

Renewable energy communities: why they deserve support & how the CEEAG can help

Energie Partagée & Enercoop's joint response to the public consultation on the draft CEEAG

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Introduction

Europe's Green Deal aims to put citizens at the heart of the energy transition by ensuring fairness and inclusiveness. This follows the Clean Energy for All Europeans legislative package (CEP), which acknowledges 'active customers', 'renewables self-consumers', 'renewable energy communities' (RECs), and 'citizens energy communities' (CECs) as distinct market actors in the energy transition. In addition to promoting equality and a level playing field in the Internal Energy Market (IEM), competition policy and State aid rules in particular need to contribute towards the delivery of the Green Deal, as well as guide Member States so they can comply with their legal requirements under the CEP.

The existing 2014 Guidelines on State aid for Environmental Protection and Energy (EEAG) have contributed towards a number of barriers to the development of RECs. Specifically, the EEAG have caused an unlevel and implicitly discriminatory playing field for RECs with its emphasis on competitive bidding for renewables support and its insufficient recognition of the different factual and legal situation of smaller and non-commercial market actors.

The legal framework for RECs created by the CEP intended to remedy market failures and create favorable policy and legal environments so that RECs can grow at the national level. Unfortunately, the new draft Guidelines on State aid for climate, environmental protection and energy (CEEAG) do little to align with the CEP's approach.

The CEEAG need to provide clear and positive guidance, so that Member States are able to innovate in designing renewables support schemes that can help jump-start community ownership of renewables production in their energy markets.

The EU has determined that RECs are indispensable for a successful energy transition and that they need support

The Commission based its proposals for a new EU framework for energy communities on the premise that acknowledgment and support for particular forms of citizen ownership and involvement in the market is necessary to successfully transition Europe to a clean, decarbonised energy system. In doing so, the Commission noted the significant potential of community ownership of renewables to contribute to a clean energy transition in Europe.¹ In its Impact Assessment, the Commission noted in particular that while citizens in a few

¹ CE Delft (2016). *The Potential of Energy Citizens in the European Union*. This study found that half of EU citizens - including local communities, schools and hospitals - could be producing their own renewable electricity by 2050, meeting 45% of their energy demand. Available at: https://ce.nl/wp-content/uploads/2021/03/CE_Delft_3J00_Potential_energy_citizens_EU_final_1479221398.pdf.

Member States have had the opportunity to enjoy the benefits of community ownership of renewables, most citizens across Europe have not benefited from such opportunities.²

Directive 2018/2001 (Recast Renewable Energy Directive, or RED II) acknowledges that RECs add value in many different ways, including enhancing local acceptance of new renewables projects, increasing the amount of capital available for local investment, choice for consumers, and greater participation by citizens in the energy transition.³ The Directive also notes that RECs help address socio-economic issues such as energy poverty, and allow groups like vulnerable consumers and tenants to actively participate in the energy transition.⁴

The CEP explicitly acknowledges the unique characteristics of energy communities and the need to mitigate challenges they face operating in the market. Directive 2019/944 (The Electricity Directive) states that “*Citizens energy communities constitute a new type of entity due to their membership structure, governance requirements and purpose.*”⁵ Furthermore, the RED II notes that the specific characteristics of RECs, including size, ownership structure, and their number of projects “*can hamper their competition on an equal footing with large-scale players.*”⁶ It follows by highlighting that measures to offset disadvantages relating to specific characteristics of local RECs include enabling RECs to operate in the energy system and easing their market integration.⁷

Article 22 of the RED II requires Member States to create an enabling framework to promote the development of RECs. These enabling frameworks must include policies and measures on removal of unjustified regulatory and administrative barriers, tools to help RECs access finance and information, and capacity building for local authorities, among other things.

Furthermore, Article 22(7) of the RED II guarantees a level playing field for RECs in national renewables support schemes. It requires Member States to “*take into account specificities of [RECs] when designing support schemes in order to allow them to compete for support on an equal footing with other market participants.*” First, this amounts to a procedural requirement for Member States to take into account specific challenges RECs might experience in competing for support when they are developing or amending their renewables support schemes. Second, there is a substantive requirement to take measures in order to correct for any distinct challenges RECs face.

