

Explaining the decision-making process of the Energy Community

A case of Supranationalism or Liberal Intergovernmentalism?



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Abstract

This study examines the decision-making process of the Energy Community through the means of congruence analysis. Due to many institutional similarities between the Energy Community and the European Union, two most prominent EU regional integration theories were thus employed. These are Supranationalism and Liberal Intergovernmentalism. The main research question is: “**Which regional integration theory gives a better explanation of the decision-making process of the Energy Community?**”. The case study was the outcome of the 16th Ministerial Council meeting. The evidence showed that the decisive role in the decision-making process was held by the European Commission and very insightful Energy Community Secretariat. Working in favor of these two supranational actors is also the institutional setup of the Energy Community. The Treaty Establishing the Energy Community appoints the European Commission as the leading policy entrepreneur. This substantially limits the role of the national governments represented in the Ministerial Council. They are unable to effectively influence the EU policy-making process and adapt the policies proposed by the European Commission. But also, they tend not to exercise even the authority given to them. There is almost no voting taking in the Ministerial Council and the Contracting Parties have never formed voting alliances. The gathered empirical evidence supports the claims of Supranationalism in almost of all of the aspects of the theory.

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Acronyms

CON	Congruence
EC	European Commission
ECC	Energy and Climate Committee
ECDSO-E	Energy Community Distribution System Operators for Electricity
ECS	Energy Community Secretariat
ECSC	European Coal and Steel Community
EnC	Energy Community
EnCT	Treaty Establishing the Energy Community
EU	European Union
LI	Liberal Intergovernmentalism
MC	Ministerial Council
MS	Member State
NF	Neo-functionalism
NGO	Non-governmental organization
PECI	Projects of Energy Community Interest
PHLG	Permanent High Level Group
PMI	Projects of Mutual Interest
SEE	South East Europe
TWG	Technical Working Group
WB	Western Balkans

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1. Introduction

1.1 Energy Community

The Energy Community (EnC) is an international organization intended to establish a common regulatory framework for energy sectors between its members, as well as to create a regional energy market that could be integrated into the EU's energy market. The EnC started as a regional arrangement in 2005 with the signing of the Treaty Establishing Energy Community (EnCT) between the European Union (EU) and countries of Southeast Europe (SEE). It was signed in Athens in October 2005, coming into force in July the following year. The EnC became fully operational in 2007 when the Energy Community Secretariat (ECS) was established (European Commission, 2011a). The EnCT was originally established for a period of ten years. However, in 2013 the Ministerial Council (MC) extended its duration for another ten years, ensuring its future. When founded, the EnC was seen as one of the pre-accession steps for the EU membership (Cogen, 2015). It was intended to ensure alignment of those countries' energy market regulation with the EU framework, prior to their accession. The members of the Energy Community are called the Contracting Parties. The original signatories that have remained present are Albania, Bosnia and Herzegovina, Kosovo*¹, Montenegro, North Macedonia and Serbia. The number of the Contracting Parties has since been increased, with several countries encompassed within the European Neighborhood Policy and Eastern Partnership joining: Moldova in 2010, Ukraine in 2011 and Georgia in 2017. Among the initial signatories were also Bulgaria, Croatia and Romania. The each of them is now a Member State (MS) of the European Union and obliged to implement the entire "acquis communautaire", not just its energy-related aspects. They still remain present in the EnC, as well as 17 other Member States of the EU and hold the status of the Participants. Unlike the countries of SEE that have been openly backed since the European Council meeting in Thessaloniki in 2003, the later signatories of the EnCT lack the real prospects of joining the EU. The integration of Moldova and Ukraine has demonstrated a significant shift in the EnC's development. From being a membership preparation tool, it has transformed into an instrument for securing the EU's energy supply (Buschle, 2015). For a country to become a CP, it needs to sign the EnCT and gain the support of the current members represented in the MC. The signatories then become legally obliged to implement the parts of the "acquis communautaire" within an agreed time-frame. They also gain the rights to be represented in the bodies of the EnC and take part in the decision-making process. The non-member states

¹ * represents a sign used by the Energy Community when referring to Kosovo, which is placed after its name. It entails that the EnC and its bodies hold no prejudice to the position or status of Kosovo and that they recognize the UN Security Council Resolution 1244 and International Court of Justice Opinion on the Kosovo Declaration of Independence.

can also participate in the work of the EnC as Observers. The three countries that currently hold this status are Armenia, Norway and Turkey (Energy Community Secretariat, 2018). This position enables them to attend many of the meetings of the EnC, but not to take part in their discussions (European Commission, 2005a).

1.2 Energy Community Law

The institutional arrangement of the EnC was influenced mainly by the institutional solutions of the EU, while binding the Energy Community law emerged based on the “acquis communautaire”. The EnC law as it is described in the Article 1 of the dispute settlement rules is a “Treaty obligation or to implement a Decision or Procedural Act addressed to it within the required period” (Ministerial Council, 2015a, p. 2). With the intention of further expanding the legal regime of the EnC, the EnCT has empowered the Ministerial Council with several legal instruments, presented in Figure 1.

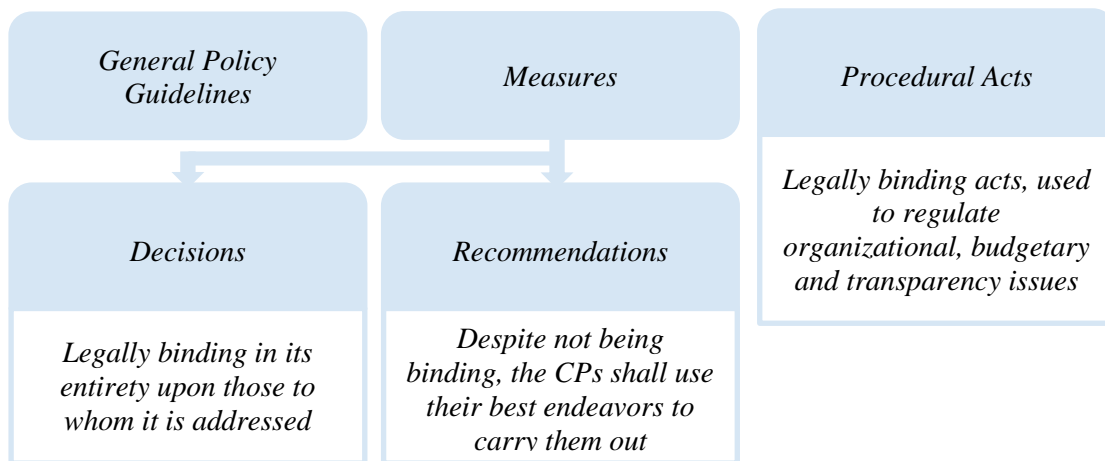


Figure 1: The instruments used by the Ministerial Council to adopt legal regulation. Adapted from “Treaty establishing the Energy Community”, *European Commission*, 2005, pp. 7-10.

These legal instruments constitute the primary legislation, which, for the most part, is not sufficient to ensure implementation. Proper implementation requires national governments to introduce secondary legislation as well. Similar to the EU, where the European Commission (EC) monitors the process of the legislation adaptation and implementation, the Energy Community Secretariat does the same on behalf of the EnC. The energy acquis implemented by the Contracting Parties is divided into two categories. Pre-signature EU energy acquis was included in the original text of the EnCT and its annexes, whereas the second type is the dynamic energy acquis, adopted later and included in the EnCT (Petrov, 2012). When the EnCT was first adopted in 2006, it contained 11 legal acts that the Contracting Parties were obliged to implement. Until 2018, the Energy Community law was extended by 61 Decisions and 38 Procedural Acts adopted by the MC and the Permanent High Level Group (PHLG) (Kopač, 2018). The Energy Community acquis currently in place consists of the directives

and regulations that cover the following areas: electricity, gas, oil, infrastructure, renewable energy, energy efficiency, competition and state aid, environment and statistics (Energy Community Secretariat, 2018).

1.3 Emergence of the Energy Community

The EnCT was the first multilateral treaty signed by the Republics of the Former Yugoslavia after the wars in the 1990s and was deemed a decisive step towards reconciliation (European Commission, 2005b). For that reason, then President of the European Commission Jose Manuel Barroso has addressed it as “a major achievement for peace and stability in Europe” (European Commission, 2005b). In the words of the current President of the Energy Community Secretariat, the EnC is “a child of the Balkan wars and crisis in the 1990s” (Kopač, 2015, p. 3). The Commission presumed that spreading the Internal Market would project stability on the countries surrounding the EU (European Commission, 2003a). Analogies with the post-Second World War efforts to create a European Community should not be surprising. In fact, the Energy Community was consciously modeled to mirror the European Coal and Steel Community (ECSC) (European Commission, 2005b).

Formal negotiations of such a comprehensive international legal arrangement started in 2001, during the so-called Athens process. The project was initiated by the European Commission, with the support of the Stability Pact that had developed institutional capacities in the region (Renner, 2009). The idea for such an endeavor first emerged in the late 1990s with several officials at the Directorate-General for Energy and Transport, before any prospects for joining the EU were given to the region (Renner, 2009). The first round of negotiations of the Athens process ended successfully with the signing of the Memorandum of Understanding in 2002. All the SEE countries signed it as well, the United Nations Mission in Kosovo for Kosovo*, the Vice President of the European Commission and the Special Coordinator of the Stability Pact (European Commission, 2002). The following year, the Memorandum of Understanding of 2003 was concluded and it extended the regulatory framework to natural gas. The finalization of the negotiations took place in Athens on 25 October 2005 with the adoption of a legally binding agreement.

The entire process, which culminated in the conclusion of the EnCT, was supported by the MSs. The need for establishing closer relations with the Western Balkan (WB) region was the focus of several high-profile EU meetings of the time. The main framework used by the EU towards the region was of a Stabilization and Association Process. Table 1 illustrates the early development of the policy.

Table 1: The development of the EU foreign policy towards SEE from 1999 to 2003

	European Council meeting in Cologne	European Council meeting in Santa Maria da Feira	Zagreb Summit	Eu-Western Balkans Summit in Thessaloniki
Date	June 1999	June 2000	November 2000	June 2003
Outcome of the meeting	The readiness was expressed to encourage the SEE countries full integration in the EU.	The Stabilization and Association Process was recognized as a path towards gaining the EU candidacy	The Stabilization and Association Process was concluded as a road leading to the EU membership.	A decisive support was given to the European perspective of the region.

Note. Adapted from *Stabilisation and Association Process History*, by Government of Montenegro, n.d., retrieved from: <https://www.eu.me/en/2014-11-19-11-15-23/sap-history>

The European Council meeting held in Thessaloniki declared that integration of the WB was of high priority to the EU, and supported the Commission’s initiative to extend the Internal Energy Market to the region (European Council, 2003). Currently, Serbia and Montenegro are the only CPs to be negotiating their accession. For negotiations to be completed, a country needs to align its legislation with the corresponding acquis. Thereby, the EnC acts as a useful instrument for aspiring members to align their regulation to that of the EU.

1.4 Internal Structure

Similar to the Treaty on the Functioning of the European Union, the EnCT contains substantive provisions that formalize the institutional structure of the EnC. Even prior to the EnCT, substantial parts of the structure were mapped out in the Athens memorandums and the Tirana declaration (Talus, 2015). The central bodies of the EnC are presented in Figure 2.

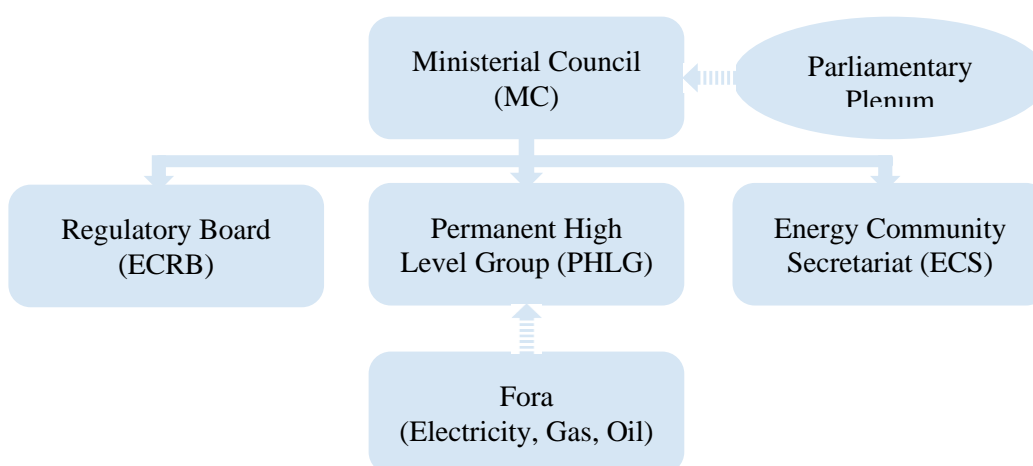


Figure 2: The institutional setting of the Energy Community. Adapted from “Energy Community facts in brief”, Energy Community Secretariat, 2019

The Ministerial Council is the highest governing body of the EnC, mandated to bring about the key priorities and adopt new legislation (Energy Community, 2018). It provides general policy guidelines, takes measures and adopts procedural acts (European Commission, 2005a). It consists of two representatives of each Contracting Party, usually the high government officials in charge of ministries that cover energy issues and two representatives of the European Commission.

The Permanent High Level Group is consisted of one member of each CP and two senior officials of the EC, who represent the EU. It performs many tasks, including: preparing the work for the Ministerial Council, giving assent to the technical assistance requests made by international donors and financial institutions, reporting on progress made towards the achievement of the objectives of this Treaty to the Ministerial Council, taking Measures, if so empowered by the Ministerial Council, adopting Procedural Acts, and discussing the development of the “acquis communautaire” (European Commission, 2005a).

The third is the **Regulatory Board** mandated by the EnCT to advise the MC or the PHLG on the details of statutory, technical and regulatory rules, to issue Recommendations on cross-border disputes involving two or more Regulators, to take Measures, if so empowered by the Ministerial Council and adopt Procedural Acts (European Commission, 2005a).

The fourth is the **Fora**, composed of interested stakeholders, including industry, regulators, industry representative groups and consumers. Its primary function is to advise the Energy Community (European Commission, 2005a). It is the best example of how significant was the influence of the contemporary EU institutions on the EnC. The Athens Fora or Forum was a direct replica of the EU’s Madrid and Florence Fora (European Commission, 2003b).

Lastly, the **Energy Community Secretariat** located in Vienna, manages day-to-day operations of the EnC. It is also the only permanent body of the organization. The ECS provides support to other bodies of the Energy Community, reviews and reports on the implementation made by the CPs, reviews and assists in the coordination by donors and provides them with an administrative support, carries out tasks conferred on it under this Treaty or by a Procedural Act of the Ministerial Council and adopts Procedural Acts (European Commission, 2005a).

Since its foundation, the EnC’s institutional setting has been developing. The prerogatives of several bodies such as the ECS and the PHLG are now also extended. Most notably the ECS, with the adoption of the Third Energy Package, has been mandated to issue an opinion on the

compliance of national regulatory actions regarding the certification and exemptions to the unbundling provisions (Ministerial Council, 2011). The ECS exercised this authority most recently in the case of the Gastrans pipeline that should go through Serbia (Energy Community Secretariat, 2019). Furthermore, new bodies have emerged with varying tasks. One of these is the Parliamentary Plenum, consisting of National Parliament representatives. These representatives are able to express their views within the Parliamentary Plenum, on matters covered under the Treaty with the exception of the dispute settlement process, as well as to pose questions to the EnC's institutions (Ministerial Council, 2015b). The number of Specialized Working Groups and Task Forces has increased as well. These include the Energy Efficiency Coordination Group, the Task Force on Environment, the Renewable Energy Coordination Group and the Coordination Group for Cybersecurity and Critical Infrastructure (Energy-community.org, n.d.-a).

1.5 The 16th Ministerial Council Meeting

Initially, the EnCT envisioned that the Ministerial Council would meet at least once every six months. However, such practice changed in 2009 when the Treaty was amended and the frequency of meetings was changed to at least once a year. This study will focus on the 16th Ministerial Council meeting, which took place on 29 November 2018. A number of important decisions were made on that occasion. The meeting resulted in:

- 16 Decisions
- 3 Procedural Acts
- A recommendation on projects of mutual interest between the CPs and MSs
- General Policy Guidelines on 2030 energy and climate targets
- Rules of Procedure on EnC Parliamentary Plenum meetings

The complete outcome of the 16th MC meeting, which includes individual Decisions and Procedural Acts, is provided in Annex 1.

