

Response to the consultation on the EEAG and GBER revision

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This report gives an overview of REScoop.eu's response to the consultation on the upcoming revision of the Guidelines on State aid for environmental protection and energy 2014-2020 (EEAG) and the related articles of the General Block Exemption Regulation (GBER).



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Introduction

The upcoming revision of the **Guidelines on State aid for environmental protection and energy 2014-2020 (EEAG)** and the related articles of the **General Block Exemption Regulation (GBER)** should be aligned with the Clean Energy for all Europeans Package (CEP), which aspires to achieve climate neutrality by 2050 and enhance citizen participation and empowerment in the energy transition. The national aid measures that will be developed according to the new EEAG and GBER regime should promote the fight against climate change, support environmental protection and ensure security of energy supply. In December 2020 the Council decided to increase the EU's climate ambition for 2030 to a reduction of at least 55% compared to 1990. In order for that target to be achieved, **everyone should contribute** towards the realisation of the energy transition to a cleaner energy future free from fossil fuels.

Taking into consideration that the CEP enhances the role of citizens as active consumers and members of an energy community in the energy transition, they should also be able to participate in the single European energy market and compete on an equal basis with the other market players. However, as mentioned in the consultation questionnaire, there are indications that the scope of the state aid guidelines might have been too restricted and thus not sufficiently future-proof, to cater for recent and expected technological and market developments and novel aid designs. There are also indications that the compatibility rules on environmental protection are not entirely suited to face the climate neutrality challenge. Consequently, the EEAG and GBER should be revised in a way that they will incorporate the vital objective of citizen participation highlighted in the CEP. The following analysis will mainly focus on energy communities.

Who we are

REScoop.eu is the European federation of citizen energy cooperatives. We are a growing network of more than 1,500 European Energy Cooperatives (REScoops) and their 1,000,000 citizens. Through REScoop.eu, we wish to make our voices heard in the European energy debate. Citizens after all are the ones who will be paying for the transition to a more sustainable energy system. REScoop.eu empowers them and wants to achieve energy democracy. Our federation has four well-defined objectives:

1. We represent the voice of citizens and renewable energy cooperatives to European policy makers;
2. We support the start-up of new REScoops and provide them with useful tools and contacts;
3. We provide services for the European REScoops and are currently working on a financial tool; and
4. We promote the REScoop business model throughout Europe.

The EEAG and GBER directly impact our members' activities relating to the production of renewable energy. As cooperatives, our members are now acknowledged under the CEP as 'renewable energy communities' and 'citizen energy communities'. While we do not have an exact figure, a majority of our members focuses on the production of renewable energy for export to the grid and the market. Most – if not all – of our members also benefit from a national support scheme for renewables. Therefore, **the EEAG provisions on aid to energy from renewable sources have a direct impact on our members' activities**. Specifically, the paragraphs on operating aid granted to energy from renewable sources are most relevant. Some of our members are also concerned with the paragraphs on aid granted by way of certificates.

REScoop.eu also provided input into the 2014 revisions of the EEAG. We support our members so they can engage in national discussions relating to the development and amendment of renewable energy support schemes. We closely follow any Member State notifications and/or decisions by DG Competition relating to the granting of operational aid to renewables, notably small-scale installations. Specifically, we look at these decisions so we can provide our national members with support. As small start-up enterprises, a lot of our members feel the impact of the EEAG on their activities, but they have little working understanding of the EEAG itself. Finally, we currently support our members in the transposition of the CEP, notably Directive (EU) 2018/2001 (the Renewable Energy Directive - REDII). Therefore, we are concerned with how the existing EEAG and GBER interact with the CEP and, more importantly, how they evolve so that they support the new CEP provisions on energy communities.