² Commission (EU) (2016). Impact Assessment Accompanying Proposal for a Directive on the Promotion of the Use of Energy From Renewable Sources (Recast). SWD(2016) 418 final, Part 1/4, p 78.

³ Directive (EU) 2018/2001 on the promotion of the use of energy from renewable sources (recast) OJ L328/82, 21.12.2018 (Recast Renewable Energy Directive), Recital 70.

⁴ Recast Renewable Energy Directive, Recital 67.

⁵ Directive (EU) 2019/944 on common rules for the internal market for electricity OJ L158/125, 14.6.2019, (Electricity Directive), Recital 46.

⁶ Recast Renewable Energy Directive, Recital 71.

⁷ Id.

The RED II does not prescribe how Member States must ensure equal footing for RECs, leaving it to their discretion. Nevertheless, the recitals provide some guidance:

“Member States should be allowed to take measures, such as providing information, providing technical and financial support, reducing administrative requirements, including community focused bidding criteria, creating tailored bidding windows for renewable energy communities, or allowing renewable energy communities to be remunerated through direct support where they comply with requirements of small installations.”⁸

Furthermore, Article 4 of the RED II allows small-scale installations to receive direct price support (i.e. fixed FiTs) and to be exempted from tendering procedures.⁹ All of these measures that Member States may take to fulfill their obligations under the RED II have the potential to implicate State aid.

The unique characteristics of RECs, including their choice of business model, non-commercial purpose, size, professional and organisational structure, and way of financing projects, put them in a different legal and factual position compared to other undertakings. Under the EU legal principle of equality, the distinct characteristics of RECs and challenges they face participating in auctions and tenders justify different treatment. This is supported by the Court of Justice of the EU (CJEU).¹⁰ Increasingly, studies also show the need to balance competitive bidding with other policy priorities, and the need to provide support for RECs and other small actors outside of tenders and auctions.¹¹

How the CEEAG can align with the Green Deal

The CEEAG can help contribute to the delivery of the Green Deal while promoting a more competitive playing field for smaller and non-commercial market actors in the renewables sector. Paragraph 123 of the existing EEAG states that while *“Aid to electricity from renewable energy sources should in principle contribute to integrating renewable electricity in the market [...] for certain small types of installations, this may not be feasible or appropriate.”* Furthermore, DG Competition has confirmed that the EEAG need to be adjusted, fine-tuned or potentially aligned with new CEP rules, including treatment of self- consumption and energy communities in RES schemes.¹²

⁸ Recast Renewable Energy Directive, Recital 26.

⁹ Recast Renewable Energy Directive, Article 4(3)-(4).

¹⁰ This is especially the case for cooperatives. See Court of Justice of the EU (CJEU). Joined Cases C-78/08 to C-80/08, *Paint Graphos Soc. coop. arl* [2011] C 311/06.

¹¹ See Amazo A, et al (2020). Auctions and renewable energy communities: measures to support RES communities in auctions - Country experiences and lessons learnt. D4.2 AURES II Project. Available at: <http://aures2project.eu/2020/02/17/auctions-and-renewable-energy-communities/>; IRENA (2019). Renewable energy auctions : Status and trends beyond price (IRENA: Abu Dhabi). Available at: <https://www.irena.org/publications/2019/Dec/Renewable-energy-auctions-Status-and-trends-beyond-price>; and European Committee of the Regions (2018). Models of Local Energy Ownership and the role of local energy communities in energy transition in Europe. Available at: <https://op.europa.eu/en/publication-detail/-/publication/667d5014-c2ce-11e8-9424-01aa75ed71a1/language-en#>

¹² Commission (EU) (2020). Staff Working Document - Fitness Check of the 2012 State aid modernization package, railways guidelines and short-term export credit insurance. SWD(2020) 257 final, Part 3/4, p 104.