1.6 Research Question

This paper is dedicated to explaining the decision-making process of the Energy Community. The study will focus on the work of the Ministerial Council, as the highest governing body of the EnC. Every year, the MC adopts new decisions that among other things, lead to expansion of the EnC legal framework. Therefore, in order to focus the research, the 16th MC meeting and the decisions made there will be taken here as a case study. The EnC is a model of regional integration that exercises somewhat of a unique model of governance. However, as it resembles the EU in many ways, particularly in its early stages, the decision-making process of the EnC will be evaluated through the lens of the dominant EU regional integration

theories. In the existent polycentric system of knowledge, two most valuable and competing theories in this regard, as recognized by Hix & Hoyland, are Supranationalism and Liberal Intergovernmentalism (2011). Empirical evidence will be provided in the light of selected theories, in order to determine which of the two has a greater explanatory capacity for the disclosed case.

The research question goes as follows:

Which regional integration theory gives a better explanation of the decision-making process of the Energy Community?

1.7 Theoretical and Social Relevance of the Study

The theoretical value of this study is twofold. First, it is intended to provide a deeper understanding of this international organization's decision-making process and fill in a gap present in the literature. As far as the author knows, this is the first research of this kind since the inception of the EnC. Furthermore, by using two regional integration theories, developed with the EU context in mind, this study will contribute to a wider debate on how well they perform in cases outside the EU institutions.

A deeper understanding of the Energy Community also has a clear social relevance as it is a model of governance likely to expand in the near future. The European Council has concluded that the EnC is to be promoted as a model of cooperation towards other neighboring countries able to implement relevant parts of the EU acquis (Council of the European Union, 2013). Moreover, membership in the EnC could become a prelude to establishing a free trade agreement with the EU (European Commission, 2011b). Due to enlargement fatigue, this and similar models of cooperation are regarded invaluable for the countries that want to move closer to the EU and demonstrate their abilities to perform advanced reforms. Therefore, understanding these models carries not just great social, but also political and economic value for the countries that decide to take part in them.

1.8 Structure of the Thesis

This study is divided into eight chapters. The introductory chapter is dedicated to providing the general insight on the EnC, its development and institutional structure. Furthermore, here the research question is formulated, followed with an explanation of its scientific and social relevance.

The second chapter is dedicated to exploring the available literature on the EnC. Some essential insights presented in the academic debates on the EnC will be introduced here. The first and most comprehensive part will cover the complicated relationship between the EU

and the EnC. Following this, an insight is to be given on the reasons for establishing and on the CPs' motives to participate in the EnC. Lastly, the literature review will reflect on the institutional structure of the EnC, its similarities with the EU as well as its limitations.

The succeeding chapter is aimed at formulating the theoretical framework of the study. Here, a comprehensive discussion on the process of selecting the theories will take place. The two EU integration theories selected for this study will be explained here in depth. Then, the theoretical propositions which reflect on the central premises of both theories will be formulated.

It is followed by the research design in which the methodological side of the study is laid out. Congruence analysis is presented and discussed as the most suitable case study approach. Confirmation of external and internal validity is the following section, as well as the information on the method by which empirical evidence is going to be gathered.

Chapter five will be dedicated to further operationalization of the four theoretical propositions. This will entail formulating more specific predictions on each of the propositions. In total, seven predictions are made for each of the two tested theories. Predictions laid out in this chapter will integrate empirical evidence expected to be seen in practice of the EnC.

In chapter six, the empirical evidence is presented. This evidence is introduced based on the predictions and questions formulated for each of them. Information will be gathered through desk research and interviews.

What follows is a discussion about the findings. There, the degree of congruence between the empirical findings on the Energy Community and the theoretical predictions is presented, as well as the dominant theory for explaining the decision-making processes in the EnC.

Lastly, the study concludes by reflecting on the most important findings, identifying the limitations of the study and possibilities for further research.

2. Literature Review

2.1 EU External Energy Governance and the Energy Community

During a significant part of its existence, the EU has practiced an exclusionary policy towards its neighboring countries in the east and the south, which are referred to as the EU's "Near Abroad" (Lavenex, 2004). In the last decade of the 20th century, such a position changed as the EU moved towards "politics of inclusion" in order to answer the changing demands of the European order (Smith, as cited in Lavenex, 2004). External governance emerged as a new function in the EU's toolbox in dealing with the third countries. It constituted a substantial advancement from the classical forms of external relations such as trade, aid and cooperation. External governance is understood as an effort to extend parts of the "acquis communautaire" outside the territory of MSs (Lavenex, 2004). This implies that the EU is able to spread its legal regime without necessarily changing its organizational boundary. Spreading the organizational boundary would mean the "inclusion of non-member states in EU policy-making organizations" (Lavenex & Schimmelfennig, 2009, p. 796). Thereby, external energy governance could be defined as the transferring of some parts of the *acquis* related to energy to the third countries. This function rests with the EC and stems from its legal prerogatives in regulating the internal market. Despite having initially only a limited role that concerned competition policy and regulation, the EC succeeded in building up a substantive authority even outside the territory of MSs (Andersen, Goldthau & Sitter, 2017b). The primary strategy that the EC pursued in external energy governance is of a regulatory power (Goldthau & Sitter, 2019). However, it is not the only one, as seen in Table 2.

Table 2: Models of the EU external energy governance

	Normative Power	Regulatory Power	Market Power	Hard Economic Power
Aim	Free trade, by international rules	Trade by EU rules	EU interests	EU interests
Means	Ideas; Leading by example	EU regulation, applied apolitically	EU regulation, applied selectively	Economic reward/punishment
Examples	1. Energy Charter Treaty; 2. Inclusion of energy in WTO	1. Gazprom antitrust case; 2. Energy Community; 3. European Economic Area	1. South Stream vs TAP/ Nabucco/ Southern Corridor; 2. Nord Stream 2 & TEP; 3. Gazprom clause; 4. Denial of OPAL	1. CDC / Energy Union gas purchase vehicle; 2. Sanctions to Russia /Iran

Note. Adapted from "Regulatory or market power Europe?: EU leadership models for international energy governance", by Goldthau, A., & Sitter, N., 2019, p.41, Cham: Palgrave Macmillan.

The EU was able to shape energy governance in transit areas and even some energy-supplying countries (Godzimirski, 2016). The targeted countries include “Russia and Norway as key producers, the Western Balkans as the EU’s “Near Abroad”, Ukraine and potentially, Turkey as essential gateways for Russian and non-Russian supplies into the EU” (Andersen et al. 2017b, p. 17). The first two models of external energy governance, presented in Table 1, have several characteristics in common. Both share liberal values and could potentially be pursued universally and apolitically (Goldthau & Sitter, 2019). The normative power strategy works towards establishing international regimes based on free trade and compliance with international law. The regulatory power strategy is predominantly focused on imposing Internal Energy Market rules on the third actors that want to export into the EU. What enables the EU to undertake this pro-consumer oriented strategy is the size of its internal market and its attractiveness abroad. Therefore, the goal is to extend the reach of its rules and regulations while still operating on a non-discriminatory basis. Instead of enforcing soft power, the latter two approaches rely on hard power to achieve political goals. The market approach implies implementing rules selectively or using economic power to induce specific behavior in the third actors (Goldthau & Sitter, 2019). On the other hand, the power approach suggests explicitly using economic power as an instrument of foreign policy.

As can be seen from Table 1, the EU has implemented a wide variety of different policy tools in order to extend its influence. Although not all of them have been successful, several flagship initiatives require further deliberation. Presented in Table 3 are initiatives highlighted for their importance by Svein S. Andersen, Andreas Goldthau and Nick Sitter (2016, 2017b).

Table 3: Notable instances of EU external energy governance

	European Economic Area	Energy Charter Treaty	Energy Community Treaty
Year signed	1992	1994	2005
Targeted countries	Norway, Iceland and Liechtenstein	Mainly key energy producers, Russia and Norway	WB countries, Ukraine, Georgia and Moldova
Outcome	Successful	Failed	Successful

Note. Information about the European Economic Area and the Energy Community were retrieved from Andersen, Goldthau and Nick Sitter (2016), while information on Energy Charter Treaty from Kuzemko and Hadfield (2016).

A key similarity between all of these initiatives is their multilateral nature. In comparison to bilateral agreements, these models of cooperation possess several important advantages as noted by Dirk Buschle (2014). First, they allow exporting the “*acquis communautaire*” to more than one country. Second, they act as a model which is easier to follow. Third, they allow for a balance of power between the parties involved. Also, this opens up a possibility

for alliances. Fourth, multilateral agreements justify the establishment of independent institutions.

In the case of the EnC, this multilateral approach has clear implications for the CPs. It supports the effects of bilateral accession conditionality and is seen as a more legitimate instrument in the hands of the EU in what is ultimately considered as an intrusion in the policy processes of sovereign states (Padgett, 2012). Furthermore, the EnC and the Energy Charter Treaty as well could be labeled as the instances of sectorial multilateralism. The term sectorial multilateralism “presumes closer legal cooperation between the EU and third countries, beyond a traditional approximation of laws, for instance, by voluntary application of the EU sectorial acquis by a third country” (Petrov, 2012, pp. 1-2). Although the EnC is sectorial in nature, it includes specific horizontal provisions in areas such as environment, competition and state aid (Buschle, 2014). More recently, climate issues have been introduced as well.

Despite not being represented in the major EU institutions, the possibility of the third countries influencing the EU policy-making process should not be disregarded. Whether a non-MS can influence the EU policy process depends on its access to relevant venues and actors of the EU policy-making and its structural power resources (Hofmann, Jevnaker & Thaler, 2019). A country possesses structural power resources if, for example, it exports significant amounts of energy resources or is an important transit country. In relation to how the third countries perform on the basis of these two indicators, four categories presented in Table 4 emerge.

Table 4: The roles on non-Member States in the creation of the EU energy policy

		Third country access	
		Absent	Present
Third Country Structural Power Resources	High	<i>Challengers</i> (Russia, Turkey)	<i>Shapers</i> Norway, Switzerland
	Low	<i>Outsiders</i> (Belarus)	<i>Followers</i> EnC members (Iceland)

Note. Countries shown in the brackets were not put to the same empirical tests as were Norway, Switzerland and the CPs of the EnC. The authors assume that if such research were to take place, this would be the results. Adapted from “Following, Challenging, or Shaping: Can Third Countries Influence EU Energy Policy?” by B. Hofmann, T. Jevnaker & P. Thaler, 2019, *Politics and Governance*, 7(1).

As evidence suggests, Norway and Switzerland are both regarded as shapers. This means that they, apart from following the EU energy regulation, are able to influence the policy-making process (Hofmann et al., 2019). The CPs, on the other hand, lack such authority and,

according to the empirical study, do not influence the EU policy-making process. Limited access to the EU institutions and low structural power resources make them fall under the category of followers. Ukraine's position as a major gas transit country could serve as an exception, but still not sufficient enough to turn this country into a shaper.

This approach of the EU towards the EnC can be best described as “our size fits all”, as it lacks inclusiveness and institutional reflexivity (Bicchi, 2006). Inclusiveness relates to the possibility for the involvement of the third countries in the development of the EU policy concerning them, while institutional reflexivity is the ability of the third countries to critically analyze the EU imposed policies and adapt them accordingly. The adverse effects of such an approach have been recognized even by the ECS's officials. The director of the ECS deems that the lack of flexibility on substance, geographical flexibility and the inability of CPs to propose new legislation have in many ways curtailed the development of the Energy Community (Kopač, 2015). The lack of flexibility of substance means that the EnC law needs to coincide with the “acquis” and that the CPs are not allowed to make any substantial changes when adopting it. On the other hand, the geographical flexibility entails that despite relevant socioeconomic differences between the CPs, they all have to adhere to the same set uniform rules. This is why Dirk Buschle, the Deputy Director at the ECS concludes that the reform process is needed and that the EnC should have more flexibility in adapting the EU rules and designing genuine rules and institutions (2014).

2.2 Rationale Behind the Energy Community

Despite the efforts taken by the EU in the last two decades to increase energy production from renewable sources, it remains heavily reliant on fossil fuels. Since 2013 it has been importing more than 50% of the energy consumed, while all the MSs have become reliant on energy imports (Godzimirski & Austvik, 2019). In 2012, 90% of the EU's crude oil demand and 66% of its natural gas demand were covered through imports (European Commission, as cited in Matsumoto, Doumpos & Andriosopoulos, 2017). However, the trade markets for these goods are very different in terms of their integration. While the oil market is globally integrated, since oil is being produced, consumed and traded globally, the gas markets remain fragmented and regionalized (Vicari, 2016). Also, the transport of natural gas requires a developed pipeline infrastructure (Renner, 2009). An exception is of course more expensive liquefied natural gas. Furthermore, many MSs heavily rely on a single foreign supplier, such as Russia, for their natural gas and even electricity needs (Matsumoto et al., 2017). Achieving a stable supply of natural gas is, therefore, a strategic imperative for the EU in order to decrease its external vulnerabilities. This correlates very well with one of the three major concerns of the EU foreign energy policy: security of supply. The other two are the

sustainability of the energy systems and the impact that energy transition could have on its global economic competitiveness (Andersen, Goldthau & Sitter, 2017a). One of the paths the EU has taken to alleviate potential energy security threats was to Europeanize the external dimensions of its energy policy (Youngs, 2011).

The existing literature suggests that energy security concerns were, in fact, the main driver for pursuing multilateral arrangement with SEE (Padgett, 2009; Renner, 2009; Youngs, 2009; Youngs, 2011; Abbasov, 2013; Talus, 2015; Andersen et al., 2017a). The goal was to minimize the uncertainties in dealing with the “Near Abroad”, as the strategic policy options of these countries were narrowed down (Abbasov, 2013). Consequently, a larger sphere, where energy markets work in a predictable way, was intended to be created (Boltz and Langeder, 2015). From a strategic perspective, the SEE region, where the initial integration has occurred, is essential to the EU for its proximity and the fact that it can become an important transit route for natural gas and oil from the Middle East and Caspian basin (Słomińska & Toporowski, 2008). The EU is thus “highly interested in having a stable and predictable political and regulatory environment in the region” (Renner, 2009, p. 21). The transit function of the countries in the east that became later signatories of the EnCT is even greater for the EU, as Ukraine accounts for the most significant route for the delivery of the Russian natural gas to Europe. The geopolitical importance of the EnC for the EU was confirmed by high EC officials. While addressing the signing of the EnCT, the Commissioner in charge of energy Andris Piebalgs, who signed the Treaty on behalf of the EU, emphasized that “the Energy Community Treaty will enhance security of supply and give support to a strategically vital sector” (European Commission, 2005b). The following year, the Green Paper termed “A European Strategy for Sustainable, Competitive and Secure Energy” was released. The document stated that “energy security would be best achieved through a “pan-European energy community” a “common regulatory space” around Europe” (European Commission, as cited in Youngs, 2009). The EnC has been at least partially able to achieve this goal of the EU. Energy security also played the central role in initiating the European Neighborhood Policy, whose several members would later join the EnC. This was confirmed by then external relations Commissioner Benita Ferrero-Waldner who noted in the aftermath of the 2006 Russia-Ukraine gas dispute that energy security needs to be higher on the EU agenda (Youngs, 2011).

On the other hand, the CPs have their unique reasons for being decided to joining this multilateral arrangement. When first initiated in the SEE region, the initiative was recognized as a valuable instrument to attract financial resources. Foreign investments, financial assistance and overall economic prosperity were all some of the expected benefits of this initiative (Karova, 2010). Furthermore, other socio-economic benefits were expected, such as

transport facilitation, increased trade and mobility, greater environmental protection and stable energy supply (Karova, 2010). For the countries of the former Yugoslavia, this meant a chance to rebuild relations, but also, physical infrastructure destroyed in the conflicts. This was especially important for the electricity grids in the former Yugoslav Republics, as they were not designed to be self-sufficient, but interconnected regionally and even internationally under the Union for the Coordination of Transmission of Electricity (Karova, 2010). By participating in the EnC, the former Yugoslav Republics were signaling foreign donors and private sector that they were a suitable destination for investments (Deitz, Stirton & Wright, 2007). Furthermore, having a legal framework that matches that of the EU allows the CPs to reduce transaction costs and facilitate the trade with the EU (Andersen, Goldthau & Sitter, 2016). The evidence also suggests that some of the governments that signed the EnCT were not even aware of its full legal implications upon its signing (Padgett, 2012). The last argument is the membership perspective associated with the participation in the EnC. So far Bulgaria, Romania and most recently Croatia have all become MSs, after participating in the EnC first. For the three aforementioned countries, as well as remaining WB parties that have all signed the Stabilisation and Association Agreement, the political conditionality imposed by the EU was not only important but played a central role in their willingness to participate in the EnC (Renner, 2009; Padgett, 2012). On the other hand, Ukraine, Moldova and Georgia lack a real prospect of joining the EU. For them, the economic and social benefits are also very attractive. However, they also have clear political reasons that fuel their motivation to participate in the EnC. These are: displaying their capacities, demonstrating readiness to one day join the EU, achieving greater interdependence from a regional hegemon and higher economic gains from an increased economic exchange with the EU (Prange-Gstöhl, 2009). More generally, their ambitions could be to establish closer political and economic relations with the EU through association agreements and free trade areas (Petrov, 2012).