Energy communities in the CEP and alignment of the EEAG and GBER with it

In its original Communication on a Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy (25/02/2015), the Commission stated unequivocally that citizens should be at its core,

“where citizens take ownership of the energy transition, benefit from new technologies to reduce their bills, participate actively in the market, and where vulnerable consumers are protected”¹

¹ Available at: https://eur-lex.europa.eu/resource.html?uri=cellar:1bd46c90-bdd4-11e4-bbe1-01aa75ed71a1.0001.03/DOC_1&format=PDF

Based on its vision for an Energy Union, the Commission made of giving a fair deal to consumers one of the goals of its proposed CEP. To achieve this goal, the Commission proposed a broad, overarching legal framework to support citizens to get involved across the energy market – both individually and collectively. **Specifically, the CEP acknowledges and defines ‘active customers’, ‘renewables self-consumers’, ‘renewable energy communities’ (RECs), and ‘citizens energy communities’ (CECs).**

With this legislative package, EU has signalled a strong shift in the role of citizens from passive consumers to active participants in the energy transition. For the first time, EU legislation also acknowledges **the role community energy ownership can play in helping the EU meet its climate and energy objectives**, while driving local social innovation. In particular, the recast Directive 2018/2001 (REDII), recast Directive 2019/944 (the Internal Electricity Market Directive, or IEMD) and recast Regulation 2019/943 (the Internal Electricity Market Regulation, or IEMR) contain provisions that establish a supportive EU legal framework for community ownership. The CEP defines two new concepts, the RECs and CECs. It also requires Member States to secure certain rights of energy communities and establish enabling frameworks to ensure a level playing field and promote their development. For RECs in particular, RED II aims to provide special support to promote their development at national level. EU Member States must transpose REDII provisions into national legislation by 30 June 2021 and IEMD provisions by 31 December 2020, to ensure they are consistent with the new EU legislation. The transposition should be seen as an opportunity for Member States to incorporate the new role of citizens and communities in their energy legislation. It is also an opportunity to update policy frameworks to support the empowerment of smaller and non-commercial market actors in the energy market as well as more decentralised renewable energy production and consumption.

The main distinguishing aspect between community ownership and other citizen and community energy initiatives organized or owned by traditional commercial energy companies is how they are organized. In particular, community ownership organises citizens in a legal entity and most often incorporate a particular set of principles around participation, ownership and governance principles, namely:

Cooperatives in particular embody these characteristics, which have a deep foundation in the seven International Cooperative Alliance (ICA) principles, or Rochdale Principles. These principles can be integrated into any legal form, not just into the legal form of a cooperative. Due to their unique characteristics, RECs can be considered to be a separate class of market actor from traditional market actors. In other words, **their unique characteristics place them in a different legal and factual situation, in particular regarding the equality principle.**

Community ownership principles

<p>Non-commercial purpose</p>	<p>The energy community exists primarily to provide services or other benefits to the members, or to the broader local community. In this sense, revenues or profits from economic activities are reinvested in the activities of the energy community, go towards providing services to members, or go towards socio-economic initiatives that benefit members of the local community, such as education, investment in local/public infrastructure, addressing energy poverty, etc. The directives frame energy communities as non-commercial type of actors that use revenues from economic activities to provide services/benefits for members and/or the local community.</p>
<p>Ownership and control</p>	<p>Participation focuses on economic participation, providing members with ownership of a project and/or services provided by the community. In exchange the members are entitled to receive services from the community and/or a return on investment. This also allows local citizens, small businesses, or local authorities that participate in the community to exercise strategic control and direction over the community.</p>
<p>Open and voluntary participation</p>	<p>Membership in an energy community is open to anyone that is willing to undertake the responsibility of becoming a member. Therefore, energy communities should not discriminate against anyone that wants to join the community. Likewise, members should be able to leave if they choose.</p>
<p>Governance/decision making</p>	<p>Internal decisions are based on democratic governance based on equal decision-making rights for all members, regardless of the amount of investment. Furthermore, there is an emphasis on ensuring decision-making 'autonomy', so that that the collective will of the members is not compromised due to the investment or decision making by one or a small group of individual members, or outside business partners.</p>

