monitored by the Secretariat and essential for the health of citizens, air quality as well as decarbonization. Crisis-related reductions in consumption will inevitably affect these deadlines. Contracting Parties should also inform the Secretariat well in advance of any extraordinary conditions (related eg to security of supply) requiring continuation of the opt-out regime, even if only limited in time.

Push for energy efficiency: The Secretariat will advocate that the recovery focuses on energy efficiency which can be a source of boosting economic regeneration after the crisis. For this to happen, there is a need for enhanced investments in building renovations, increased use of sustainable heating and cooling, support for economies to produce nationally and install energy efficient technologies in residential, public and commercial buildings. The Secretariat will also step up efforts to help improving the bad quality stock of wood stoves in households.

Decarbonization: National Energy and Climate Plans (NECPs) are the central instrument of the energy transition in all European countries, and applicable to the Energy Community under Recommendation 2018/01/MC-EnC. They are currently under preparation in all Contracting Parties. As the NECPs cover all sectors of the economy, the drafters should include, to the extent already possible, a true and fair view of measures aimed at economic recovery and their impact. Measures and impact should be in line with the overall European decarbonization objectives, as well as the (revised) nationally determined contributions and long-term strategies. To the extent emissions have been decreasing as a consequence of the current crisis, the recovery should take that into account in setting the level of ambition. Current low carbon prices (in the European ETS) could be viewed as a chance to introduce similar carbon pricing schemes also in the Contracting Parties, the revenues from which could contribute to a sustainable recovery, and/or to support of vulnerable customers.

State aid: Economic recovery measures may entail or amount to State aid which, in the energy sectors, is prohibited in principle by Article 18 of the Energy Community Treaty. In line with the practice of the European Commission (which recently introduced a temporary framework to support the economy in the context of the COVID-19 outbreak) and the courts, the Secretariat will consider such aid compatible with the single market under Article 107(2)(b) TFEU (damage caused by natural disaster or exceptional occurrences) or Article 107(3)(b) TFEU (serious disturbance in the economy of a Contracting Party). In addition, Article 107(3)(c) TFEU allows for support to undertakings in financial difficulties. In the framework of administrative cooperation procedures available under the

acquis, the Secretariat stands ready to cooperate with national State aid authorities for solutions for the energy sectors, and to support them in their decision-making in the shortest possible timeframe.

Infringement procedures: As guardian of the Treaty, the Secretariat carries out infringement procedures upon complaint or ex officio. Except in cases of urgency or in other cases necessitated by overriding interests, the Secretariat will not launch any new cases until the end of April (or until after the state of emergency in a given Contracting Party is lifted), and prolong any deadlines in ongoing procedures appropriately.

Phasing out interventions: The crisis comes with a risk that temporary interferences with Energy Community principles such as open markets, independence of regulators or contractual freedom are difficult to be phased out or be undone once they are not required anymore. This could set back the Energy Community and its Contracting Parties behind what has already been achieved during years of reforms. It could also widen the gap between the Contracting Parties and the European Union. Once the state of emergency has been lifted, the Secretariat will monitor the situation and propose measures to phase out redundant interventions.

Meetings and knowledge-sharing: During the ongoing crisis, the Secretariat has replaced all meetings and workshops with stakeholders by virtual meetings, and will continue to do so. It is important, and in the interest of Contracting Parties and wider stakeholders, that ongoing processes such as the Energy Community reform, PECCI/PMI selection or the deliberations in the Energy and Climate Committee are not interrupted. The Secretariat will also expand its range of offers in terms of knowledge-sharing and capacity-building through online media. For this purpose, stakeholders should keep their accounts and subscriptions at the Energy Community up to date. The Secretariat will also investigate possibilities to support enhancement of the required IT infrastructure in the Contracting Parties, including granting access to its virtual meeting facilities to the representatives of public authorities of Contracting Parties for energy-related discussions with domestic and international stakeholders.

Funding: As a result of the crisis, delays of loan repayments and requests to lower interest rates puts stress also on the financial sector, which will need to support the recovery (as well) in the energy industries. In this situation, support from public donors and international financial institutions (IFIs) is more crucial than ever. The Secretariat will engage with the IFIs and discuss the expected impact of the crisis on current lending and grant incentives for energy projects, SMEs and household borrowers. Many of them attach a significant portion of grants from the European Commission and bilateral donors as completion bonus, which will not materialise if the investment is not completed. The Secretariat will also discuss with the European Commission how the new Financial Framework 2021 – 2027 may take into consideration other type of instruments that would lower the cost of borrowing for projects supporting the recovery, and especially in the areas covered by the Green Deal. The Secretariat will share information and raise awareness about any existing or emerging funding opportunities for the benefit of Contracting Parties and their stakeholders.

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