However, the draft CEEAG do very little to create a fair and level playing field for RECs. Specifically, the draft CEEAG:

- Do not provide sufficient recognition for the different factual situation of smaller, local and non-commercial market actors, in particular RECs;
- Do not acknowledge the market failures that prevent communities from taking more ownership in the renewables sector, or the fact that the REC sector is still very new or non-existent in many Member States;
- Mandate market-based competitive bidding procedures for support to renewable energy sources without factoring in the challenges small and non-commercial market actors face to access such schemes; and
- Fail to balance cost-efficiency and other market-based outcomes against other social policy considerations such as inclusiveness and public acceptance.

In order to align with the Green Deal and the CEP, the draft CEEAG must include:

- 1) Dedicated provisions on RECs acknowledging their unique market position and challenges as non-commercial market actors;**
- 2) Increased thresholds to exempt RECs and other small renewables production installations from having to participate in competitive bidding procedures;**
- 3) Clear and concrete guidance to help Member States integrate RECs into their support schemes consistent with their legal obligations under the RED II;**
- 4) Simpler administrative burdens on Member States that want to create dedicated support for RECs in their national renewables support schemes;**
- 5) Acknowledgment of social impacts on local communities from renewable energy projects, along with supportive provisions on the integration of social criteria into competitive bidding procedures for renewables; and**
- 6) The continuation of a dedicated chapter for support to renewable energy.**

The sections below will lay out each of these elements

1. The CEEAG need to include provisions acknowledging the unique market position and challenges of RECs

The draft CEEAG do not make even one reference to RECs. We understand that DG Competition wishes the CEEAG to be simpler, more forward-looking and flexible. However, energy communities are a new legal concept under EU law. Furthermore, only a few Member States have significant numbers of energy communities, and in many Member States the sector is either nascent or non-existent. Moreover, many Member States are still unsure how write new EU rules on energy communities into law, or to develop supportive measures for the promotion of RECs at the national level.

While RECs are undertakings, their non-commercial purpose and other unique characteristics place them at a distinct competitive disadvantage in the market, and particularly in accessing renewables support schemes. The Renewables Directive acknowledges this, for example in *whereas 71 the specific characteristics of local renewable energy communities in terms of size, ownership structure and the number of projects can hamper their competition on an equal footing with large-scale players, namely competitors with larger projects or portfolios*. Yet, by neglecting to mention this, the draft CEEAG ignore this market reality.

This is most notable in paragraph 33 of the draft CEEAG, which serves as policy orientation for the application of State aid guidelines to certain categories of aid. Specifically, it fails to mention social impacts of renewables projects on local communities, positive externalities that can result from citizen inclusion in renewables projects, or the asymmetry that exists between large commercial market actors and small new-comers to the market that are often inexperienced or unprofessionalised. The final CEEAG need to follow the lead of the RED II and acknowledge the social and market realities of RECs in the renewables sector. Otherwise, Member States will have a harder time justifying measures to ease the integration of RECs into the market.

Furthermore, paragraph 66 fails to acknowledge that even competitive bidding can result in market concentration and discourage market entry of small and non-commercial undertakings. In particular, competitive bidding in existing renewables markets has led to the decrease of participation in the market by small, local and non-commercial actors, while at the same time resulting in market concentration by larger actors. This has occurred in the German solar PV sector, whereby a report by IZES gGmbH and Leuphana University of Lünenburg found that after six years of tenders for ground-mounted PV installations above 750 kW, market concentration is already recognisable.¹³ We recommend that such potential outcomes be acknowledged in paragraph 66 of the CEEAG.

¹³ Umwelt Bundesamt (2021). Entwicklung und Umsetzung eines Monitoringsystems zur Analyse der Akteursstruktur bei Freiflächen-Photovoltaik und der Windenergie an Land. Available at: https://www.umweltbundesamt.de/sites/default/files/medien/5750/publikationen/2021-06-28_cc_49-2021_monitoringsystem_akteursstruktur_wind_pv.pdf.

2. The CEEAG need to raise thresholds exempting small renewables production installations from the requirement to participate in competitive bidding

DG Competition proposes to lower the existing threshold that exempts small installations from competitive bidding under the 2014 EEAG to 400 kW. DG Competition justifies this choice by citing Article 5 of the EU Regulation 2019/243 (the Electricity Regulation), which requires electricity production installations over 400 kW to be balancing responsible (this threshold will be lowered to 200 kW from 1 January 2026, and it is assumed that this number would apply to the CEEAG as well).