2.3 Institutional Setup of the Energy Community

The guiding principles for the Commission officials in charge of designing the institutional structure of the EnC originate from early experiences of the ECSC (Renner, 2009). As the liberalisation in trade, investments and movement of people had a stabilizing effect on the war-torn Europe after the Second World War, a similar outcome was expected from this initiative for the former Yugoslavia. The idea was to start an integration process in a highly technical sector and establish the institutional capacity for possible spill-over into other policy fields (Renner, 2009). This meant relying on neo-functionalist ideas and so-called Monnet's

model of regional integration (Hoffer, 2007²; Deitz et al., 2007; Renner, 2009). However, there is a significant difference between the cases in relation to how they originated. While the ECSC was instituted by future MSs which produced common institutions and binding legislation, the EnC was initiated by the EC. What the EU managed to do was to reproduce itself in SEE (Renner, 2009). This should not mean that the EnC is a replica of the early EU, but rather that the EnC is an organization which adopted many of its traits. The product of this was the governance structure, which is more sophisticated than the structure of any other agreement the EU made with the third countries (Prange-Gstöhl, 2009). Many of the EnC bodies, therefore, bear a striking resemblance to the EU bodies. The Ministerial Council, as a predominant political body within the organization mirrors the European Council (Talus, 2015). The peculiar setup of this body serves as one of the examples of how the EnC crosses the usual scope of intergovernmental agreements (Buschle, 2015). By instituting equal voting rights and a majoritarian voting system, it allowed for the protection of the interests of small CPs (Buschle, 2014). Regardless of each country's size and population, all the CPs have the same voting power in the Ministerial Council. Furthermore, a wide coalition of different CPs is needed for a decision to be passed. This way, a scenario in which a small number of larger CPs is able to subjugate the rest of the CPs to its will is unlikely. Also, since the EU is represented in the MC and is allowed to vote, in principle, each of the CPs has the same voting power as the entire EU (Buschle, 2014). The counterpart of the European Commission is the Permanent High Level Group, as it prepares the Ministerial Council's decisions and secures the follow-up (Talus, 2015). Opinion on this, however, is not monolithic, as Stephen Renner sees the role of the PHLG closer to that of COREPER and other preparatory bodies in the institutional system of the EU (2009). Similar to the Madrid and Florence Fora are the Regulatory Board and Gas and Electricity Fora (Talus, 2015). Again, Stephen Renner has a different view and states the ECRB to be an equivalent of the European Regulators' Group for Electricity and Gas - ERCEG (2009). Of all the bodies, the most intensive interaction takes place at the ECRB where meetings are frequent and personal relationships are well developed among the officials (Padgett, 2012). The same can be said for the PHLG and the high level ministry officials attending the meetings. The last one and the one without a clear parallel in practice is the Energy Community Secretariat, which, alongside its more formal responsibilities, acts as the guardian of the EnCT (Talus, 2015). Over the years, the ECS has become a body that provides political and administrative leadership within the organization. Moreover, the ECS is considered the main body through which the EC operates, whereas in practice it mediates almost the entire interaction between the CPs and the EU (Prange-Gstöhl,

² Stephen Renner has at the time of his doctoral studies at the University of Wien published an article "Neo-functionalism reloaded. The Energy Community of Southeast Europe" under the name Stephan David Hofer (2007).

2009). However, the ECS has fallen short of developing as a supranational institution such as the European Commission (Renner, 2009).

Mimicking the institutional setup of the EU has not necessarily translated into establishing an equally effective organization with the EnC. In fact, the EnC is displaying many limitations which are connected to its institutional setup and the poor practices of the CPs. Most notably, an inherent weakness of the ECT is the absence of an independent judicial body and a strong enforcement mechanism that would ensure a high rate of compliance. Even though the Treaty stipulates clear obligations for the CPs, the institution features no coercive power or enforcement (Goldthau, Andersen & Sitter, 2015). An infringement procedure, currently in place can be started against a CP found to be in violation of the EnC law. However, the ultimate decision-maker is the Ministerial Council, which is a non-independent and non-expert institution (Buschle, 2014). The MC can in case of a consistent breach of rules suspend certain rights of the Party, such as the voting rights and the right to participate in meetings (Energy Community, 2018). This system is deemed ineffective and cannot live up to the European standards of judicial protection of individuals and companies (Boltz and Langeder, 2015). In the absence of a judicial body, the CPs have a possible instrument for ensuring compliance by enforcing a political pressure through the MC (Padgett, 2009). It would mean peer pressuring the CPs that are not compliant with the EnCT by those that are. Also, the European Commission has an access to a single potential instrument of punishment, which is the suspension of the accession process (Padgett, 2009). However, it has not taken such a drastic measure against any of the Parties to this day. The absence of a judicial body has another important consequence. It means that there is no ultimate, unbiased authority for interpretation of the EnCT (Talus, 2015). It also means that the chance of deeper integration gets reduced since a counterpart to the European Court of Justice that creates an integrative dynamic in the EU does not exist in the EnC (Renner, 2009).

The current system needs to be reformed, for proper enforcement to be achieved. A potential solution could be a flexible mechanism of enforcement. Strong enforcement would be used in crucial issues such as investments and legal disputes, while weak enforcement for social issues and implementation timetables (Boltz and Langeder, 2015). An adequate enforcement mechanism could also be attained by instituting a Court of Justice (Vinois, 2017; Renner 2009; Karova, 2015). The CPs still have no legal limitations in potentially instituting such a body, as long as unanimity in the MC is reached (Renner, 2009). Establishing a tribunal of this sort would certainly enable applying sanctions in the situation where most of the CPs were found to be violating the EnC law (Karova, 2015). In the current system, a deadlock would emerge, as reaching a majority in the MC would be very difficult. Another problem

which the EnC faces and which does not stem from its institutional setup is the limited participation rate of some of the CPs. The evidence suggests that collaboration between the CPs is low, even though there is undoubtedly room for joint lobbying. The CPs have “an underdeveloped culture to coordinate and voice their collective interests, and generally accept the design of energy regulation from Brussels” (Hofmann, Jevnaker & Thaler, 2019, p. 157). The reason for this can be in heterogeneous interests of the CPs, but also, ethnic tensions between some of them, most notably Serbia and Kosovo*.

3. Theoretical Framework

3.1 Selection of Theories

As previously stated, due to its resemblance to the EU, the decision-making process of the EnC will be analyzed through the lens of the dominant EU regional integration theories: Supranationalism and Liberal Intergovernmentalism. The two theories, are however not the only ones which could potentially be applied to the case. There are also other influential international relations theories such as Realism and Social Constructivism.

Realism probably accounts for the most influential theory in the field of international relations. The central premises of realisms include state-centrism as well the understanding that the countries operate inside an anarchic environment. This does not entail that war constantly occurs, but in a sense that it can break out at any time since every country is deciding for itself whether or not to use force (Waltz, 1979). The influence of international institutions is in the eyes of realists in essence not existent. The institutions are run by the most powerful states in the system, which shape them and use them to maintain their share of world power (Mearsheimer, 1994). They are seen as mere “arenas for acting out power relationships” (Evans & Wilson, as cited in Mearsheimer, 1994). Realism therefore emphasizes the roles of states and disregards the influence of other actors. This is the main reason why this theory would probably not have much explanatory value, once applied to the case of Energy Community. As previously discussed, the role of the, the European Commission, which is a non-state actor, has been of paramount importance for the success of the Energy Community, especially in its early days.

On the other hand, the provisions of Social Constructivism seem much more applicable to the case of Energy Community. Unlike Neorealists, who have a materialistic view of the international relations, Constructivists see the world as socially constructed (Hurd, 2008). For Constructivists, beliefs, expectations interpretations were of vital importance for understanding the international relations (Hurd, 2008). This is line with the heterogenic motives of CPs to participate in the Energy Community. Also, they have adopted a pluralist approach in understanding international relations and recognize the importance of different actors at the international stage, aside from states. This meant incorporating the influence of different actors on the Energy Community, such as the European Commission, private sector, non-governmental organizations (NGOs). In understanding the social constructivism there are several other important concepts, including agency and structure. Constructivists see these two concepts as mutually constituted. Agency is understood as ability of someone to act while structure refers to the international system that is made of material and ideational elements.

(Theys, 2017). In conclusion, the ideas of Social Constructivism could potentially be applied to the case of Energy Community with a large degree of success.

However, neither Social Constructivism nor Realism was selected for this research. The reason for this was previously disclosed in the section on theoretical relevance of the study. As noted, the aim of this study is not only to find a more appropriate theory for explaining the decision-making process in the EnC, but also to test how successful are the two dominant EU regional integration theories in explaining the processes outside the context of the EU. This is an interesting case for such a research, since the Commission officials responsible for designing the EnC explicitly stated Monnet's method and the ideas of neo-functionalism (NF) as their guiding principles throughout that process (Renner, 2009). The literature review revealed that despite some important differences, the institutional setup of the EnC was influenced by that of the ECSC. This makes the theory of Supranationalism very influential in the early days of the EnC as it integrates the classical ideas of neo-functionalism. However, it is not clear if this translates into the decision-making process, especially now, after more than a decade since its establishment. Thus, the research carried out in this work is not only focused on determining today's relevance of Supranationalism only but testing it as well against its main competitor, Liberal Intergovernmentalism (LI). LI is a theory that starts from liberal institutionalism and builds up on one of the variants of liberal theory: commercial liberalism (Schimmelfennig, 2013).

3.2 Supranationalism

Supranationalism encompasses a wide variety of theoretical traditions and ideas on the EU integration and EU politics that share the central proposition saying that Member State governments are not able to have it their way in the EU (Hix & Høyland, 2011). The earliest of those traditions was neo-functionalism. It is a theory of market and political integration within a region, by countries formally agreeing to participate (Sandholtz & Stone Sweet, 2012). It emerged as a voice of opposition to major IR theories of the time, most notably realism. As stated, realists see the system of international relations as an anarchic place, with power games occurring between the nation-states. Neo-functionalists, on the other hand, advocate for an international economic integration that could be beneficial to all the states involved and could lead them to further integration (Jensen, 2016).

Neo-functionalism does not envision the future institutional setup of the emerging organization, but only tries to explain the process in which it is developing. The political integration is followed by the creation of a regional institution (Secretariat), towards which "political actors in several distinct national settings are persuaded to shift their loyalties,

expectations and political activities” (Haas, as cited in Niemann & Schmitter, 2009, p. 47). By doing so, a new political entity gains rule-making authority, delegated from a nation-state level. Ernst Haas, who is deemed as the founder of NF, is credited for synthesizing the theory of functionalism developed by David Mitrany with Monnet’s strategy for operating the ECSC (Gerard Ruggie, Katzenstein, Keohane & Schmitter, 2005). Supranational institutions of the EU are not just passive agents of MS, but actors with institutional interests, policy preferences, resources and power (Hix & Høyland, 2011). The classical NF emphasizes the importance of rational and self-interested elites that, by realizing the limitations of national solutions, give the key impetus for deeper integration (Niemann & Schmitter, 2009). Many empirical studies confirmed that a Haasian feedback loop could explain the European integration. It entails that rising cross-border transactions necessitate supranational governance which, by expanding in time, perpetuates additional social demand for integration in other areas (spillover) (Sandholtz & Stone Sweet, 2012).

Central to the neo-functional framework is the concept of spillover. It refers to the extension in transnational political cooperation and formulation of new political goals intended to facilitate the achievement of the original, previously set goals. That way, regional integration can evolve, gaining its own dynamic and progressively escaping the nation-state control (Niemann & Schmitter, 2009). This process is regarded as an unintended consequence of integration. The NF theory has originally suggested three potential models of spillover: functional, political and cultivated spillover (Tranholm-Mikkelsen, 1991). Functional spillover envisioned that, for successful integration in one sector to occur, integration in interconnected sectors would be needed as well. Technical pressures from the related sectors lead to a greater scope of supranational control. Political spillover can be attributed to both political elites and the non-state actors, such as interest groups. It is related to advocating for supranational governance as a more effective model which is necessary for solving certain problems. Cultivated spillover focuses on the mediatory role of Central institutions, most notably the EC, which is able to move the agreements beyond the minimum common denominator (Tranholm-Mikkelsen, 1991). One of the ways to do so is through negotiating “package deals”, enabling multiple actors to safeguard their interests (Jensen, 2016). In order to explain the outside impact on the integration process, the fourth spillover category was later included by Arne Niemann and called “the exogenous spillover” (2006). It focuses on outside political and economic pressures that influence the decisions of both domestic and the EU political actors and structures. From the empirical perspective, NF will get heavily scrutinized due to its inability to explain the stagnation of the process of integration. The events such as de Gaulle's empty chair, the Luxembourg compromise and failed integration plans at the beginning of the 1970s have come in contrast to their expectations of the

integration as a relatively steady process (Sandholtz & Stone Sweet, 2012). However, the pace of integration has rapidly increased with the adoption of the Single European Act in 1985 and efforts to create a common market. Among others, these included the efforts in liberalizing the energy sector, opening the door for external energy governance to become a new function of the EC. These developments made NF relevant again, with the new generation of authors such as Alec Stone Sweet and Wayne Sandholtz (Jensen, 2016).

These two authors have emerged with a new theory for the understanding how supranational governance expands into new policy areas (Stone Sweet & Sandholtz, 1997). Even though not neo-functionalist in a classical sense, their arguments share multiple affinities with it. The constituent elements of their governance theory, prefigured in NF are: transnational society, supranational organizations with broad autonomy able to pursue integrative agendas, and reliance on supranational rule-making for tackling international policy externalities (Stone Sweet & Sandholtz, 1997). The transition from national control over a policy area towards supranational governance begins with the non-state actors engaged in international transactions and communications. Interest-driven transnational actors favor the establishment of a supranational regime, as it is able to create a more favorable environment for cooperation in the sector of shared interest. For that reason, they are trying to influence the policy process at the supranational level. The sheer value and scope of transactions within a sector will imply how great the demand will be for integration. Consequently, the sectors where the immense pressures occur are most likely to be integrated first. With all the different stakeholders involved, control that national governments exercise over the process of integration decreases. However, they can attempt to reduce the pace in which it is happening or steer it in a more favorable direction. With supranational bodies' authority rising, their ability to propel the integration process increases as well. The term used to describe the internal dynamic towards greater supranational governance is institutionalization. Whereas "institutions are systems of rules; institutionalization is the process by which rules are created, applied, and interpreted by those who live under them" (Stone Sweet & Sandholtz, 1997, p. 310).

3.3 Liberal Intergovernmentalism

Contrary to neo-functionalism, both intergovernmentalism and its liberal version focus on the role of national governments as the key actors behind the integration process. Through integration, governments seek to achieve outcomes aligned with their preferences in decisive policy areas (Hix & Høyland, 2011). Intergovernmentalism emerged in the 1970s as a competing theory and a critique of NF. Integration was seen as an intergovernmental project that went only as far as national governments saw fit. It heavily relied on realism and

neorealism, from which it drew assumptions on the roles of states in the international system (Bache, Bulmer, George & Parker, 2015) and on the accounts of interstate bargaining (Pollack, as cited in Cini, 2016, p. 66). Behind the theory was Stanley Hoffman, who however departed from classical realism by acknowledging the importance of domestic political processes and the fact that states are not unified rational actors (Bache et al., 2015). He believed that states' decisions did not always mirror the prevailing opinion of the interest groups, as governments would often make choices in contrast to the latter ones' preferences. These political calculations would come as a result of other domestic concerns, such as government reputation among voters or implications on the economy (Bache et al., 2015). Major empirical evidence for intergovernmentalism came with slowing down of integration in Europe in the late 1960s and 1970s with the MSs imposing further transfer of authority. This made many, including Ernst Haas (1975) himself, label NF as obsolete.

Liberal intergovernmentalism emerged as a much more comprehensive framework in the works of Andrew Moravcsik in the 1990s. It was heavily influenced by the early intergovernmental studies. He believed that the EU had developed through a series of intergovernmental bargains, each setting the agenda for an upcoming period of consolidation (Moravcsik, 1993). Although intergovernmental scholars rarely focus on the process of consolidation, they claim that the EU bodies' scope of work is broadly established by the MS governments (Garrett; Moravcsik as cited in Stone Sweet & Sandholtz, 1997). Integration can be best described as a "series of rational choices made by national leaders" (Moravcsik, 1998, pp. 18). This definition uncovers the two fundamental elements of the LI framework. The first one refers to the idea that states are actors who achieve their goals through intergovernmental negotiations and bargaining, while the second one is that they are rational in their action (Moravcsik & Schimmelfennig, 2009). In order to structure his theory, Moravcsik applied a rationalist framework of international cooperation (1998). Moravcsik moved decisively from neo-realism by claiming that countries do not have fixed preferences while acting in the international arena (1993). Instead, they act purposively, on the basis of domestically defined goals. Political goals get to be formulated by national institutions pressured by competing domestic social groups. In order for national governments to pursue international cooperation, potential benefits for such action need to be identified. This accounts for the demand side of the policy. The second is the supply dimension which regards the process of intergovernmental negotiations. Interaction between these two dimensions shapes the foreign policy behavior of states (Moravcsik, 1993). Furthermore, the LI framework is designed as a sequential process that consists of three elements: national preference formation, interstate bargaining and institutional choice (Moravcsik, 1998). A specific theory explained each of these steps. These theories are the liberal theory of national preference formation, the

intergovernmental bargaining theory and the functional theory of institutional choice (Moravcsik & Schimmelfennig, 2009).

