



European Energy Poverty:

Agenda Co-Creation and Knowledge Innovation
(ENGAGER 2017-2021)

Policy Brief No. 2, June 2019

The Right to Energy in the European Union

Authors:

Marlies Hesselman (University of Groningen, The Netherlands)

Anaïs Varo (University of Girona, Spain)

Senja Laakso (University of Helsinki, Finland)

This policy brief is part of the ENGAGER 2017-2021 Action, supported by COST (European Co-Operation in Science and Technology). COST is a funding agency for research and innovation networks. COST Actions help connect research initiatives across Europe and enable scientists to grow their ideas by sharing them with their peers. ENGAGER brings together a diverse and extensive body of stakeholders to help understand and address the energy poverty challenge. ENGAGER consists of four Working Groups (WGs). This brief is prepared by WG 4 on 'Innovation: Introducing path-breaking perspectives to the understanding of energy poverty'. WG4 is developing and consolidating knowledge around innovative solutions and co-benefits for alleviating energy poverty from a multisectorial and interdisciplinary perspective. For more information: <http://www.engager-energy.net/>



1. The Right to Energy in the EU

“Energy services are fundamental to safeguarding the well-being of the Union citizens. Adequate warmth, cooling and lighting, and energy to power appliances are essential services to guarantee a decent standard of living and citizens’ health. Furthermore, access to those energy services enables Union citizens to fulfil their potential and enhances social inclusion.”

Recital (59) of EU Electricity Directive 2019/944 of 14 June 2019

1. Introduction to the concept

Uninterrupted, high quality, affordable, and sufficient access to energy services is essential to human life. The European Union (EU) has recognized this in recent years by providing greater protection to vulnerable and energy poor households, and by requiring States to provide various forms of support to them. The EU’s new [Clean Energy for All Package](#) aims to further increase protection for households, particularly by requiring Member States to define, assess and report on the number of energy poor households within their territory and to indicate the measures they intend to take to address the situation. We provide focussed information on the concept, emerging practices and policy implications as part of the Engager Working Group 4’s work on innovative perspectives on energy poverty.


While the Clean Energy Package stopped short of recognizing a new legally binding ‘right to energy’ for all individuals, sought after by European civil society organizations, the concept of the ‘(human) right to energy’ is gaining considerable traction in law, policy and advocacy all around the world (see e.g Tully 2006; Hesselman 2019 and section 3). The new Electricity Directive 2019/944 now also affirms that ‘it respects the fundamental rights and observes the principles recognised in the EU Charter of Fundamental Rights’.

Clearly, the ‘right to energy’ can be formulated in different manners, for example as referring to affordable, reliable, uninterrupted, high quality, clean or renewable energy supply or services, or as the right to a warm home. The ‘right to energy’ can also be posited in various ways, as a moral right, a call to action, a policy objective or legally enforceable right, the latter through constitutions, human rights treaties or in energy laws. This brief zooms in on a range of recent developments at EU regional and national level, and specifically sets out what such a right might mean in practice, including when accepted as a legally binding (human) right.

2. The Right to Energy in the EU Framework: A Legal Perspective

2.1. Fundamental Rights Protection in the Clean Energy for All Europeans Package

This month, the EU completed its Clean Energy for All European Package (CEP) entailing that the EU and its Member States have to implement a set of new internal energy market reforms. The CEP includes several important improvements for the protection of vulnerable and energy poor households, including the obligation for Member States to start defining,



assessing and reporting on the number of energy poor households in their territories. The CEP proposes a range of parameters in support of this, including low income, high expenditure of disposable income on energy, poor energy efficiency of homes, or people's critical dependence on electrical equipment for health reasons, age or other criteria (see [Governance Regulation](#) 2018/1999; [Electricity Directive](#) 2019/944).