The idea that balancing responsibility and a requirement to participate in a competitive bidding procedure are similar is misguided and incorrect. Balancing responsibility relates to system requirements and responsibilities that a market actor must assume to make sure they maintain a balance between the injections, offtakes and commercial power trades within their portfolio. The application of this responsibility is justified by the need to operate the grid in a safe manner, and its connection to the market is based on the need to regulate market actors in a consistent and fair manner. Competitive bidding on the other hand is a market-based mechanism, designed to achieve certain economic outcomes.

In addition to having different aims, competitive bidding also raises significantly different challenges for RECs compared to balancing responsibility. The Electricity Regulation provides market actors with the choice between becoming a balance responsible party (BRP), or delegating it to a third party. At the moment, no RECs are capable of becoming a BRP. As such, they make use of the choice to delegate this responsibility.

While balancing responsibility adds a financial cost to entering and participating in the market, it does not present nearly the same level of challenge as competitive bidding. Competitive bidding raises a number of practical challenges for RECs including:

- Difficulty in raising capital from members (which impacts the ability of RECs to obtain outside finance from third party lenders) due to the risk of not winning;
- Absorbing sunk costs related to prequalification, again due to the risk of not winning and also to the fact that to submit a project in a competitive bidding, one has to have a very high level of expertise of the market for materials (turbines, solar panels, etc.) when this level of expertise is not needed when there is direct support. RECs do not have this expertise and therefore need to contract especially for this, the cost being between 5k€ for solar and 20 k€ for wind. This is a very high cost for smaller market actors with one project only, and not market efficient;
- Navigating different complex administrative procedures ;
- Their inability to spread risk across a large portfolio of projects or to benefit from economies of scale in purchasing equipment;
- A bank guarantee is now mandatory in order to compete in a bidding process and this is a complex process for RECs

Finally, participation in a competitive bidding process cannot be delegated to a third party, as with balancing responsibility.

There is much experience, for instance from Germany, on what happens to RECs when they are forced to compete for renewables support in competitive bidding procedures. Since 2016, when tenders were introduced for onshore wind and solar PV, the number of RECs operating in the market has shrunk significantly, as numbers from German members of REScoop.eu will show (see separate submissions from the German Cooperative and Raiffeisen Confederation (DGRV) and Bundis Burgerenergie e.V.(BBEn)). Even the 2014 EEAG acknowledge that market integration is not suited for smaller market actors.

As a matter of policy, the EU should not be encouraging citizens to invest in renewable projects that do not come to fruition simply because they were unsuccessful in a tender process. Member States must be able to exercise discretion to exempt RECs and other small installations from having to compete for renewables support with large commercial project developers. This is justified by the different factual and legal situation of small and non-commercial market actors compared to larger commercial undertakings. In particular, where the energy community sector is currently non-existent or just getting started, which is the reality in a majority of EU Member States, the sector must be allowed to develop.

The current thresholds are too low for 2 reasons :

- technological evolutions, which increase the capacity of each installation. Maintaining a low threshold would force RECs to dimension artificially small projects and not use the most efficient and most recent technologies which is not market efficient.
- RECs should not be restrained to very small installations. Indeed the obstacles they face are due to various aspects including governance and their non-commercial character, independently of the size of the project they develop.

We therefore recommend that the CEEAG allow for the exemption of electricity generation installations with an installed capacity of less than 5 MW, except for electricity from wind energy projects, which should be exempted up to a total installed capacity of less than 24 MW. At the very least, Member States should be able to exempt RECs and REC-owned and controlled installations from participating in competitive bidding. Such an exemption could include safeguards to ensure proportionality, for instance through the use of an overall cap to limit the number of eligible projects, and proper justification and evidence of regulatory oversight to prevent abuse by market actors.

3. Member States need clear guidance from the CEEAG on how to develop and justify supportive measures for RECs in compliance with their RED II obligations

Given that State aid is likely to be implicated in many of the supportive measures that Member States will adopt for RECs, particularly around renewables support schemes, the CEEAG need to facilitate and support Member States' compliance with their legal obligations.