The first element of Moravcsik's LI framework concerns the formulation of national preferences. National preferences reflect the interests of domestic political actors able to influence the national policy process (Moravcsik, 1998). Preferences emerge from the process of domestic political conflict and are predominantly influenced by economic and geopolitical interests (Moravcsik, 1998). Even though core economic interests, as empirical evidence suggests, were comparatively more influential than any other relevant factor, the explanatory value of geopolitical interests should not be disregarded.

In order to explain the bargaining process taking place at the EU level, Moravcsik developed two mutually conflicting theories that he empirically tested in his famous "The choice for Europe" (1998). Derived from NF is the theory of supranational bargaining, while the theory of intergovernmental bargaining is in line with his LI framework. Common metrics, used by Moravcsik to evaluate them, were bargaining efficiency and the distribution of gains (1998). Supranational bargaining theory emphasizes the role of supranational officials needed for their political entrepreneurship in achieving efficient bargaining outcomes. The primary constraint here on efficiency and reaching the distributional outcomes is information supply by entrepreneurs (Moravcsik, 1998). On the other hand, the LI framework sees an underlying demand for cooperation as a binding constraint on negotiations. Since interested governments can act as policy entrepreneurs, efficiency does not seem to be a problem. The distribution of benefits is at the center of the attention and depends on each government's relative power, understood in terms of asymmetrical interdependence (Moravcsik, 1998). In Moravcsik's research, the latter one prevailed, with more evidence supporting it (1998).

The last stage of the LI framework is related to institutional choice. Here, Andrew Moravcsik tried to provide reasons behind governments' willingness to pool and delegate sovereignty to the supranational level, which meant giving up on the possibility of making future unilateral decisions at the same time (1998). While pooling sovereignty means creating decision-making procedures other than unanimity, delegating authority is about permitting supranational bodies to reach autonomous decisions without significant government interference (Moravcsik, 1998). Empirical analysis showed that the answer was the need for more credible commitments. In essence, by transferring their authority to the supranational level, the governments under the same legal arrangement gained certainty that all of the actors involved would commit to the newly enforced set of rules. Once sovereignty has been moved to an international institution, any attempts to unilaterally regain control over a policy area

jeopardized the future cooperation and possibly set in motion costly and risky renegotiations over the future of the institution (Moravcsik, 1998).

3.4 Theoretical Propositions

When researching the policy-making process in the EU, Wayne Sandholtz and Alec Stone Sweet concluded that it could not simply be characterized as either 'intergovernmental' or 'supranational' (1997). There is great unevenness between the extent of integration of different policy sectors. That is why, these authors propose continuum that stretches between these two ideal-typical modes of governance (Sandholtz & Sweet, 1997). This model is not only meant to be applied to the specific areas of EU policy, but also, different international regimes.

The explanation of the decision making process in the EnC is most likely located at some point in the continuum, with both theories having some degree of explanatory value for the disclosed case. In order to determine which elements of the two theories are applicable to the case, several steps will be made. First, clear propositions will be derived from both Supranationalism and Liberal Intergovernmentalism. They will then be operationalized and finally, empirically tested in the following chapters. The remainder of this chapter is dedicated to the first step.

3.4.1 Propositions derived from Supranationalism

In order to capture the essence of Supranationalism, two of its concepts were employed here and formulated as propositions. The first proposition regards the position of transnational actors, who Alec Stone Sweet and Wayne Sandholtz take as the starting point in their theory (1997). The pressures made by these actors generate an expansion dynamic for supranational governance. The second proposition presents supranational thoughts on the bargaining process between the states. For that reason, Moravcsik's supranational bargaining theory will be applied.

Proposition 1: *Important transnational actors are drivers behind regional integration.*

Proposition 2: *Supranational entrepreneurs enjoy privileged access to information and ideas that allow them to manipulate the policy process and alter the outcome of negotiations.*

3.4.2 Propositions derived from Liberal Intergovernmentalism

As it is the case with Supranationalism, two contradictory propositions are to be derived from LI framework as well. Propositions for LI will regard the first two sequential stages of Moravcsik's framework: national preference formation and interstate bargaining (1998). The institutional choice for the organization will not be employed here. In authors thought, there

was no adequate theoretical proposition that could be derived from Supranationalism and contrasted to the last sequential stage of the Liberal Intergovernmental framework. In contrast to Supranationalist scholars, who place transactional actors and supranational institutions in the focus of integration efforts, LI proposes domestic constituents and national governments. Domestic social groups influence the formation of nations' political preferences. Once established, governments seek to attain these goals by negotiating them internationally. Therefore, the second proposition will be focused on the process of intergovernmental bargaining..

Proposition 1: *Important domestic stakeholders are drivers behind regional integration.*

Proposition 2: *Information and ideas are available to national governments, making negotiations efficient with distributional outcomes shaped by asymmetrical interdependence.*

4. Research Design

4.1 Case Study Design

This research will employ a case study design in order to answer which of the two major regional integration theories explains the decision-making process taking place at the Energy Community. In the absence of a common definition in academia, the case study design will be explained through its general characteristics that make it different from large-N studies. As Blatter and Haverland note, it involves having a small number of cases, a large number of diverse empirical observations and a continuous reflection on the relationship between empirical evidence and theoretical concepts (2014). The selected case study is the 16th Ministerial Council, during which a multitude of decisions was reached. Other elements that constitute a case study design will be confirmed in the remainder of the chapter. In line with this research design, there are three widely used approaches: co-variation analysis, causal process tracing and congruence analysis. In order to come up with an answer to the posed question, congruence analysis (CON) has been selected as the most suitable solution.

4.2 Congruence Analysis

The CON analysis implies deriving propositions and formulating predictions on the basis of the selected theories that are to be compared to concrete empirical evidence. This way, the extent of each theory's congruence to the empirical evidence is to be determined. Out of several theories that would vary in the extent of their explanatory power, one would most certainly emerge as the dominant one.

The two subtypes of the CON analysis proposed by Blatter and Haveland are the competing theories approach, and complementary theories approach (2014). The former one accounts for research in which selected theories and propositions derived from them contradict each other significantly. The goal, in this case, is determining which of the theories can explain the empirical processes with more accuracy. On the other hand, a complementary theory approach lacks such a "conflict" and is pointed towards giving more comprehensive explanations and conceptual and practical innovations (Blatter & Haverland, 2014). It is pursued for gaining insights on the practices outside the remedy of the dominant theory. The study here will employ the former, competing theory approach.

Even though selected theories have a great explanatory capacity, their arguments vary significantly. Neither of the two is expected to provide a complete explanation on all the aspects of the EnC. This is in fact true for the EU as well, since neither of the integration theories holds an absolute supremacy over the other. Nevertheless, this research will provide

the insight into the relevance of these theoretical lenses, revealing which one is more suitable, in the case of the EnC.

Until now, four propositions have been made in the context of the regional integration theories. These have included two propositions for each of the two theories. The following section, named “Operationalization of theoretical propositions”, is going to be dedicated to formulating more detailed predictions on each of the established propositions. While propositions are used to specify the elements of the theory, predictions are concrete observations we expect to see from empirical evidence (Blatter & Haverland, 2014). Those predictions will later be empirically evaluated before the level of congruence gets finally determined in a section under the name “Discussion of the Findings”. As Blatter and Haverland note, the level of congruence of the theory to the empirical data can vary (2014). The observations can be aligned with the predictions, they can oppose them or they can lie outside the theoretical expectations without necessarily contradicting them. The degree of congruence will be presented through categories of strong, weak and none as done by Van Tilborg (2016).

4.3 Internal and External Validity

The CON analysis has vertical and horizontal methodological elements that control against epistemological relativism (Blatter & Haverland, 2014). The vertical element implies separating the two important phases: formulating propositions and predictions from general paradigms, and comparing them to empirical findings. The horizontal element of control for the CON analysis means that it is not enough for a theory to show congruence to the empirical data, but that it is the most successful in doing so among other theories. Explicitly formulating theoretical expectation before the introduction of empirical data improves not only the internal validity but also the reliability and replicability of the results (Blatter & Haverland, 2014). In practice, the CON analysis could be undertaken with only a single theory. However, such research would lose the horizontal element of the control and become much less compelling (Blatter & Haverland, 2014). Peter Hall thus envisions the CON analysis to be a three-corner fight of empirical evidence and at least two differential theories (as cited in Blatter & Haverland, 2014), as is the case with this study.

The external validity refers to the possibility of generalizing the conclusions, but not in a way to explain a population of possibly similar cases. Generalization is done in order to support a theory inside the academic discourse (Blatter & Haverland, 2014). For generalizations to be drawn in a reflective way, researchers interested in a specific case must reflect on the relationship between the theories themselves, as well as between the theories and the case (Blatter & Haverland, 2014). The external validity in congruence analysis is in direct relation

to the case selection. If a very demanding case can be successfully explained by a theory, chances are that it is able to explain a more likely case. The selection of the Energy Community as a research topic for this analysis limited the possibility of generalizing the conclusions. The EnC is an international organization that even though strongly connected to the EU, lies outside its institutional structure and is a hard case to be explained through integration theories in question.

4.4 Collection of Empirical Data

The two primary methods for collecting information used here are going to be desk research and interviews. Desk research will be predominantly focused on acquiring the information published on the Energy Community website. The documents released from the 16th Ministerial Council meeting include different documents taken by the Contracting Parties into consideration, the decisions reached at the meeting, meetings conclusions and the agenda. The documents released by other relevant bodies of the EnC will also be examined. Whenever possible, this study is to take into account the contributions made by the authors in academia as a secondary source of information. Secondly, this study is going to rely on interviews for gathering additional information. In order to draw impartial conclusions, requests for interviews will be sent to three different groups of stakeholders. These are will be the experts on the Energy Community, national government officials and lastly the experts from the non-governmental sector. The questions will be derived from the predictions and information gathered through desk research and intended to fill in the potential gaps. The exception will be the predictions in which available documents were sufficient to reach strong conclusions. In these cases, no additional questions will be posed to the interviewees in order to use the potentially limited time as effectively as possible.

5. Operationalization of Theoretical Propositions

5.1 Generation of Predictions

This chapter is dedicated to mapping out empirically testable predictions based on propositions formulated in Chapter 3. Table 5 provides an overview of these propositions. From each of the three pairs of propositions, several predictions will be derived. These predictions will serve as indicators in determining the relevance of the propositions and, subsequently, the two theories.

Table 5: Overview of contrasting propositions

Propositions	Supranational theory	Liberal Intergovernmental framework
Propositions 1	Transnational society	National preferences
Propositions 2	Supranational bargaining	Intergovernmental bargaining

Note. Created by the Author

The list of full propositions and the derived predictions is given in **Appendix A**.

5.2 Transnational Society

The starting point for Sandholtz and Stone Sweet's supranational theory is the transnational society, whose members engage in transactions and communications across nation-state borders (1997). The theory of Alec Stone Sweet and Wayne Sandholtz interprets transnational society as "those non-governmental actors who engage in intra-EC exchanges social, economic, political - and thereby influence, directly or indirectly, policy-making processes and outcomes at the European level" (Sandholtz & Stone Sweet, 1997, p. 304). These are individuals, groups, and firms that participate in exchange across borders. Also, in the context of the EnC, it is important to mention international financial institutions. Having separate legal systems between countries generates high transaction costs for parties involved. This way, the absence of common regulation undermines their chances of collecting greater revenue. Intensified international cooperation will perpetuate the need for common rules, coordination, and regulation. With the increase of transnational exchange, non-state actors start pivoting more towards the supranational bodies, as they gain more authority. This creates social pressure on the supranational authorities to deliver common rules and regulation. Transnational exchange does not predetermine the future policy process, but it does in fact initiate it. Non-state actors put pressure on supranational actors and attempt to influence directly or indirectly the policy-making process and its outcomes (Sandholtz & Stone Sweet, 1997).

Prediction S-1: *The interest-driven transnational actors initiate integrative policies in the Energy Community.*

Prediction S-2: *The transnational actors seek to influence the outcome of the Energy Community decision-making process by influencing the decisions of the Permanent High Level Group and the Energy Community Secretariat.*

Supranational institutions are also very much interested in deepening their cooperation with transnational society by allowing it many access points to the policy process. Its members are seen as very beneficial, as they can bring expertise, information, and legitimacy to supranational institutions (Sandholtz & Stone Sweet, 1997). The European Commission also goes further by organizing and mobilizing these groups (Sandholtz & Stone Sweet, 2012). This entails that the EC facilitates the work of the transnational actors, brings them together and enables them to more efficiently influence the policy proposals. The ECS is the only body within the institutional setup of the EnC that carries out day-to-day operations, similarly to the EC in the EU. Which is why, the ECS is also the only body in the EnC capable of carrying on a similar role in organizing these transnational actors.

Prediction S-3: *The Energy Community Secretariat helps organizing transnational actors and enables them to have many access points in the EnC decision-making process.*

5.3 Supranational Entrepreneurship

As supranational bodies exercise a significant level of autonomy, they are able to influence the policy process to a great extent. In order to analyze how the decision-making process functions at the supranational level, the concept of supranational bargaining will be employed. Developed by Moravcsik, this concept was designed to contend with the LI concept of Intergovernmental bargaining. The concept of supranational bargaining foresaw that the EU officials are often better informed in terms of technical, political, and legal information and ideas than state officials (Moravcsik, 1998).

Prediction S-4: *Supranational bodies of the EU and the EnC hold a comparative advantage in terms of information and expertise over the Contracting Parties.*

The supranational theory predicts that the EU officials are able to advance proposals, mediate compromises and mobilize domestic group (Moravcsik, 1998). This makes the supranational actors the dominant policy entrepreneurs within a multilateral arrangement. The “Coase Theorem” predicts that influence of the supranational actors stems from high costs which

carrying out these tasks requires. Generating technical, political, legal information and ideas, does not come at a low cost (Moravcsik, 1998). Therefore, the high financial burden makes the national governments unable to provide the optimal levels of policy entrepreneurship (Moravcsik, 1998). The two leading supranational bodies in the context of EnC that can have such a role are the ECS and EC.

Prediction S-5: *The European Commission and the Energy Community Secretariat act as the dominant policy entrepreneurs in the Energy Community.*

Since supranational actors have distinctive preferences and can generate and disseminate information selectively, they are in the position of manipulating distributive outcomes (Moravcsik, 1998). Consequently, international agreements are to be Pareto-suboptimal, unless Supranational entrepreneur intervenes, bringing about new information and ideas (Moravcsik, 1998). The manipulation of information on behalf of supranational actors aligns the outcomes with their preferences.

Prediction S-6: *Supranational entrepreneurship leads to more Pareto efficient agreements in the Energy Community.*

Prediction S-7: *Decisions reached in the Energy Community are systematically biased towards outcomes preferred by the European Commission.*

5.5 National Preferences

In his seminal work “The choice of Europe”, Andrew Moravcsik, alongside developing his LI framework, produced propositions on all of its elements in order to test it empirically (1998). These propositions that he labeled as hypotheses will be employed and reconfigured in the following sections, in a way to suit the study on the decision-making process of the Energy Community. In contrast to Supranationalism, which emphasizes the role of transnational society in imitating the integration process, the LI framework places key domestic actors in the center of such efforts. These domestic actors or groups are able to influence the state apparatus, the state preferences and its position in international negotiations. National preferences are explained as “ordered and weighted set of values placed on future substantive outcomes, often termed states of the world that might result from international political interaction” (Moravcsik, 1998, p. 24). National preferences are predominantly influenced by two factors: economic and geopolitical interests. The geopolitical explanation predicts that domestic actors involved in the geopolitical aspects of the policy process are top executive officials, alongside elite and public opinion (Moravcsik, 1998). These are able to take initiatives, make significant decisions and even impose vetoes. On the other hand, the

economic aspects would be dominated by interests groups, economic officials and chief executives (Moravcsik, 1998). All these groups constitute together the domestic actors able to influence the governments in designing integrative policies which could be pursued at the supranational level

Prediction LI-1: *Interest-driven domestic actors initiate integrative policies in the Energy Community.*

“Geopolitical interests reflect perceived threats to national sovereignty or national integrity, whether military or ideological; economic interests reflect the imperatives induced by interdependence and, in particular, the large exogenous increase in opportunities for profitable cross-border trade and capital movement” (Moravcsik, 1998, p. 26). Moravcsik empirically showed that the economic interests stand as the crucial factor behind the bargaining process. However, the geopolitical interests could not just be disregarded, as they have provided explanatory value, especially in the cases where cost and benefits of the agreements were uncertain or weak. A similar position will be taken, to Van Tilborg (2016), who in his research of the EU Arctic policy used both economic and geopolitical factors to explain specific aspects of the policy. From a geopolitical perspective, positions of countries vary within regard to politico-military threats, with more endangered countries being the ones more in favor of closer cooperation. In the context of the EnC, such a country is Ukraine, as it is the only country that faces ongoing military altercations. From the economic side, Moravcsik theorized that wealthier countries are going to favor the higher standards when negotiating. The indicator most often used to determine the country’s wealth is Gross Domestic Product (GDP). In order to control for the size of their population, indicators used here in order to identify richer countries will be the GDP per capita. According to the data provided by the World Bank, among the Contracting Parties, the wealthiest are: Montenegro, Serbia and North Macedonia (Data.worldbank.org, 2019). The wealth disparity between the CPs is however not that significant and all the Contracting Parties, aside from Ukraine and Moldova, are labeled as upper-middle income countries by the World Bank.

