

HIGH-LEVEL LECTURE

## EXPORTING THE INTERNAL MARKET - PANACEA OR NEMESIS FOR THE EUROPEAN NEIGHBOURHOOD POLICY? LESSONS FROM THE ENERGY COMMUNITY

DR. DIRK BUSCHLE, DEPUTY DIRECTOR OF THE ENERGY COMMUNITY SECRETARIAT  
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Dr Dirk BUSCHLE, Deputy Director, Energy Community

The Rector of the College of Europe, **Professor Jörg Monar**, welcomed the audience with some introductory remarks about the events series and the College's strong interest in the European Neighbourhood Policy (ENP). This lecture focused in particular on what can be learned from the experience of the still less well known Energy Community in the context of the broader question to which extent the EU's neighbourhood relations can be based on European standards and how a smart design for internal market export may look like.



**Professor Sieglinde Gstöhl**, Director of the Department of EU International Relations and Diplomacy Studies, introduced the high-level speaker.



**Dr Dirk Buschle** then tackled the issue of which lessons can be drawn from the Energy Community experience with a view to exporting the internal market regime of the European Union to neighbouring countries. He pointed at the Ukrainian example and at the latest developments in EU-Ukraine relations. Within the neighbourhood, the EU admittedly owns the most appealing 'house on the block'. Many neighbours wish to 'move in' or at the very least go to parties there, but the 'dress code' in the form of applicable rules is often perceived as very strict. At the same time, the EU has engaged in the export of its internal rules and practices to its immediate neighbourhood. This has led to a 'silent expansion' of the EU's internal

energy market. Against this backdrop, the lecture offered insights on which European model can be exported and what incentives the EU can put on the plate for non-EU countries.

Following the rejection of the EU-Ukraine Association Agreement in November 2013, protests and violence erupted in Ukraine eventually bringing the country on the verge of war with Russia over the Crimean peninsula. According to Dr Buschle, the current situation in Ukraine epitomises the inherent contradiction of the country's geopolitical circumstances, whereby Ukraine is in the sphere of influence of both the EU and Russia. Former President Yanukovich perceived the draft Association Agreement with the EU as an offer that Russia could easily top-up in terms of taking over the country's debt. Only the Ukrainian people's support for closer relations with the EU, as shown on the Maidan Square, pre-empted the acceptance of the Russian offer. In such situations, what the EU puts on the table is key. Europe should therefore reflect on how to make an attractive offer based on European values, principles and rules.

Prior to the rejection of the Association Agreement with the EU in late 2013, Ukraine was already a member of the Energy Community. Why did the same administration refuse to sign the Association Agreement but accept membership into the Energy Community which is much more constraining on its members as it requires the acceptance of the EU's energy-related *acquis*? The example of the Energy Community shows that the EU is able to export standards under the right circumstances.



Even though – unlike past empires – the EU is exporting its norms by peaceful means, it is still in the Union's best *realpolitik* interest. According to Dr Buschle, it does matter whether the EU practices norm export via bilateral or multilateral regimes. Whilst the European Neighbourhood Policy as well as the Eastern Partnership are inherently multilateral in nature but are implemented through a bilateral set up, both the European Economic Area (EEA) and the Energy Community are examples of multilateral agreements expanding the relevant internal market *acquis* to the neighbours. The EEA brings together three EFTA countries and the EU Member States in one single internal market and ensures reciprocal market access rights. From the EU's point of view, this means exporting its internal market rules to non-EU countries relying on a mixture of shared and separate institutions, which are themselves mirroring the EU institutions. The proximity of legal cultures across EEA countries favours the application and reliance on that very homogeneity principle which represents one of the main features of the EEA's regime.



On the other hand, the setup of the Energy Community Treaty entails different layers, including a requirement of abidance by EU law and a pan-European energy policy which is binding for all the members, including the EU. Each non-EU country enjoys a voting right which weights exactly as much as the vote of the whole EU. According to Dr Buschle though, the main deficiency of the Energy Community is the lack of enforcement tools, a shortcoming that could only be addressed through a reform of the founding Treaty.



The initial relevance of the Energy Community lies in its potential as a preparatory tool for Western Balkan countries in view of accession to the EU. Ever since Ukraine joined, the Energy Community has become the EU's reference point to set up the external dimension of its energy policy and therefore acquired even more significance. According to Dr Buschle, the multilateral nature of the Energy Community and its fair and balanced rules might have been one reason for the Ukrainian administration to hold on to it even in times of crisis.

If multilateral agreements are preferable for an effective norm export, which European model should be exported? In order to better punch its weight and offer concrete benefits to third countries, the EU should put the whole internal market *acquis* on the table even if only in a sectorial way as in the case of the Energy Community. In this context, together with setting up both monitoring and appropriate enforcement models, imposing binding rules becomes instrumental to replacing diplomacy by the rule of law. A shared institutional set-up also seems to matter in order to foster ownership on the partner's side, whilst at the same time guaranteeing the supranational nature of decision-making.



Through the prism of the Ukrainian case, Dr Buschle came to the conclusion that much can be learned from the Energy Community as to what to put on the table to encourage non-EU countries to adopt EU rules. In the case of the Energy Community, elements of a fair and attractive offer have been the juridification of EU external energy policy, a smart design, Europe's own commitment, creating win-win situations, smart flexibility as opposed to strict homogeneity, and in the future maybe also flexible membership. All of these features may help meeting third countries' essential interests in taking over EU rules, such increasing efficiency through reforms, getting enhanced market access, obtaining energy security and solidarity and attracting investment and financial support.



**Dr. Dirk BUSCHLE** is since 2011 Deputy Director and since 2007 Legal Counsel of the Energy Community Secretariat in Vienna. Prior to his current position, he was Head of Cabinet of the President of the Court of Justice of the European Free Trade Association (EFTA) in Luxembourg. Dirk BUSCHLE graduated from Constance University, Germany, and earned his Ph.D. at the University of St. Gallen, Switzerland. He is also Deputy Director of the Institute for European and International Business Law at the University of St. Gallen. He has



College of Europe  
Collège d'Europe



Natolir

Department of EU International Relations and Diplomacy Studies  
Dijver 11 BE-8000 Brugge T +32-50-47.72.51  
ENPComparativePerspective@coleurope.eu  
[www.coleurope.eu/ENPComparativePerspective](http://www.coleurope.eu/ENPComparativePerspective)

widely published in different areas of European Law, speaks regularly at conferences and has lectured as visiting professor at the Universities of Reykjavik, Constance and St. Gallen. He co-chairs the annual St. Gallen International Energy Forum as well as the Vienna Energy Law Forum.



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[www.coleurope.eu/ENPComparativePerspective](http://www.coleurope.eu/ENPComparativePerspective)