Without any references to RECs or other small and non-commercial market actors, the CEEAG will increase the burden of Member States that notify such aid. For example, paragraph 83, which allows Member States to justify more limited eligibility for a particular support scheme, makes no mention of policy objectives connected to the inclusion of citizens, public acceptance or other socio-economic aims such as promotion of social innovation. This will make it harder for Member States to develop policy objectives at nation level for RECs, and to justify them to DG Competition.

In order to help Member States develop and justify renewables support schemes for RECs so that they can comply with their EU requirements, paragraph 83 needs to reference policy objectives around community ownership of renewables.

We understand that DG Competition plans to include some provisions on RECs in its revisions to the General Block Exemption Regulation (GBER). While we would welcome such an approach, the CEEAG must also provide proper guidance to Member States on the design of renewables support schemes and other measures aimed at developing RECs. Inclusion in GBER should not dispense with the responsibility of the CEEAG to guide Member States in providing support to RECs.

As stated above, the lack of clear guidelines to member States can lead to the introduction into national law of unfavorable dispositions for the development of CERs.

In France, there was clear political will to support locally owned projects (which are the precursors of RECs) but without clear EU guidance of how to develop and justify supportive measures for those projects, the first supportive measure (bonus in the tenders) was first ill-fitted. Thanks to strong consultation with the french stakeholders, the new version of this supportive measure in the tenders, still in discussion with DG competition, is more adapted to locally owned projects in terms of criteria (whom should this supportive measure concern). Still, this measure is not sufficient for RECs to compete on an equal footing with other market participants when participating in a bidding process. There should be other facilitating measures (e.g. administrative facilities etc.) for RECs.

Other examples show the need for clear guidance. In France, it is extremely complicated for a producer under public support (FIT or premium) to have access to his own Guarantees of Origin, in order to guarantee the renewable origin of his energy to his buyer (supplier or consumer). Traceability is yet particularly important for RECs. CEEAG should clearly state that GOs (both for electricity and biogaz) are a traceability mechanism and not a support mechanism and thus that GOs are compatible with other public supports, in particular for RECs.

Another example of an ill-fitted disposition into French law undermining the development of RECs is the inability, as the French tax law stands, for ESUS-labeled entities (social utility companies) involved in renewable energy production activities to benefit both from the tax reduction granted for subscriptions to the capital of SMEs and from public support (FIP or premium). However, these social utility companies (RECs) need to attract solidarity-based shareholders in order to develop and increase their equity capital. Moreover, these RECs operate in a capital-intensive and risky energy sector from a financial, economic and legal point of view, where there is no over-remuneration.

Moreover, the solidarity enterprises concerned are based on an economic model with limited profitability and are therefore faced with a greater risk hazard, due to the lack of possible risk pooling. France must be encouraged at the EU level - thanks to clear dispositions in the CEEAG - to reform these in order to allow an ESUS company to offer tax incentives to people investing their savings in it, even if the company benefits from public support for energy production.

4. The CEEAG must simplify the process for Member States to innovate new renewables support mechanisms for RECs

Under the draft CEEAG, Member States are perversely incentivised to ignore RECs in the design of their renewables support scheme. For example, under paragraph 86 of the draft CEEAG, in instances where the overall budget for the scheme is low enough and the Member State institutes competitive bidding, they would be exempted from the requirement to hold a public consultation. Furthermore, under paragraph 85 if Member States make amendments to existing schemes that do not amend scope or eligibility, they would not have to hold a public consultation. Ultimately, this would mean that Member States would face minimal administrative burden to get State aid clearance if they decide not to enact any supportive measures for RECs in their renewables support scheme, even though this would cause them to violate their legal obligations under the RED II.

On the other hand, Member States that want to design something tailored to the needs of RECs would need to hold the necessary public consultations, and provide additional justification, specifically through the development of an assessment of net extra costs versus benefits, and through the development of factual and counterfactual scenarios. While support for RECs, particularly in Member States where the sector is still nascent, might fall under paragraph 51 of the draft CEEAG, which could simplify this process, there is no reference to RECs in that paragraph. This will make it more difficult for Member States to justify such assessments to DG Competition. We recommend inserting a reference to RECs and the development of nascent markets in paragraph 51, so that Member States are not overburdened in quantifying benefits and costs of developing support schemes for RECs, particularly where the sector is still in its infancy or has yet to emerge.