Prediction LI-2: *The Contracting Parties which face higher military threat are more supportive of embracing integrative policies.*

Prediction LI-3: *Wealthier Contracting Parties favor the adoption of higher standards.*

5.6 Intergovernmental Bargaining

This LI concept focuses on the negotiations between the governments that allow for suboptimal outcomes to be avoided. In contrast to supranational bargaining, he predicts here that negotiations between governments generate low transaction costs and that they have complete information. The situations where information and ideas are not evenly distributed between the governments are rare. Critical information and new and relevant ideas are introduced into the meetings by the most interested Parties. Therefore, the supranational actors hold no comparative advantage over them in this regard (Moravcsik, 1998).

Prediction LI-4: *Information and ideas are evenly distributed between the Contracting Parties and supranational bodies have no comparative advantage over them.*

National governments and societal groups act as effective policy entrepreneurs in interstate negotiations (Moravcsik, 1998). However, in situations where national governments find outcomes proposed by the supranational bodies to be optimal, governments choose to be silent. This does not mean that supranational bodies hold any comparative advantage over them. National governments are still able to provide plenty of initiatives and compromise proposals, followed by a social mobilization on the issue (Moravcsik, 1998).

Prediction LI-5: *The most interested Contracting Parties and societal groups act as policy entrepreneurs in the Energy Community.*

For Pareto efficient agreements to be struck, national governments do not need supranational interference on new information and ideas (Moravcsik, 1998). The distribution of gains is in line with the relative bargaining power of states, shaped in turn by their mutual policy interdependence (Moravcsik, 1998). “Nash bargaining model” is used by Moravcsik to explain the process of bargaining. This model presumes that the countries favoring certain agreements are ready to make disproportionate concessions in order to achieve them (Moravcsik, 1998). The countries opposed to the original proposal, tend to get most out of the concessions on the margin.

Prediction LI-6: *Supranational intervention is not needed for Pareto efficient agreements to be reached in the Energy Community.*

Prediction LI-7: *Decisions reached in the Energy Community are systematically biased towards outcomes preferred by the Contracting Parties least likely to support the core deal.*

6. Empirical Analysis

This section is dedicated to empirically testing the established theoretical expectations. The predictions formulated in the previous chapter will serve as indicators in evaluating the relevance of the two theories. These indicators are presented in the **Appendix B**, together with the questions which reflect on the needed empirical evidence. Empirical evidence will be introduced in a manner to answer these questions for each of the predictions. At the end of each sub-sub-headings a brief answer to the questions will be made as well as a conclusion on whether congruence exists. In cases where the predictions of the two theories are mutually exclusive, empirical evidence will be given to them simultaneously.

In order to provide a roadmap for the empirical analysis, each of the following subheadings will start by introducing the relevant propositions of the two tested theories. The following sub-sub headings will contain the corresponding predictions and where necessary, further theoretical expectations. Information presented in this chapter was drawn from several sources. Primarily, these were the official documents released by the Energy Community and other relevant institutions. Secondly, interviews by telephone were conducted with two experts who are highly familiar with the work of the Energy Community. These persons will be cited as EnC expert A and EnC expert B. Third person is an independent expert from the NGO sector. He will be cited as NGO expert. Also, information already presented in the academic literature was employed.

6.1 Propositions One

Supranationalism argues that drivers behind the integration in the energy sector are important transnational actors. On the other hand, Liberal Intergovernmentalism argues that such a function rests with important domestic stakeholders. Evidence will be given simultaneously to the mutually exclusive predictions **S1** and **LI1**, and then to the remaining Supranational (**S2**, **S3**), followed by the Liberal Intergovernmental predictions (**LI3**, **LI4**).

6.1.1 Do transnational or domestic actors initiate deepening of integration in the Energy Community?

The **SI** prediction states that interest-driven transnational actors initiate integrative policies in the Energy Community, while the **LI1** insists that domestic actors and groups are the ones responsible. Transnational actors succeed in doing so through cooperation with supranational actors, while domestic actors do it through national institutions.

Unlike the EU's single market, the EnC has mostly witnessed integration in the sector of energy. Transnational society, therefore, should not be expected to be as numerous and influential as it is in the EU. Despite this, transnational actors in case of the EnC include

international private companies, NGOs and international financial institutions. Energy sectors of the CPs are mostly dominated by these large state-owned companies in the fields of electricity, gas and oil. Governance over companies is in hand of the political elites who decide on their course of action. This leaves only a narrow group in international private companies that could support the EnC and drive the integration forward (EnC expert A, personal communication, November 6, 2019). Also, the NGOs do not have much space to become influential in the way that supranational theory suggests, despite their active involvement on multiple instances of the EnC. Their position will be elaborated in detail in the following, **6.1.2** section. Last among the transnational actors are international financial institutions. Insufficient financial resources have motivated many of the CPs to sign up to the EnCT. This is evident in the EnC's mission statement, as one of the missions suggests attracting foreign investors. Among the involved financial institutions, the European Bank for Reconstruction and Development was especially active in the region through the framework of the EnC. It financed the projects pursued by the CPs in areas such as energy efficiency and renewable energy production. Moreover, together with the Secretariat and the International Renewable Energy Agency, it concluded the non-binding Policy Guidelines on Competitive Selection and Support for Renewable Energy in 2018 (ECS & EBRD, 2018).

Among the decisions reached at the 16th MC meeting, a clear influence of transnational actors was recognized in the cases of Decision 11 and Recommendation 1. These two measures are related to the adoption of lists of the Projects of Energy Community Interest (PECI) and the Projects of Mutual Interests (PMI). In these cases, projects were nominated by companies from different CPs. Vast majority of the companies that acted as project promoters were, in fact, state-owned enterprises. However, there are some exceptions. Transelectrica and DESFA that carry out projects in their home countries are only partially state-owned. More important is the example of two projects included in the PECI list: the future expansion of the South - Caucasus Pipeline and Brody - Adamowo oil pipeline. In cases of these two projects, the shareholders include several state owned companies but also two large multinational ones: BP and Lukoil.

There is also some evidence of national governments initiating integrative policies. Decision 2 was a measure adopted after an explicit request of a country, in this case, North Macedonia. However, the overall impact of this decision was not significant for the rest of the Community, as it only meant a revision of previously established national renewable energy targets for that country (Ministerial Council, 2018a). A more relevant example here is the origin of the decision to adopt the GPG for 2030 targets for energy and climate. This decision represents a political consensus of the CPs to adopt three energy and climate targets which should be in line with those set by the EU (Ministerial Council, 2018h). The negotiations over

it lasted for more than a year prior to the 16th MC meeting. On the 15th MC meeting, the CPs openly requested from the Secretariat to develop a proposal on the 2030 targets, which it eventually did. This decision has been emphasized in one of the interviews as an instance of the CPs explicitly asking for new legislation (EnC expert B, personal communication, November 15, 2019). However, the evidence suggests that the supranational actors were the ones who initialized the idea for establishing the 2030 targets, during the first Energy and Climate Committee meeting which took place more than three months prior to the 15th MC meeting. This body was designed to be the primary platform to work on integrated climate and energy planning (Energy Community Climate Action Group, 2017a).

Therefore, despite the governmental involvement in the process, supranational actors were the ones who initialized it. Further evidence for supranational involvement in reaching this and other decisions can be seen in **Appendix C**, where the decision-making process of all the decisions reached at the 16th MC meeting, including the one on 2030 targets, is laid out. The remaining decisions analyzed there suggest that the Energy Community Secretariat and the Commission are the ones responsible for introducing new integrative policies. These bodies have introduced the policies mainly through the PHLG, where they were also first discussed. The interviews further supported this claim on role which supranational actors have. Comparatively, the role of supranational bodies as the overall drivers of integration is larger than that of national governments and transnational actors (EnC expert A, personal communication, November 6, 2019).

In sum, the analysis of the decisions reached at the 16th MC meeting did not provide much evidence that could support the claims that either transnational or relevant national actors were the dominant drivers behind the adoption of integrative policies. This entails that neither of the theories is able to adequately predict who the actors responsible for initiating integrative policies are. What seems to be the case is that the supranational bodies are the ones responsible for perpetuating further integration in the EnC.

6.1.2 Do transnational actors seek to influence the Energy Community decision-making process?

The following *S2* prediction states that interest-driven transnational actors seek to influence the outcome of the Energy Community decision-making process by influencing the decisions of the PHLG and the ECS.

There are several venues which allow participation of the transnational society in the work of the EnC. However, there is one institution mandated explicitly by the EnCT to bring these actors together: the EnC Fora. The function of this and other Forums, in general, is to be a mechanism for participation, to collect the information and opinions of different stakeholders

(NGO expert, personal communication, November 8, 2019). Originally, the EnCT only envisioned the constitution of the Gas Forum and the Electricity Forum (European Commission, 2005a). The institution later expanded with the founding of the Oil Forum, followed by three more, on Law, Sustainability and most recently the Dispute Resolution Forum. The EnC Fora is attended by all interested stakeholders such as representatives of governments, industry, industry associations, regulators, donors, academia, consumer interest groups and civil society (Energy-community.org, n.d.-b). The impression is that all gathered stakeholders are interested in shaping the future decisions, at least by presenting the topics relevant for the stakeholder themselves (NGO expert, personal communication, November 8, 2019). Following the ending of each Forum, conclusions are adopted by consensus and forwarded to the PHLG (European Commission, 2005a). With regards to the case study, many decisions of then-upcoming 16th Ministerial Council were a matter of discussion at some level of the Fora during 2017 and 2018, as can be seen in Table 6.

Table 6: Decisions of the 16th Ministerial Council meeting, previously discussed at the Energy Community Fora

Future measures discussed	Place of discussion	Description
Decision 10	23 rd Electricity forum 22 nd Electricity forum 12 th Gas Forum	Expressed support
Decision 11 Recommendation 1	23 rd Electricity forum 22 nd Electricity forum	Need for implementation of PECEI and PMI was emphasized. The CPs were urged to support the projects
Decision 11 Recommendation 1	9 th Oil Forum	Presented by the Secretariat
Decision 11	13 th Gas Forum	Project of Ionian Adriatic Pipeline was presented. It was later included as one of the PECEI in Gas sector
Procedural Act 1	22 nd Electricity forum	Expressed support
Procedural Act 2	23 rd Electricity forum	Expressed support
GPG on 2030 targets	10 th Oil Forum	The 2030 climate and energy framework was a matter of keynote speech
GPG on 2030 targets	2 nd Sustainability Forum	Need for establishing 2030 targets was expressed

Note: Created by the author.

It should be noted that the majority of presentations held on these meetings were of the Secretariat's representatives, as it can be seen in the agendas. The exceptions are the Oil and Sustainability Forum, where the actors who can be regarded as transnational, showed more

prominent roles in presenting. Given the evidence, many of the decisions reached at the 16th MC meeting were discussed to some extent at the level of the Fora. Transnational actors expressed clear interests for the topics discussed there and furthermore, willingness to take part in its meetings. Even though the focus here remained on the Fora, there were other institutions gathering different transnational stakeholders as well. Many of the Special Groups formed later have shown to be inclusive towards the transnational actors and were inviting them to participate in their meetings. For example, the ECC involved some important transnational actors in its meetings held during 2017 and 2018. This included the non-governmental sector, academia, and large financial institutions. The inclusivity towards transnational actors was kept with the groups established at the 16th MC meeting: the one for the Distribution System Operators for Electricity and the second one on Cyber-Security and Critical infrastructure. Both groups allow for the representatives of relevant stakeholders to participate in their meetings, upon an invitation.

The evidence presented confirms the supranational prediction. There is several important ways in which the transnational actors are able to access the decision-makers. Also, what seems to be the case is that they use those channels quite successfully.

6.1.3 Does the Energy Community Secretariat help in organizing transnational actors and enables them to have many access points in the decision-making process of the Energy Community?

The prediction *S3* states that the Energy Community Secretariat goes further from just opening up to the transnational actors and helps by organizing them in the way that facilitates their further involvement.

Focus again will be on the EnC Fora and practices of the Secretariat towards this institution. Unlike the Electricity and Gas Fora established with the EnCT and the Oil Forum established by the Ministerial Council decision, the remaining Fora are a result of the Secretariat's initiative (Energy-community.org, n.d.-b). As can be seen in Table 7, there are three Forums that the ECS has established either on its own or in partnership with other institutions.

Table 7: Overview of Fora launched on the Secretariats' initiative

Forum	Year established	Launched by
Vienna Forum on European Energy Law	2013	ECS and Florence School of Regulation
Sustainability Forum	2017	ECS and Balkan Green Foundation
Dispute resolution Forum	2018	ECS

Note. Created by the Author

The Vienna Forum on European Energy Law brings together “representatives from EU institutions, academics, and representatives from regulatory authorities alongside members of industry, energy-focused law firms and consultancies to exchange knowledge and share practices on how to tackle the latest EU energy issues and explore the opportunities for integrated energy policies from both a legal and economic perspective” (Florence School of Regulation, 2019). The Sustainability forum was first launched by the Secretariat and the Balkan Green Foundation. It happened the same year as the EnC started introducing sustainability issues with three non-binding recommendations on climate and environment. The 2017 forum provided a unique platform for more than 120 gathered stakeholders to discuss the region’s future sustainable energy solutions (Energy Community Secretariat, 2017a). The two following years also saw a successful realization of the Forum and growth in attendance. The Secretariat and its partners showed great ability to continuously, year after year, gather relevant high-profile stakeholders, such as the CPs’ ministers responsible for energy, environment and climate change, high EC officials, government officials, representatives of private sector and international financial institutions, civil society, NGO’s and academia (Energy Community Sustainability Forum, 2019). Finally, in 2018, the Dispute Resolution Forum was established as the newest body within the EnC Fora.

This is all a result of a conscientious effort by the ECS officials, working towards greater inclusion of different actors. Well aware of the top-down logic inherent in the Treaty, the Secretariat tries not only to gather information but to genuinely involve other actors (EnC expert A, personal communication, November 6, 2019). From September 1st 2017 to September 1st 2018, the Secretariat hosted record 109 official events with almost 4.000 participants, without even including various workshops and working group meetings (Energy Community Secretariat, 2018). Among the most visible events organized by the ECS is a Civil Society Day that has been taking place since 2016. The same year, the Energy Community Summer School also started taking place, under the auspices of the ECS (Energy-community.org, 2019).

The supranational theory was very successful in predicting the role which the Energy Community Secretariat here holds. The ECS has showed great enthusiasm in gathering relevant transnational actors not only through the Fora, but also through different venues it organized in the EnC.

6.1.4 Are the Contracting Parties that face higher military threat more supportive of extending the Energy Community law?

The *LI2* prediction states that CPs facing a higher military threat are the ones in favor of embracing more integrative policies. As previously noted, Ukraine suffers from the most

unstable political situation due to the armed conflicts that have been taking place in the east of the country since 2014. Furthermore, the Russian annexation of Crimea happened in 2014, deepening the conflict between the sides. Therefore, if the prediction is to be correct, Ukraine should be more in favor of new integrative policies, compared to other CPs.

The overall support of Ukraine for the EnC will be first assessed from its compliance record. The results for Ukraine, from the Implementation Report for 2018 are presented in Table 8.

Table 8: The implementation record of Ukraine

Implementation status	Indicator
Well advanced	Energy efficiency
	Environment
Moderately advanced	Gas
	Renewables
	Statistics
Implementation yet to begin	Climate
	Infrastructure
	Oil

Note. Adapted from “*Annual Implementation Report 2017/2018*”, by Energy Community Secretariat, 2018

The EnC implementation reports are drafted and published annually by the Secretariat. These reports take sectorial approaches and evaluate the success of all the CPs’ implementation efforts in each of nine policy areas of the EnC law. As seen in Table 7, Ukraine has shown mixed results in its implementation efforts.