Such parameters are pertinent from a perspective of human rights protection, especially now that Electricity Directive 2019/944 affirms that human rights obligations flowing from the EU Charter of Fundamental Rights apply to its implementation. Relevant rights and obligations include the respect for private and family life, the right to social assistance or the protection of women, children, the elderly and persons with disabilities (Articles 7, 21-26 and 34 of the EU Charter) as well as those included under international human rights law treaties such as the [International Covenant on Economic, Social and Cultural Rights](#), the [Convention on the Rights of the Child](#), or the [Convention on the Rights of Persons with Disabilities](#) (see [FRA](#) 2018). In short, human rights apply when Member States draft their definitions of energy poverty and vulnerability under the Directive.






2.2. The Right to Energy in EU (Energy) Law

Apart from the relevance of existing rights to energy law and policy making, EU law actually also already acknowledges 'rights to energy' in several places, including in the Electricity Directive when it affirms that household customers have a 'right to be supplied with electricity of a specified quality within their territory at competitive, easily and clearly comparable, transparent and non-discriminatory prices', including possibly through a 'supplier of last resort' (see Article 27 Electricity Directive 2019/944). Other examples are the right of access to Services of General Economic Interest in Article 36 of the [EU Charter on Fundamental Rights \(2000\)](#) and the new, highly aspirational 'right to access to essential services of good quality' in Principle 20 of the [EU Pillar of Social Rights](#) (2018), including support for access to such services for those in need. There is considerable agreement, however, that none of these provisions so far support any firm binding legal entitlements of citizens vis-a-vis their governments or the EU to any specific types of high quality, affordable, clean or reliable energy access (see e.g. Ten Oever and Houben 2017). The Electricity Directive is largely consumer-rights oriented and has to be implemented through national regulations mostly, while the EU Charter equally mostly protects nationally existing rights of access. It is a well-known problem that current definitions and approaches in favour of protecting energy poor and vulnerable households so far differ widely across EU Member States (Pye and Dobbins 2015; Dobbins 2019). Finally, the rights in the EU Pillar of Social Rights are non-binding in nature.

For these reasons, EU civil society has recently begun to call for more explicit and firm recognition of a binding European 'right to energy' in EU law. Such a right would elevate protection of the energy poor to a proper (legal) human rights concern and inform strengthened and more standardized forms of legal protection for citizens across the EU. Importantly, a dedicated European 'right to energy', as embedded in a specific document, with its own legal meaning, could clarify legal protection and empower those in need, and create more certainty for citizens, governments and (private) service providers alike.

3. The Right to Energy: A European Civil Society Perspective

Globally, but also especially in the EU, civil society movements have started to stand up and demand recognition and protection of rights to energy for the energy poor. So far, claims of various groups vary from context to context, but always include similar aspects such as affordability, accessibility and sustainability (see box 1 for a comparison of different formulations and demands). Increasingly, ‘right to energy’ movements also include calls for greater democratic control over energy resources and energy provision, sometimes referred to as the remunicipalisation of services provision (Kishimoto, Petitjean and Steinfort 2017; [European Union](#) 2018; [Rudringer](#) 2017; www.energy-democracy.net).

Box 1. Right to Energy definitions in advocacy in Europe				
Right to Energy Coalition	Catalan Energy Poverty Alliance	Fuel Poverty Action	Droit à l'énergie	EAPN and EPSU
<p>Access to clean and affordable energy. Prohibition of disconnection. Financial support on energy bills. Home insulation. Energy in people's hands.</p>	<p>Universal access to basic supplies (gas, water, and electricity). Prohibition of basic supplies disconnections.</p>	<p>Access to affordable and sustainable energy to cover basic needs, good quality housing and disconnection prohibition. Fair energy pricing. No compulsory pre-pay meter. Local community ownership. Energy-efficient homes.</p>	<p>Fundamental right recognized by national constitutions and the UN. Better access to sustainable energy.</p>	<p>Prohibition of basic supplies disconnections. Prohibition of disconnection of vulnerable customers in critical times. Support social tariffs. Public investment in energy efficient homes for energy poor, without extra cost for them.</p>
<p>Manifesto for the Right to Energy</p> 	<p>Principles of the Catalan Energy Poverty Alliance</p> 	<p>Energy Bill of Rights</p> 	<p>The Mission of the Organization</p> 	<p>Right to Energy for all Europeans!</p> 