A Member State's choice to include or exclude special measures for RECs from a support scheme needs to be based on its consideration of the characteristics of RECs during the design phase. Furthermore, this decision needs to be subject to a transparent and participative process, as it has a direct impact on the ability of certain undertakings to compete in the market. Therefore, we recommend that the CEEAG should not contain any exemptions to the requirement for Member States to consult relevant stakeholders when schemes are being designed or amended.

5. The CEEAG need to acknowledge the social impacts of renewables projects in local communities and provide stronger recognition of socio-economic objectives in the design of renewables support schemes

The draft CEEAG neglect to acknowledge market failures related to the social impacts experienced by local communities from renewable energy projects. Energy projects, in particular production and infrastructure, have significant social impacts in the local communities where they are sited. Oftentimes, undertakings have little incentive to mitigate these impacts. This results in the privatization of profits derived from projects, while communities are left to deal with any negative impacts that the project might have. These concerns can impact public attitudes towards renewables, and can result in significant delays to project completion. This in turn raises costs of realising projects, and also compromises Member States' ability to achieve their national renewables objectives. It is the lack of local acceptance of new renewable energy production installations, particularly strong in France especially against wind projects, among other things, that caused the EU Commission to support the introduction of RECs into the RED II. Improving local acceptance is today a prerequisite to reach the Green Deal & climate-energy package targets.

As already noted, paragraph 33 of the draft CEEAG, which helps provide policy orientation for the application of the CEEAG to support for renewables, fails to mention potential social impacts of renewables projects on local communities. At the same time, it fails to acknowledge citizen and community involvement in renewables projects as a positive externality. While some project developers partner with communities and share in the benefits, many would rather find another project to develop.

These social and market dynamics need to be acknowledged in the CEEAG as they provide a firmer context and policy basis for integration of socio-economic criteria into competitive bidding procedures. In this regard, while paragraph 49 of the draft CEEAG would allow Member States to use non-price selection criteria such as social criteria in "a few exceptional cases," it frames the use of such criteria in a rather negative light. For instance, the reference to 'few exceptional cases' implies that non-price selection criteria should almost never be used. This ignores the potential for widespread integration of social criteria into renewables support schemes to add value in terms of delivering renewables objectives while promoting inclusiveness of citizens, which is an aim of the Green Deal.

Furthermore, paragraph 49 of the draft CEEAG seeks to limit the use of non-price criteria to "not more than 25% of the weighting of all the selection criteria." This provision is unnecessary and overly prescriptive. Member States should be able to weigh price and non-price criteria proportionate to the objectives they aim to meet through the design of the support scheme. The role of the CEEAG should be to ensure that all criteria (price and non-price) are proportionate compared to different objectives such as cost-effectiveness and ensuring competition. Therefore, we recommend that the cap of 25% be replaced with a requirement for non-price criteria to be proportionate to the objectives they are aimed to meet when weighed against other selection criteria and the need to ensure competition.

6. The CEEAG should dispense with its "Low Carbon Category" and reinstate a dedicated category of aid to renewable energy

Commingling renewable energy with other so-called "low-carbon" technologies will delay and undermine efforts to decarbonise the energy system and mitigate the rise of global temperatures. While mixing different technologies in the same competitive bidding process would not be mandatory under the draft CEEAG, it would be encouraged - again through less cumbersome administrative procedures related to notification, such as an exemption from holding a public consultation. Furthermore, the CEEAG would provide a presumption of proportionality of aid if a Member State were to subject all low-carbon technologies to the same competitive bidding procedure. This will give Member States an excuse, even a perverse incentive, to continue supporting fossil fuels at the expense of renewables.

Such schemes would have a particularly damaging impact on RECs. RECs already have an extraordinarily difficult time competing against large commercial market actors in competitive bidding procedures for renewables support. Having to compete against other low carbon technologies would likely push RECs even further out of the market, if not entirely. Therefore, we recommend that the CEEAG continue to maintain a separate, dedicated section to renewable energy.