Ukrainian difficulties in implementing the EnC law were also apparent during the 16th MC meeting. Three separate decisions adopted then stated its lack of compliance to the *acquis* in the same number of cases. This was more than any other CP. Moreover, the Decision 15 was adopted, signaling the country’s serious and persistent breach of the EnC law. The reason for this was lack of compliance with the Directive 1999/32/EC adopted previously by the MC.

Ukraine has become a signatory of the EnCT in 2011, much later than the CPs from the WB, making its lower implementation record somewhat understandable. Furthermore, in the first years of its membership, there have been major concerns whether Ukraine is going to remain a CP at all. There was always a possibility that Ukraine would leave the EnC as a part of negotiations with Moscow. The President of Ukraine at that time, Viktor Yanukovich, even announced the withdrawal from the EnCT on several occasions (Buschle, 2014). The reasons for Ukraine’s difficulties in implementation are structural and go well beyond the limited

capacities that the Ukrainian government has on its disposal. These problems include strong corruption in the energy sector, oligarchic power and a lack of political will (Bayramov & Marusyk, 2019). However, some positive trends can be spotted. Following the events of the Euro-Maidan Revolution, a new pro-European regime was elected in Kiev in 2014. The new government explicitly stated the implementation of the EnC law as a clear priority for the country (Buschle, 2014).

There has been significant tension in Russia – Ukraine energy relations even before the outbreak of hostilities in 2014. In 2006 and 2009, cutoffs in the supply of natural gas through Ukraine took place. Empirical evidence provides contending views on the matter of Russian influence on Ukraine’s willingness to adhere to the EU standards and regulation. Some understand its motive for embracing the EU regulation, especially related to natural gas, because of Russian aggression (Bayramov & Marusyk, 2019). Aside from security motives, an argument can be made for the economic side as well. Some see it as a threat of losing revenue gathered by transporting Russian gas to the rest of Europe. In this case, the reason can be the Russian insistence for Ukraine to comply with the provisions of the Third energy package, most notably its elements related to the so-called unbundling (EnC expert A, personal communication, November 6, 2019).

The Liberal Intergovernmental theory was not able to provide a convincing argument. The implementation record of Ukraine showed that comparatively to other CPs, it is not performing very well, therefore making it hard to be considered a frontrunner in advocating for the extension of the EnC law. Also, even though the presence of Russia unmistakably influences the decision-makers in Ukraine, the security concern is able to only partially explain the motives of Ukraine to participate in the EnC.

6.1.5 Do wealthier Contracting Parties favor the adoption of higher standards?

The *LI3* prediction states that wealthier among the CPs, when negotiating, advocate for higher standards on policies. As an indicator of wealth, GDP per capita was used. The data from the World Bank showed that Montenegro, Serbia and North Macedonia performed the best among the CPs.

The validity of this prediction is going to be evaluated first on the basis of a specific decision reached at the 16th MC meeting. The notion of high standards, equivalent to those of the EU, is most evident with the Decision on General Policy Guidelines on the 2030 targets for energy and climate. In addition, this decision implies the most far-reaching consequences for the CPs’ economy. Although, the political negotiations on the targets have not yet begun, the CPs could have expressed their support for the idea of high energy and climate standards in several instances. If such findings were to be made, they would come as a confirmation to the

prediction. Unfortunately, even though the MC adopted it, the voting patterns there do not provide much evidence by themselves. The decision to adopt the GPG on the 2030 targets was reached by consensus in the MC. In fact, the MC does not have a developed voting culture, and actual voting has been limited to the cases of infringement procedures (EnC expert A, personal communication, November 6, 2019). The Energy and Climate Committee (ECC) and its Technical Working Group (TWG) meetings are more indicative as they were the main platforms for discussions on the methodology for calculating the 2030 targets.

The first TWG meeting was held in June 2018, and the CPs' representatives expressed varying opinions. The position of North Macedonia stood out, as it showed great optimism in reaching the proposed targets (Energy and Climate Technical Working Group, 2018a). On the other hand, some of the less wealthy CPs, such as Bosnia and Herzegovina, Georgia and Kosovo*, have openly voiced their concerns in reaching some of the proposed targets due to their financial burden. On the second TWG and the fourth ECC meeting, the final draft of the study on possible methods for achieving the 2030 targets was presented and discussed. Most of the Parties agreed on the proposed methodology in calculating the targets and indicated its fairness, but also indicated its narrowness. North Macedonia and Ukraine showed on this occasion even greater ambition, stating that the targets for reducing the greenhouse gas emissions could be higher (Energy and Climate Technical Working Group, 2018b). What is worth mentioning is also that the authors of the study made an explicit division on the more and the less wealthy CPs, and stated that it would influence how ambitious and strict their targets are going to be. On the third TWG meeting held in March 2019, serious concerns were expressed by the CPs, especially Serbia as the most vocal among them. The question of renewable energy sources targets was especially emphasized since many of the CPs were noted already to be below the trajectory to reach the 2020 targets. This includes Kosovo*, North Macedonia, Serbia and Ukraine (Cretu & Cegir, 2018).

The empirical data released on the meetings does not, however, limelight the most pressing problems of the CPs and reasons for why many of them are not likely to attain high energy and climate standards. Above all, high reliance on coal by many of the CPs is a significant obstacle to ambitious energy transition needed to fulfill the targets (EnC expert A, personal communication, November 6, 2019). This is the case with all of the three aforementioned countries: Montenegro, North Macedonia and especially Serbia. Achieving high targets would require a series of measures which bear high public cost. These measures include cutting pollution coming from coal-based power plants, closing the very inefficient ones and increasing the share of renewable energy in the countries' energy mix. Despite the positive impacts which transition beyond coal can have on public health and environment, national decision-makers have more than just the financial burden to worry about. Other negative

social, economic and political externalities make such measures less appealing to the CPs. How dramatic could such externalities potentially be differs between the CPs. Serbia is probably the most vulnerable one, as it is, by far, the most reliant on coal. One example which can be put forward in order to exemplify why the politicians in the country are reluctant to embark on an energy transition is of miners' community. In 1999, the NATO bombing campaign over Federal Republic of Serbia was not enough to bring down the regime of Slobodan Milošević. But what did, was the strike of 13 000 coal miner workers the following year. This event is engraved in minds of all the political leaders in the country (Kopač, 2019).

The case of Albania can here be put forward in order to exemplify the fact that wealth does not necessarily predetermine how advanced a position a country can take in regard to the policy proposal. Being entirely reliant on hydropower allows Albania to support high 2030 targets, as well as other progressive policies in areas of green energy and energy transition. On the other hand, Albania is lagging behind the other CPs in the implementation in other areas, such as market liberalization, where it is considerably lagging behind the countries such as Serbia (EnC expert A, personal communication, November 6, 2019). Therefore, whether a country supports some progressive policy, is to a large extent predetermined by the state of its economy. The theory that these three countries, in particular, would support higher standards is only a tendency for Montenegro and possibly to an extent for North Macedonia (EnC expert A, personal communication, November 6, 2019).

In conclusion, the example of 2030 targets as a very ambitious policy provided us with an insight that the countries' wealth does not necessarily translate into its desire for establishing higher standards. Analysis of the released documents concerning this decision as well as the interviews supported the claim that the wealthier CPs do not always desire or prefer higher standards. This makes the third Liberal Intergovernmental prediction incorrect.

6.2 Propositions Two

These propositions reflect the two ideas developed by Andrew Moravcsik in order to explain the bargaining processes taking place between the countries internationally. These are supranational and intergovernmental bargaining. The propositions of the theories and their matching predictions are mutually exclusive. Similarly to the case of **S1** and **LI1** predictions, empirical evidence will be here given simultaneously to each of the four pairs of predictions in order to determine which theory is able to provide greater insights.

6.2.1 Is the information and expertise evenly distributed between the Contracting Parties, or do supranational bodies of the EU and the EnC hold a comparative advantage?

The *S4* prediction states that supranational bodies have a comparative advantage over the CPs in terms of information and expertise, while *LI4* prediction suggests that information is distributed evenly between the CPs and that supranational institution holds no such advantage.

As in the case of prediction **LI3**, the General Policy Guidelines on the 2030 targets will serve as a case study, being the most telling of the decisions reached on the 16th MC meeting. The discussions held during the ECC and TWG meetings revealed that there are differences in capacities between the CPs. For example, Montenegro and Kosovo* explicitly stated that they have insufficient technical capacities available and expressed the need to be assisted by supranational and transnational actors (Energy and Climate Technical Working Group, 2018b). In fact, the TWG was established as an expression of the need for more technical insights and information that could enable the CPs to make informed decisions. Montenegro and Ukraine were the Parties that openly called for this. In some instances, it was concluded that external support could be beneficial to all the CPs. This was the case with training in negotiations, organized for all the CPs (Energy Community Climate Action Group, 2017a). For the duration of these meetings, the European Commission, as well as the Secretariat, showed some comparative advantage in terms of information available. The EC was able to provide insights on the target setting process, as well as the process of preparing the National Energy and Climate Plans, as both were in progress at the EU level. The ECS, on the other hand, showed a high degree of entrepreneurship by introducing studies on a possible methodology for determining the 2030 targets. These were focal points of discussions held at the technical level. This policy gave evidence on ad hoc instances of the Secretariat acting in support of the CPs to raise their capacities. However, it is hardly the only case. The implementation report of 2018 stated that just in the past year, a multitude of workshops took place (Energy Community Secretariat, 2018). The exact number of those was not specified. The ECS also institutionalized its support in the form of regular training courses. This is the case with the Energy Community Regulatory School, which has been in place since 2017, intended to support national regulatory authorities.

Concerns over national capacities were also voiced in the interviews. It is a fact that capacities of the CPs are not as they should be (EnC expert A, personal communication, November 6, 2019). In order to be well prepared for not only managing the sectors, but also reforming and developing it further, the CPs will need to make significant progress in this regard. Although the situation differs between the CPs, predominant reason for low capacities

is an insufficient number of people working for national governments and their inadequate working conditions. The mismatch between the level of expertise in the Secretariat and the CPs is not about the quality of employees, as most of the Secretariat personnel come from the CPs (EnC expert A, personal communication, November 6, 2019).

On the other hand, the ECS has well-experienced personnel, which is mostly focused on legislation, its transposition and implementation (EnC expert B, personal communication, November 15, 2019). This makes the position of the Secretariat very limited. Despite the needs of CPs, it is unable to provide them with the needed technical assistance in the energy sector. Furthermore, the ECS is mainly reliant on the CPs for gathering information. The information delivered by the CPs accounts as the largest source of data for the Secretariat, followed by results of research it commissions (NGO expert, personal communication, November 8, 2019).

In depth analysis of the general policy guidelines for 2030 targets, showed that not all the CPs have similar capacities at their disposal. Also, it presented that the CPs are unable able to make informed decisions, without the supranational actors. Example here was the need to institute the TWG, as well as to introduce the Commission officials who would share their knowledge. Lastly, the Secretariat also had an important role as it introduced relevant studies. The supranational bodies have thus shown supremacy in terms of information and expertise available in the mentioned situations. However, their position also has severe limitations. Firstly, because the supranational actors are still very depended on the CPs in gathering needed information due to their much larger capacities. Also, as interviews showed, the supranational bodies are to a large extent unable to provide the assistance to the CPs to the extent they actually need as the role of ECS is very narrow and concerns mostly policies. Therefore, due to presented limitations, the supranational prediction is also not able to make an entirely convincing argument.

6.2.2 Do supranational bodies, or the most interested Contracting Parties and societal groups, act as dominant policy entrepreneurs?

We will look here for evidence on whether the Supranational bodies, such as the Commission and the Secretariat (*S5*), or the Contracting Parties and societal groups (*LI5*) act as dominant policy entrepreneurs in the EnC. The Liberal Intergovernmental theory does not exclude entirely the possibility of supranational bodies acting as policy entrepreneurs. Moravcsik notes that governments silently agree to their propositions in cases when they find them optimal (1998). National governments do, however need to provide plenty of initiatives and proposals on their own.

Article VI of the EnCT is dedicated to outlining the decision-making process in the EnC. The Ministerial Council, as the highest governing body of the EnC, adopts measures, but can also empower the Permanent High Level Group and the Energy Community Regulatory Board to do so as well. The decision-making process differs considerably in relation to the area of the Treaty that is being decided, as can be seen in Table 9.

Table 9: Decision-making process, laid out in the Energy Community Treaty

Element of the Treaty	Policy entrepreneur	Voting procedure
Title II Extension of the Acquis Communautaire	European Commission	Majority vote
Title III Mechanisms on operation of network energy markets	Contracting Parties & the Energy Community Secretariat	Two-thirds majority
Title IV The creation of a single energy market	Contracting Parties	Unanimity

Note. Adapted from “Treaty establishing the Energy Community” by European Commission, 2005

The most significant and comprehensive element of the EnCT is undoubtedly the second Title, dedicated to expanding the EnC law. Being the only body authorized to submit policy proposals in relation to this element of the Treaty allows the EC to hold high leverage over the CPs. In practice, this process is somewhat more complex, with the informal role of the ECS. The Secretariat is closely monitoring for changes on the EU level, possible new legislation and policy initiatives that could be relevant for the CPs (EnC expert B, personal communication, November 15, 2019). These proposals are then discussed with the EC, which still holds the prerogatives on whether it is to be put in front of the CPs. The CPs are also included, as exchange with them is done both formally and informally (EnC expert B, personal communication, November 15, 2019).

The empirical evidence from the 16th MC meetings confirms that the role of the leading policy entrepreneur was mostly divided among supranational actors, the European Commission and the Secretariat. A detailed explanation of the policy process behind each of the decisions reached on that occasion is presented in **Appendix C**. The only exception is the Decision 2, which was in practice proposed by a Contracting Party. However, as previously discussed in section **6.1.1**, the decision had a limited legal effect and targeted only North Macedonia, which called for its adoption. The governments were involved throughout the policy processes of each of the decisions. Before coming in front of the MC, all of them were

put in front of the PHLG first, with the exception of Decision 2 and the cases which concerned the infringement procedure. There, the CPs were empowered to discuss the proposals in detail and give suggestions. The extent of their influence on policy proposals is discussed in more detail in section **6.2.4**.

In recent years, the CPs have started to voice their interests. It has not been in a manner to block initiatives but to shape them through amendments and adaptations (EnC expert A, personal communication, November 6, 2019). Individual countries started requesting for changes and making that claim towards the European Commission. There is still a road ahead since the CPs have not yet started organizing themselves in voting alliances (EnC expert A, personal communication, November 6, 2019). Overall, this has been a clear development from the early days of the EnC when the CPs were not even aware of their negotiating power and authority to influence decisions. During the first five to seven years of the EnC, the CPs were only taking instructions and doing what was proposed to them (EnC expert A, personal communication, November 6, 2019). Despite this positive trend, the supranational bodies remain the ones responsible for initiating, drafting and proposing new legislation.

In conclusion, the institutional setup of the EnC clearly favors the EC and sets it as the formal policy entrepreneur. Despite this limitation, the CPs are still in theory able to provide relevant initiatives and proposals. This way they could influence informally the EC in submitting potential policy proposals, progressive ideas and initiatives. However, the empirical analysis of all decisions gave very few evidence for such action. This makes the supranational prediction considerably more accurate.

6.2.3 Is the Supranational intervention needed for Pareto efficient agreements to be reached?

S6 and *LI6* express a very different view on the benefits brought about with supranational involvement in the policy process. The Supranational camp argues that a supranational actor should have an entrepreneurial position in order for Pareto efficient agreements to be reached. Thus, the supranational actors are to ones to introduce new ideas, as well as information. Liberal Intergovernmental theory offers a competing understanding that no such intervention on behalf of a supranational actor is needed for Pareto efficient agreements to be made. Therefore, in the case of the EnC, LI dismisses the importance of the Secretariat in reaching efficient agreements and suggests that the CPs could be equally successful by themselves. As the EnC has a somewhat different institutional setting from the one of the EU, we will expand this analysis by including a financial aspect of its work as well. Therefore, LI logic would entail that, if by any chance the Secretariat does introduce relevant insights, it is to be demanded by the CPs, which would also finance it. On the other hand, Supranationalism

would argue that parties not only require support in terms of information and expertise from the European Commission but a financial one as well.