4. From theory to practice: Catalonia and France

4.1 The Right to Basic Supplies, including Energy Supplies, in Catalonia

In Catalonia, law-makers have recently adopted [Law 24/2015 on the housing and energy poverty crisis](#), favouring a human rights-oriented perspective to the protection of access to housing and energy by guaranteeing to every person a right to basic supplies, including water, gas and electricity. A novel feature of Law 24/2015 is the precautionary principle which prohibits suppliers to disconnect any household from basic supplies in situations of non-payment, *unless* the supplier can obtain a report from local Social Services confirming that the household is not in a vulnerable situation.



This law was prompted by a popular initiative which collected more than 50.000 signatures, so it is an example of a policy promoted by citizens for citizens. The human rights-based nature of Law 24/2015 is clearly evident from its various references to international and constitutional human rights law, including particularly the right to decent housing.

To support the exercise of energy rights, Barcelona City Council has been running eleven Energy Advice Points that combine all energy-related public services and offer information and assistance to households on various energy related matters. These Energy Advice Points aim to destigmatize energy poverty by not only catering to the energy poor, but to the general population as subjects of the right to energy.

4.2. *Service Public* and the Right to Electricity in France

France has a long and strong tradition of '*service public*' whereby the State is responsible for ensuring access to essential public services to all its citizens. Such public service duties continue in the face of liberalizing energy markets and resulted in considerable regulation of (partially) privatized energy companies, notably through the French Energy Code.

In tandem with its liberalization process, and to ensure adequate protection for households, the French legislator has been progressively emphasizing the fight against energy poverty (*'précarité énergétique'*), including more recently through 'right to energy'-language. Since 2015 especially, the Energy Code states that one of its objectives is to guarantee to households: the 'right of access to energy without excessive burden to their resources' ([Law n°2015-992](#)). Presently, the French Senate is debating the need for even firmer legal recognition of 'the right to energy access as a fundamental right', since doubts have arisen about the adequacy of protection in place through an 'energy voucher' system that was introduced in 2015 as an alternative to direct regulation of electricity prices (social tariffs), and insufficiently broad disconnection policies. The legislative proposals seem to be directly inspired by the text of the EU Pillar of Social Rights (see [Proposal of Law N° 260](#) on the recognition of an effective right to energy and the fight against energy poverty).

5. Policy Implications

A ‘rights-based’ perspective to energy poverty would entitle each individual to claim a right to certain types or levels of access to energy services in the home, for the enjoyment of health, well-being and social inclusion. A right to energy can be either conceived of as a *legal right*, both in terms of ‘human rights’ or ‘consumer rights’, or as a *moral right*, a right a person has simply because one is alive as a human being in the modern world. Elevating energy access to the status of a human right means that access to energy becomes one of the highest societal priorities. It requires continuous mobilization and (re)distribution of public and private resources towards realizing adequate access for all, and adequate regulatory and oversight frameworks, whether in the form of judicial or administrative procedures, consumer protection mechanisms or various alternative dispute resolution options, including possibly through a dedicated Energy Ombudsman (as now included in Electricity Directive 2019/944).

While existing human rights, such as the human rights to life, dignity, health or adequate standards of living can be leveraged to demand greater access to energy services or better protection against disconnections, recognizing a new separate right to energy means such a right can be given an autonomous meaning as directly relevant to the context of energy poor households and the various forms of energy deprivation they encounter (see also Tully 2006, Shove and Walker 2014; Guyet 2015; Walker 2015; Hesselman 2019). Presently, the energy poor still too often fall through policy gaps in terms of being recognized as a specific group that needs targeted protection (Simcock et al, 2018, 255). As evident from this brief, there are various options available for the recognition, formulation and content of the right, and for protecting the rights-based interests of citizens to basic supplies. In any case, adequate protection will always at least entail consideration of the dimensions summarized below.