As recognized in section **6.2.1**, several Parties have openly stated that they have insufficient capacities needed to carry out demanding reforms. Unlike the MSs, they lack experienced personnel and needed financial resources. Therefore, the role of the Secretariat is crucial for facilitating the reform process. In the case of the Decision on GPG on 2030 targets, the Secretariat commissioned two studies during the TWG meetings. First was the study that outlined the potential methods for establishing energy and climate targets, while the second one was the follow-up study, with Serbia taken as a pilot. The European Commission has for the duration of these meeting also been of invaluable importance, especially in regard to including its energy modelers who gave needed technical insights. The shortcomings of the Secretariat should not be disregarded. It has a limited number of personnel and is not able to provide full technical assistance to some of the CPs that need it. Despite this, it is still able to introduce relevant information by employing third actors to perform research as well as to get assistance from the Commission as well. Aside from carrying out responsibilities that have been exclusively designated to it by the EnCT, such as the monitoring of implementation and administrative support of other bodies, the ECS has also been largely performing functions that were described as shared competences. This is the case with the infringement procedure. As Article 90 of the EnCT points out, each of the CPs, the Secretariat or the ECRB can report the potential breach of the EnC law by a CP to the MC. The same three actors can as well request the MC to vote on a serious and persistent breach of the EnC law by a Party, as described in the Article 92. In the case of the 16th MC meeting, five separate decisions were reached recognizing breach of the EnC law and five more condemning serious and persistent breach of law by a Party. In each of the cases, the Secretariat was the one to initiate the process and to notify the MC.

Being less wealthy than many of its neighboring EU counterparts, the CPs have much more limited capacities for pursuing comprehensive international agenda. However, the work of the EnC does not make a financial burden to the CPs. Roughly 95% of the EnC's approximate 6,3 million-euro budget, gets funded by the EU (Energy Community Secretariat, 2018). This way, the Secretariat is able to provide assistance to the CPs, at the expense of the EU.

Again, Supranationalism has shown to be much more accurate. The ECS and EC obviously contribute to a large degree to the success of the decision-making process in the EnC. Their impact goes much further than through the financial support but through relevant ideas and information as well. This allows the MC to reach more Pareto-efficient agreements.

6.2.4 Are agreements systematically biased towards outcomes preferred by the Commission or the Contracting Parties least likely to support the core deal?

Final predictions related to propositions two are *S7* and *LI7*. Supranationalism argues that agreements are biased in favor of the European Commission. On the other hand, Liberal Intergovernmentalist position acknowledges the presence of bias, but towards the outcomes preferred by the CPs least likely to be in favor of a specific deal. This would mean that the CPs which are against certain policy proposals could threaten the remaining ones by blocking them. Furthermore, the goal of the EnC is to establish a common legal regime between the MSs and the CPs. Therefore, if the LI prediction is to be deemed correct, the CPs should be able to make certain changes to the legislation adopted and tailor it in accordance with their unique social and economic situation. Supranationalism, on the other hand, would entail that the EnC adopts legislation, which is not different in any relevant aspect, from that in power at the EU.

The decisions adopted at the 16th MC meeting, which led to the clear expansion of the EnC law, were decisions 3 and 10. Upon analysis, no significant discrepancy was found between them and the original EU documents. Decision 3 was especially complex as it concerned the adoption of the Regulation (EU) 2017/1369, a framework for energy labeling, but also several Delegated Regulations, which cover a multitude of areas (Ministerial Council, 2018b). Alongside the general adaptations, which are a standard measure, there were plenty of ad hoc adaptations. Despite the number, they have not introduced any relevant change to the new piece of legislation. Changes mostly concerned the time of implementation and the division of functions between the ECS and the Parties in order to avoid overlap with the EU institutions. At the PHLG meeting, held the day before the 16th MC, the Republic of Serbia had some objections regarding several of its Articles, but agreed to support it. On the other hand, the EC confirmed that it would consider making a proposal related to the issue for the 2019 MC meeting (Permanent High Level Group, 2018b). Another case supporting this claim is of GPG on 2030 targets, as it is line with the measure already undertaken by the MS. Even though the countries are yet to decide what the national targets are going to be, they have decided to be equally ambitious as the EU in pursuing these targets.

As stated previously in section **6.2.2**, the current institutional arrangement of the EnC, favours the supranational actors as dominant policy entrepreneurs. The CPs have, by signing up to the EnCT, agreed to align their energy policies with the EU and authorized the Commission to be in charge of submitting policy proposals. However, the CPs are unable to effectively influence the policy process at the EU and therefore, the policy proposals made by the EC. On the other hand, Norway and Switzerland are also non-member states, but unlike the CPs they are able to take part in shaping the EU policies (Hofmann, Jevnaker & Thaler, 2019). The CPs

are seen as mere followers of the rules instituted by the EC. Working in favor of the EC are also equal voting rights the CPs have, regardless of their size and population and a majoritarian voting system. This makes the Commission's proposals difficult to be rejected as a wide coalition of the CPs would be needed. Even though the EnCT allows forming voting coalitions, the CPs have never even showed an ambition to collaborate between themselves in this manner (EnC expert A, personal communication, November 6, 2019). In comparison, Titles III and IV of the EnCT, require two-thirds majority and unanimity for decisions to be reached. In these cases, each vote has more value to it and the CPs find it less difficult to reject a proposal which is not in their interest. In theory, the EnCT empowers the Ministerial Council to influence the policy proposals of the Commission. Article 24 says that, when adopting new legislation, states are authorized to make changes to it, with regard to the institutional framework of the EnCT and the specific situation, of each of the Contracting Parties (European Commission, 2005a). In practice, the CPs have not taken advantage of this element on the Treaty. It has mostly been used in order to get longer implementation periods for certain decisions (EnC expert A, personal communication, November 6, 2019). Timely implementation of EnC law has been troubling all the CPs, as all the directives come with a clear deadline. Instead of making efforts to achieve the reforms within the agreed timeframe or even researching for new ways to adjust the implementation of the acquis, the CPs would often just wait and then seek for extension of the deadline. An interesting exception in this case is Georgia, the latest country to join the EnC as a CP. When it was negotiating its accession to the EnC, the country insisted on certain particularities. The intention of Georgia in this case was to keep certain pipeline projects which were already commenced, outside the EU legal regime (EnC expert A, personal communication, November 6, 2019).

The potential value the Article 24 can have on the further development of the EnC was recognized by the High Level Reflection Group. Back in 2014, when the HLRG analyzed the reasons for poor implementation record of many of the CPs, it concluded that the lack of flexibility was one of them and that its governance should not function as a one-way street. Furthermore, it recommended that Article 24 should be strengthened and that the EU acquis covered under Title II of the EnCT, should be more thoroughly adapted on the basis of the socio-economic situation of each of the CPs (The High Level Reflection Group, 2014). To this day, no such alteration took place even though it was recognized as necessary.

In conclusion, the legal regime established with the EnC favors the role of the EC. The EC is established as the leading policy entrepreneur, whose policy proposals the CPs are for the most part not able to adequately influence or adapt. This makes the EnC law, completely in line the EU law. Also, the policy proposals made by the EC are difficult to be dismissed by the CPs. This made the Supranational argument, again, much more accurate.

7. Discussion of the Findings

In this chapter, final remarks will be given to each of the predictions based on their congruence to the empirical data. First, a model similar to the one of Robbert W. Van Tilborg is going to be used in order to present the final results (2016). Concerning whether the observed congruence exists and how strong it is, each of the predictions will be given a grade. Referring to the extent of congruence, these grades are Strong, Weak and None. Final observations are presented in Table 10.

Table 10: Empirical observations per theoretical prediction.

No.	Supranational theory	Observations
Transnational society		
S1	Transnational actors' initiate integrative policies.	Weak
S2	Transnational actors' seek to influence the policy process.	Strong
S3	The ECS helps organizing transnational actors.	Strong
Supranational bargaining		
S4	Supranational bodies have advantage in information available.	Weak
S5	Supranational bodies act as dominant policy entrepreneurs.	Strong
S6	Supranational bargaining leads to Pareto efficient agreements.	Strong
S7	Agreements are biased in favor of the European Commission.	Strong
.	Liberal Intergovernmental framework	
National preferences		
LI1	Domestic actors initiate integrative policies.	Weak
LI2	Ukraine is more supportive in extending the scope integration.	Weak
LI3	Wealthier countries favor adopting the higher standards.	Weak
Intergovernmental bargaining		
LI4	Information and ideas are evenly distributed between the CPs.	Weak
LI5	The most interested CPs are policy entrepreneurs.	None
LI6	CPs do not need supranational bodies to reach Pareto efficiency.	None
LI7	Agreements are biased in favor of most skeptical Parties.	None

Note. Created by the author

Despite potential limitations of the two theories, as they were developed predominantly with the EU context in mind, both have shown great ability to be applied to the context of the Energy Community. Furthermore, it was possible to draw robust theoretical predictions for the investigated case. Out of the two theories, Supranationalism has shown clear supremacy in explaining the decision-making process of the Energy Community. Only two elements of the

Supranational theory failed to provide comprehensive explanations. In these instances, the Liberal Intergovernmental framework did also not perform any better. The first case was regarding the transnational society's role in initiating integrative policies through the creation of social pressures on the supranational authority. Despite evidence on the involvement of different transnational actors, mainly through venues organized at the level of the EnC Fora, the European Commission and the Secretariat remain the main actors perpetuating further integrative steps. The second case is related to the information supremacy of the Secretariat in relation to the CPs. Despite the limited resources, the CPs still have significant capacities at their disposal and are the main source of information for the Secretariat. The remaining predictions drawn from Supranationalism were shown to be very successful in explaining the decision-making process. As predicted, transnational society tries to influence the decision-making process and is helped by the Secretariat to participate in the EnC activities. Moravcsik's concept of supranational bargaining was also employed with significant success, as it explained not only how the decisions are reached, but what kind of decisions as well.

On the other hand, Moravcsik's LI has shown significant limitations in almost all of its aspects. First, the elements of the framework that concerns national preferences failed to captivate the true reasons for the CP's willingness to participate in the EnC. Even though economic and, to some extent, security causes do influence national decision-makers, it is the desire to establish closer ties with the EU that is in the center of their considerations. This is even more obvious with the CPs from the WB, which have greater chances for joining the EU eventually. Secondly, the absence of voting culture and voting alliances in the Ministerial Council disregards the proposition of intergovernmental bargaining. The CPs are reliant on the Secretariat to achieve more efficient agreements, as well as to introduce new ideas and information to some extent. The CPs lack initiative for introducing new regulation and are not using rights given to them by the EnCT to the full extent, therefore making the Commission and the Secretariat dominant policy entrepreneurs. This makes the outcome of the entire decision-making process clearly in line with the Commission's interests.

8. Conclusions

7.1 The Energy Community – A Case of Supranationalism

The purpose of this study was to determine whether Supranationalism or Liberal Intergovernmentalism is an adequate theory to explain the decision-making process in the Energy Community. The research method applied was a congruence analysis, which entailed formulating clear predictions based on theory and their empirical evaluation. From each of the two theories, two theoretical propositions were derived and later operationalized through fourteen predictions that have undergone the empirical test. Comparatively, evidence drawn from the 16th MC meeting showed that Supranationalism holds much greater explanatory value in all of its relevant aspects. This comes as a confirmation that neo-functionalist ideas that guided Commission officials responsible for initiating the EnC still resonate today. Also, it revealed that Supranationalism, which was first developed with the EU context in mind, is successful in providing insights in cases outside the EU.

The central conclusion of this study was that supranational bodies dominate the decision-making process of the EnC. A large reason for this is the institutional setup of the EnC, which favors the role of the Supranational actors. The EnCT sets the European Commission as the leading policy entrepreneur and the only body able to make proposals on the extension of the acquis. In practice, it is supported by the Energy Community Secretariat, which is in charge of the EnC's day-to-day operation. In some cases, the Secretariat searches for new legislation implemented at the EU and discusses with the Commission potential of its transposition at the EnC level. In several different ways, the Secretariat has also displayed a very pro-active approach within the institution. It has been organizing different events and establishing venues that have allowed transnational actors to influence the decision-making process more efficiently. The Secretariat also shaped the outcome of negotiations by introducing relevant information, through research it commissioned and financed. Another instance is its role in the infringement procedure. It has been the only body actively launching infringement procedures in front of the MC, even though the Parties and the Regulatory Board have the same authority. The second reason is the inability of CPs to successfully utilize the authority which has been given to them. This has been especially the case in the early years of the EnC when the CPs were not even aware of their rights as members and simply agreed and transposed all the regulation proposed by Brussels. Since then, the progress has been achieved, and the CPs have been increasingly trying to shape the policy outcomes. Their efforts were only somewhat successful due to two main reasons. The EnC law primarily consists of the transposed EU legislation, in whose creation the CPs are not able to participate. Furthermore, the provision of the EnCT that allows the adaptation of the acquis

communautaire has exclusively been used by the CPs for postponing their implementation deadlines. Still, the Ministerial Council withholds some checks on the power of the European Commission. Most importantly, it can refuse to extend the duration of the EnCT. When initially signed in 2005, the Treaty was concluded for a period of ten years. That deadline has once been extended for another ten years in 2013 by the Ministerial Council. More practical is the MC's ability to reject the Commissions' proposals for new legislation. This has also not been exercised, as the Parties have never voted against the Commission's proposal. The MC generally lacks a voting culture, and the parties tend to participate in the consensus. The only voting that has taken place in the MC by now concerned the infringement procedure. Already advanced position of the supranational actors also gets perpetuated by the lack of technical and financial capacities of many of the parties. On the other hand, the Commission would not succeed in this endeavor if the CPs were not supportive of this international arrangement and willing to adopt the "acquis communautaire". Their motivation for this, however, goes well beyond the interests for establishing a common regulatory framework in energy sectors and common energy market.

7.2 Limitations of the Study

The presented research possesses several limitations. The main limitation, which has already been addressed on several occasions, concerns the selection of the theories. The theories selected for this research were the two dominant EU regional integration theories. First, this meant exclusion of other potentially relevant theories, such as Social Constructivism. But also, it meant relying on the theories which were made specifically with the institutional context of the EU in mind. The most important institutional difference of the EnC, compared to the EU is the presence of two dominant supranational actors: The Commission and the Secretariat. The EnC also lacks an independent judicial institution and a directly represented body as is the European Parliament. Therefore, the theories required adjustment to the EnC's unique institutional setup. Two more limitations are related to the sources used to retrieve the empirical data. The first one concerns the selected case study. By focusing mainly on the MC, this study did not reflect much on the work of the Permanent High Level Group. Secondly, the intention of this research was to include interviews with three groups of stakeholders. These were the government representatives, the NGO experts and the experts on the EnC. However, despite sending several appeals to the Serbian Ministry of Mining and Energy, there has unfortunately been no response. Therefore, valuable input from the national level is missing.

7.3 Implications for Further Research

Research in the future may address these limitations and offer a more comprehensive analysis of the Energy Community. There are several other questions that authors interested in the work of this institution may try to answer. First, how are parts of the *acquis* selected by the European Commission to be proposed to the MC for adoption? This would explain how some important policy instruments present in the EU, such as the Emission Trading System, are not yet incorporated in the EnC law. Second, as presented in the literature review, several explanations exist on the motives of the European Commission to pursue this integrative agenda in the region. The academic debate can be further expanded by applying relevant international relations theories to the case. Third, this research focused on the dominant EU regional integration theories. Academic debate can be expanded even more by applying Social Constructivism to the case of Energy Community. Fourth, when negotiating accession into the EU, countries are required to implement different reforms and align their legislation with that of the EU in various aspects, such as the rule of law, free movement of people, goods and capital, environment, foreign relations. One of these criteria is also energy policy. Therefore, it would be of great importance for the prospective members to evaluate how significant are the reforms in the energy sector, compared to other policy-relevant areas in the eyes of the Commission when evaluating countries' readiness to join the EU. Lastly, when discussing the motives of the CPs to participate in this international legal arrangement, the membership perspective was emphasized as a particularly valuable one. The EU currently is going through a period of enlargement fatigue and is discussing changes in methodology for negotiating accession to the EU. It would be of great value to assess how significant effects these developments have on the work of the Energy Community.

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Annex

Table 11: The outcome of the 16th Ministerial Council meeting

Abbreviation	Decision
Decision 1	Decision 2018/01/MC-EnC on the discharge of the director for year 2017
Decision 2	Decision 2018/02/MC-EnC amending Decision 2012/04/MC-EnC of 18 October 2012 on the implementation of Directive 2009/28/EC
Decision 3	Decision 2018/03/MC-EnC adapting and implementing Regulation (EU) 2017/1369 setting a framework for energy labelling, and certain Delegated Regulations on energy-related products
Decision 5	Decision 2018/05/MC-EnC on the failure by Ukraine to comply with the Energy Community Treaty in Case ECS-8/15
Decision 6	Decision 2018/06/MC-EnC on the failure by Ukraine to comply with the Energy Community Treaty in Case ECS-1/18
Decision 7	Decision 2018/07/MC-EnC on the failure by Albania to comply with the Energy Community Treaty in Case ECS-2/18
Decision 8	Decision 2018/08/MC-EnC on the failure by Bosnia and Herzegovina to comply with the Energy Community Treaty in Case ECS-3/18
Decision 9	Decision 2018/09/MC-EnC on the failure by Ukraine to comply with the Energy Community Treaty in Case ECS-4/18
Decision 10	Decision 2018/10/MC-EnC implementing Regulation (EU) 1227/2011 on wholesale energy market integrity and transparency
Decision 11	Decision 2018/11/MC-EnC on the establishment of the list of projects of Energy Community interest ('Energy Community list')
Decision 12	Decision 2018/12/MC-EnC on the determination of a serious and persistent breach of the Treaty by the Republic of Serbia
Decision 13	Decision 2018/13/MC-EnC on the determination of a serious and persistent breach of the Treaty by Bosnia and Herzegovina
Decision 14	Decision 2018/14/MC-EnC on the determination of a serious and persistent breach of the Treaty by the Republic of Serbia
Decision 15	Decision 2018/15/MC-EnC on the determination of a serious and persistent breach of the Treaty by Ukraine
Decision 16	Decision 2018/16/MC-EnC on the determination of a serious and persistent breach of the Treaty by Bosnia and Herzegovina

Decision 17	Decision 2018/17/MC-EnC on extending the measures imposed on Bosnia and Herzegovina under Article 92(1) of the Treaty
Procedural Act 1	Procedural Act 2018/01/MC-EnC on the establishment of a Coordination Group of the Energy Community Distribution System Operators for Electricity
Procedural Act 2	Procedural Act 2018/02/MC-EnC on the establishment of an Energy Community Coordination Group for Cybersecurity and Critical Infrastructure
Procedural Act 3	Procedural Act 2018/03/MC-EnC on the extension of the term of office of the Director of the Energy Community Secretariat
General Policy Guidelines	General Policy Guidelines on the 2030 targets for the Contracting Parties of the Energy Community
Recommendation	Recommendation 2018/01/MC-EnC on projects of mutual interest between Contracting Parties and Member States of the European Union
Rules of Procedure	Rules of Procedure on Energy Community Parliamentary Plenum

Note: Adapted from “16th Ministerial Council Meeting “ by the Energy Community Secretariat, retrieved from: <https://www.energy-community.org/events/2018/11/MC.html>

Appendix A

Table 12: The list of entire propositions and the derived predictions

Number	Content
Supranationalism	
Proposition 1	Important transnational actors are drivers behind regional integration.
Prediction S1	The interest-driven transnational actors initiate integrative policies in the Energy Community.
Prediction S2	The transnational actors seek to influence the outcome of the Energy Community decision-making process by influencing the decisions of the Permanent High Level Group and the Energy Community Secretariat.
Prediction S3	The Energy Community Secretariat helps organizing transnational actors and enables them to have many access points in the EnC decision-making process.
Proposition 2	Supranational entrepreneurs enjoy privileged access to information and ideas that allow them to manipulate the policy process and alter the outcome of negotiations.
Prediction S4	Supranational bodies of the EU and the EnC hold a comparative advantage in terms of information and expertise over the Contracting Parties.
Prediction S5	The European Commission and the Energy Community Secretariat act as the dominant policy entrepreneurs in the Energy Community.
Prediction S6	Supranational entrepreneurship leads to more Pareto efficient agreements in the Energy Community.
Prediction S7	Decisions reached in the Energy Community are systematically biased towards outcomes preferred by the European Commission.
Liberal Intergovernmentalism	
Proposition 1	Important domestic stakeholders are drivers behind regional integration.
Prediction LI1	Interest-driven domestic actors initiate integrative policies in the Energy Community.
Prediction LI2	The Contracting Parties which face higher military threat are more supportive of embracing integrative policies.
Prediction LI3	Wealthier Contracting Parties favor the adoption of higher standards.
Proposition 2	Information and ideas are available to national governments, making negotiations efficient with distributional outcomes shaped by asymmetrical interdependence.
Prediction LI4	Information and ideas are evenly distributed between the Contracting Parties and supranational bodies have no comparative advantage over them.

Prediction LI5	The most interested Contracting Parties and societal groups act as policy entrepreneurs in the Energy Community.
Prediction LI6	Supranational intervention is not needed for Pareto efficient agreements to be reached in the Energy Community.
Prediction LI7	Decisions reached in the Energy Community are systematically biased towards outcomes preferred by the Contracting Parties least likely to support the core deal.

Note. Created by the Author

Appendix B

Table 13: Needed empirical data, per indicator

No.	Indicator	Needed empirical evidence
Supranationalism		
S1	Transnational actors initiate integrative policies.	<ul style="list-style-type: none"> - Who are the relevant transnational actors? - Is there transnational interference in the decision-making process? - Are transnational actors initiating integrative policies?
S2	Transnational actors seek to influence the policy process.	<ul style="list-style-type: none"> - Are there any access points available to the transnational actors in the institutional structure of the EnC? - Are transnational actors actively using such venues for influencing future policy outcomes?
S3	The ECS helps organizing transnational actors.	<ul style="list-style-type: none"> - Is the Secretariat organising venues that would institutionalise the influence of the transnational actors?
S4	Supranational bodies have advantage in the information available.	<ul style="list-style-type: none"> - Does Secretariat introduce relevant information during the negotiations? - Does Secretariat display higher capacities in terms of information and expertise than the CPs?
S5	Supranational bodies act as dominant policy entrepreneurs.	<ul style="list-style-type: none"> - Are supranational actors formal policy entrepreneurs? - Do supranational actors initiate new regulation?
S6	Supranational entrepreneurship leads to more Pareto efficient agreements.	<ul style="list-style-type: none"> - Does Secretariat in practice bring any value to the negotiations? - Does EU predominantly finance the work of the EnC?
S7	Agreements are biased in favor of the European Commission.	<ul style="list-style-type: none"> - Does EnC law significantly differ from EU law? - Is it difficult for CPs to dismiss the proposals for the new EnC law made by the Commission?
Liberal Intergovernmentalism		
LI1	Domestic actors initiate integrative policies.	<ul style="list-style-type: none"> - Are national actors and groups initiating integrative policies?
LI2	Ukraine is more supportive in extending the scope of	<ul style="list-style-type: none"> - Does Ukraine have a solid implementation record? - Does Russia influence Ukraine's position towards the EnC?

	integration.	- Does military threat influences Ukraine's decision to participate in the EnC?
LI3	Wealthier countries favor adopting the higher standards.	- Do wealthier CPs express desire to establish higher standards? - Do wealthier CPs prefer high standards?
LI4	Information and ideas are evenly distributed between the CPs.	- Are information and expertise evenly distributed between the CPs? - Are CPs well equipped to make informed decisions?
LI5	The most interested CPs are policy entrepreneurs.	- Are the CPs formal policy entrepreneurs? - Do national governments provide plenty of initiatives and proposals?
LI6	CPs do not need supranational bodies to reach Pareto efficiency.	- Are the CPs able to reach more Parreto-efficient agreements without the participation of Supranational actors? - Do CPs predominantly finance the work of the EnC?
LI7	Agreements are biased in favor of most skeptical Parties.	- Are CPs empowered to adapt the EU laws when adopting them? - Do CPs adapt the EU laws in practise? - Are more sceptical CPs empowered to reject the proposals of the new EnC law?

Note. Created by the Author

Appendix C

The overview of the policy process for each of the decisions reached at the 16th Ministerial Council meeting

The order in which the decisions will be introduced and analyzed is in accordance with the way they have been presented at the EnC website and Table 11 of the Annex. Exceptions will be made for the pairs of Decisions 3 and 10, as well as Decision 11 and Recommendation 1, which will be discussed together due to their interconnections. Decision 1 and GPG for 2030 targets will not be discussed. The reason for not discussing Decision 1 is because it contains no policy-related significance and is a decision of a technical nature, adopted every year on the start of the MC meeting. The GPG for 2030 targets will not be discussed here, because it has already been done in section **6.1.1**.

Decision 2 was related to reducing the renewable energy sources targets for the North Macedonia, established initially with Decision 2012/04/MC-EnC (Ministerial Council, 2018a). When formulated, targets were not made fixed but opened for a future change on the basis of suggestions made by the EC, on request of the CPs. As Decision 2012/04/MC-EnC predicted, amending was initiated by North Macedonia, though sending a letter to the European Commission in late 2017. The reason for changing the previously set targets was the evidence showing that the consumption of renewable energy in North Macedonia in 2009, which was a base year for calculating the targets, was smaller than predicted (Energy Community Secretariat, 2017b).

Decisions 3 and 10 are the cases of extension of the EnC law, with the corresponding legislation already in place at the EU level. Both were adopted on the proposal of the European Commission and previously discussed during the PHLG meetings. These policy proposals were first introduced to the PHLG's meetings by the Secretariat's representatives, who held presentations about them on March 26, 2018, in Vienna. The PHLG then called the Commission and the Secretariat to submit formal policy documents for its following, 50th meeting, where they got support and were called to be submitted to the MC (Permanent High Level Group, 2018a).

Decisions 5-9 concern similar matter, as the five of them note the failure of the CPs to comply with some of the provisions of the Energy Community Treaty. All of these cases were brought to the attention of the MC by the Secretariat, which, despite being the body that monitors on the implementation, is not the only body capable of doing it. As stated in the EnCT, the CPs and the ECRB as well can start the infringement procedure (European Commission, 2005a). The process in which these decisions were reached differed to some

extent, as public hearings were held before reaching Decisions 5 and 7. In addition, Ukraine was allowed to offer a reply in the case of Decision 6. No such action existed in the remaining two cases. As for all potential breaches, the Commission drafted Reasoned Requests and delivered them to the MC. Furthermore, all of the cases were also put in front of the legal experts from the Advisory Committee. This body is tasked to give advice to the MC when discussing potential breaches in the EnC law. Lastly, the MC recognized the breaches in all the cases and adopted these decisions.

Decision 11 and **Recommendation 1**, addressed the infrastructure projects of interests of the CPs and mutual interests between the CPs and the MSs. The list of priority infrastructure projects, also referred to as the projects of the Energy Community interest (PECI), was prepared by the two working Groups (Permanent High Level Group, 2018b). The Electricity and Gas Groups were established on the basis of the EU Regulation No: 347/2013 adopted by the MC and consisted out of national and supranational actors, including representing the European Commission and the ECS (Ministerial Council, 2015c). As noted in advance, the Secretariat went on to launch four meetings for projects in electricity and gas groups each (PECI/PMI Electricity Group Meeting, 2018). The calls for the submission of candidate projects were made by the Energy Community and the project promoters were to fill out the project-specific questionnaires and submit them to the ECS (Energy-community.org, 2018b). The ECS also held a public consultation on the projects proposed by their promoters. A draft of preliminary list of PECIs was made on the basis of consensus and proposed to the PHLG (Permanent High Level Group, 2018b). The PHLG endorsed the list of proposed projects to the MC on the 28th of November and the latter one adopted it the following day. The MC also adopted a Recommendation on projects of mutual interest between the CPs and the EU MSs. As in the case of PEGI list, the list of PMI, was drafted by the same two groups and put to a public discussion. The ECS proposes to the MC to issue this Recommendation in order for projects to gain political impetus and undertake all necessary regulatory measures (Ministerial Council, 2018i).

Decisions 12-16 covered the cases where the MC concluded an ongoing breach of the EnC law. These are a follow-up to the decisions on the failure of these Parties to comply with the Energy Community Treaty, requested by the Secretariat. The initial breaches were recognized and condemned on the 14th MC meeting. As these countries have not rectified their behavior in the meantime, the EC now gave out its final warning and offered a chance to the parties to comply. In the case that these parties continue to act outside the legal framework, their actions are to be deemed as the cases of serious and persistent breach of the EnC law (Ministerial Council, 2018c).

The last Decision adopted on this occasion is the **Decision 17**, concerned extending the measures imposed on Bosnia and Herzegovina as result of its serious and persistent breach of the EnC law. It was first determined in 2014 and the Bosnian authorities have since not rectified their behavior. Therefore, the ECS has requested for several of its rights to be suspended, which the MC has accepted to do. These measures include suspending the right of Bosnia and Herzegovina to participate in votes for Measures under the Title II of the EnCT, related to the adoption of the new acquis in the gas sector, as well as the rights to participate in votes on measures under Article 91 of the EnCT (Ministerial Council, 2018d).

In line for the analysis are now the three Procedural Acts. **Procedural Acts 1 and 2** were on the establishment of a Coordination Group of the Energy Community Distribution System Operators for Electricity (ECDSO-E) and the Energy Community Coordination Group for Cybersecurity and Critical Infrastructure. The platform for cooperation between the national Distributional System Operators was not initially planned in the institutional setting of the EnC. Even though formally established on the 16th Ministerial Council, the ECDSO-E was originally launched in March 2014 by the ECS, which also supported it in its work (Ecdso-e.org, n.d.). The need for a body of this kind emerged with the adoption of the Third legislative package (Ecdso-e.org, n.d.). The Electricity Forum was the first to state the need for a more structured approach in its work in 2017 (Energy Community Electricity Forum, 2017). By 2018 the ECDSO-E reached a high level of maturity in its work, so it was decided to formalize its position within the institutional setup of the EnC (Ministerial Council, 2018e). The Secretariat drafted the ECDSO-Es' governance and cooperation structure and searched for the solutions for integrating it into the EnCs institutional frameworks (Permanent High Level Group, 2018c). Based on the suggestion of the PHLG, it was included in the Security of Supply Coordination Group as a specific subgroup (Mumimović, 2018). In order to further facilitate the cooperation, the ECS started a web-based discussion forum intended for operators. The process of launching the Cyber CG was triggered by the Commission, when it issued a "Recommendation on the cyber-security", that not just MSs took notice of, but also did the EnC (Politopoulou, 2019). The issue of cyber-security was discussed during the 49th and 50th PHLG meeting, where it was introduced by the ECS. The Secretariats' official proposal for the Energy Community Coordination Group for Cybersecurity and Critical Infrastructure came in front of the parties on the 51st PHLG meeting, and the MC, the following day, gaining support of both. **Procedural Act 3** concerned extension of the mandate for the Director of ECS, Mr Janez Kopač. In line with the rules of recruitment of the EnC, the European Commission proposed Mr Kopač as a candidate and the proposal was approved (Ministerial Council, 2018g).

The Decision to adopt the **GPG for 2030 energy and climate targets** was justified as an obligation regarding the CPs' accession process, as well as the United Nation's Framework Convention for Climate Change and the Paris Agreement. The need for setting these targets was first expressed at the first meeting of the ECC in September 2017, where it was acknowledged that the targets should accompany the stable national energy and climate plans (NECP) up to 2030 (Ministerial Council, 2018h). The Commission representatives used that opportunity to present the development of integrated national and energy plans in the EU (Energy Community Climate Action Group, 2017a). Also, the prospects for the future development of the EnC were also presented by the Secretariat's officials, among which, the idea for setting the 2030 targets was most likely included (Energy Community Climate Action Group, 2017b). The ECC is consisted of up to two representatives per CP that come from their respective ministries responsible for energy and climate policies and the representatives of the EC and the ECS (Energy-community.org, n.d.-c). Their meetings are also open for Participants and Observers and, in some instances, the non-governmental actors. The support of CPs for setting the 2030 targets came in the 15th MC meeting. On that occasion, the CPs have urged the Secretariat to discuss and develop a proposal for the MC, upon a recommendation made by the European Commission (Ministerial Council, 2017). Furthermore, the Secretariat had presented a study it commissioned for determining the possible methods for achieving 2030 targets by the EnC. Regarding the decision, the MC tasked the Energy and Climate Committee and its Technical Working Group to maintain work on the development of methodology and definition of the 2030 targets. Once completed, the individual targets are intended to be integrated into to new Energy Efficiency Directive, Renewable Energy Directive and Governance Regulation (Ministerial Council, 2018h). In order to provide the EnC with an EU-convergent and viable process in establishing the targets, the ECC is working closely with the ECS and the European Commission (Energy-community.org, n.d.-c). The next step will be establishing official targets for each of the CPs, which will not be done on a technical, but formal political level (EnC expert B, personal communication, November 15, 2019).

Lastly, **the Energy Community Parliamentary Plenum meetings Rules of Procedure** were also adopted. The draft was first presented by the ECS on the PHLG's 50th meeting. There, the PHLGs' members supported the Secretariat's initiative but called for some revisions (Permanent High Level Group, 2018a). Notable differences between the adopted document and the initial draft were several. The draft contained provisions that allowed the EnC observers to attend the Plenum meetings, and the institution of the Bureau consisted of the President and the three Vice-Presidents. The explicit responsibilities of the Parliamentary Plenum were also cut out from the draft, together with the changes made regarding the

institutions that can amend the Rules of Procedure. The final document only allowed the participants of the Parliamentary Plenum meetings to propose amendments (Ministerial Council, 2018j). The PHLG welcomed the changes made to the draft and endorsed the document on its 51st meeting after which it also got the support of the MC (Permanent High Level Group, 2018b).