Key policy considerations for the right to energy:

Key dimensions	Key questions for policy makers and civil society
Specific content of the Right to Energy	<ul style="list-style-type: none"> - What is the most appropriate formulation of the right to energy? - Which entitlements are to be included and how, e.g. ‘affordable’, ‘clean’, ‘reliable’, ‘modern’, ‘basic’ access to energy ‘supply’ or ‘services’?
Disconnections	<ul style="list-style-type: none"> - Under which circumstances, if any, can disconnections occur? - How are payments for energy supply, if any, secured?
Inclusivity, vulnerability and empowerment	<ul style="list-style-type: none"> - How can <i>all</i> persons benefit from and be included in energy services provision, in a universal, non-discriminatory, and if necessary targeted manner? - How to ensure democratic control over energy? - How to ensure rights to access for vulnerable households, including in the context of local energy communities that take generation, distribution and consumption into their own hands? - Are benefits and burdens of universal services provision fairly divided amongst members of the society/community? - How to provide access to justice?

References

- Bradbrook A. and Gardam J. 'Placing Access to Energy Services with a Human Rights Framework' (2006) 28 *Human Rights Quarterly* 389
- Dobbins A., Nerini F., Deane P. and Pye S., 'Strengthening the EU response to energy poverty' (2019) 4 *Nature Energy* 3-5
- European Committee of the Regions/ENVE, 'Models of local energy ownership and the role of local energy communities in energy transition in Europe', European Union (2018) via <https://cor.europa.eu/en/engage/studies/Documents/local-energy-ownership.pdf>
- European Agency for Fundamental Rights (FRA), 'Applying the Charter of Fundamental Rights of the European Union in law and policy-making at national level – Guidance'. Luxembourg: FRA (2018)
- Guyet. R., 'Précarité énergétique et justice énergétique: un droit À l'énergie est-il pensable?' (2015) 378 *L'Europe en Formation* 126-145
- Hesselman M., 'Energy poverty and household access to electricity services in international, regional and national law' in: M. Roggenkamp et al (eds), *Edward Elgar Encyclopedia of Energy and Environmental Law*, Cheltenham: Edward Elgar Publishing (2019, forthcoming) via: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3398588
- Houben I and ten Oever H., 'The relationship between public service obligations and human rights in the EU' in: Hesselman M., Hallo de Wolf A. and Toebes B., *Socio-economic human rights in essential public services provision*, Abingdon: Routledge (2017) 123-138
- Kishimoto S., Petitjean O. & Steinfort L. (eds), *Reclaiming public services. how cities and citizens are turning back privatization*. Amsterdam: Transnational Institute (2017) via: <https://www.tni.org/en/publication/reclaiming-public-services>
- Pye S. and Dobbins A., 'Energy poverty and vulnerable consumers in the energy sector across the EU: analysis of policies and measures'. Insight_E (2015) https://ec.europa.eu/energy/sites/ener/files/documents/INSIGHT_E_Energy%20Poverty%20-%20Main%20Report_FINAL.pdf.
- Rüdringer A., 'Local energy community ownership in Europe: an exploratory study of local initiatives in France, Germany and the United Kingdom'. *Energy Cities* (June 2017) via: http://www.energy-cities.eu/IMG/pdf/local_energy_ownership_study-energycities-en.pdf.
- Simcock N., Thomson T., Petrova S. and Bouzarovski S. (eds) *Energy poverty and vulnerability: a global perspective*, Abingdon: Routledge (2018).
- Shove E. and Walker G. 'What is energy for? Social practice and energy demand' (2014) 31 *Theory, Culture and Society* 5, 41-58.
- Tully S., 'Access to electricity as a human right' (2006) 24 *Netherlands Quarterly of Human Rights* 557-587.
- Tully S. 'The human right to access clean energy' (2008) 3 *Journal of Green Building* 140-148.
- Walker G., 'The right to energy: meaning, specification and the politics of definition' (2015) 378 *L'Europe en Formation* 26-38.