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Both the RED II and the IEMD require Member States to **provide an enabling framework to promote and facilitate the development of RECs and CECs** respectively.² In more detail, unjustified administrative and regulatory barriers should be removed, while also the energy communities should be subject to fair, proportionate and transparent procedures, including registration and licensing procedures.³ In line with this requirement, costly and complex administrative procedures that pose a burden in applying for aid should be removed and simplified rules should apply for energy communities. Furthermore, RECs should not be subject to discriminatory treatment with regard to their activities, rights and obligations as final customers, producers, suppliers, distribution system operators, or as other market participants, while also there should be tools in place to facilitate access to finance and information.⁴

In addition, according to article 16(3)(a) of the IEMD, Member States shall ensure that CECs are able to access all electricity markets in a non-discriminatory manner. Therefore, the enabling framework is intended to create a level playing field for CECs as new market actors.⁵ Moreover, Member States are required to take the specificities of RECs into account when designing their renewable energy support schemes, in order to allow them to compete for support on an equal footing with other market participants.⁶ As a result, both Directives recognise that the energy communities are unique players in the energy market and that the **Member States should identify concrete measures to make sure that they receive adequate support to be able to compete equally with the other market players without discrimination.**

To this end, the EEAG and GBER should be revised in order to align with these clear requirements of the CEP.

The need for support of the energy communities is also recognised in the 2020 JRC Science for policy report, which specifies that the long-term sustainability of the energy communities

“will be contingent on the development of viable business models moving towards innovative financing and remuneration schemes, smart

² Article 22(4) of the REDII and 16(1) of the IEMD.

³ Article 22(4)(a) and (d) of the REDII and 16(1)(e) of the IEMD.

⁴ Article 22(e) and (g) of the REDII.

⁵ Aura Caramizaru and Andreas Uihlein, *Energy communities: an overview of energy and social innovation*, JRC Science for policy report 2020, pages 7,8

⁶ Article 22(7) of the REDII. On the same note, recital 26 of the RED II specifies that “Member States should ensure that renewable energy communities can participate in available support schemes on an equal footing with large participants. To that end, 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.”.

technologies, national regulatory support and their wider social acceptance and degree of citizen participation.”⁷

It is also highlighted there that

“Market-based remuneration mechanisms such as auctions may pose certain restrictions for energy communities because of their small size and resources.”⁸

In order to allow energy communities to compete on an equal footing with other market participants, the procedures for participation in support schemes should be changed, so as to include criteria for local community benefits. As recognised in the same report,

“The fast development of communities can be largely attributed to policy support schemes such as feed-in-tariffs that supported investments in renewable generation assets. [...] Easing the procedures for participation in these support mechanisms – such as including criteria in tenders for local community benefits could help support local and citizen participation. Local authorities are well placed to support communities by, for example, providing quotas for local ownership of renewable energy projects for citizens. [...] Innovative financing schemes are necessary to overcome barriers to investments.”⁹

Although the Green Deal puts citizens at the heart of the energy transition and the CEP explicitly recognizes the specific characteristics of RECs¹⁰ as well as their environmental, economic and social benefits, the current State aid framework does not allow their full development on the EU energy market. In the report on the fitness check of state aid guidelines, the Commission confirms this by stating 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.¹¹ The EEAG and the GBER need to support the delivery of the EU's climate and energy objectives analysed above. The

⁷ Aura Caramizaru and Andreas Uihlein, *Energy communities: an overview of energy and social innovation*, JRC Science for policy report 2020, page 2

⁸ Ibid 33

⁹ Ibid

¹⁰ As recital 71 of the REDII clearly underlines, “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”.

¹¹ Annex 8 of the Commission staff working document, Fitness check of the 2012 State aid modernisation package, railways guidelines and short-term export credit insurance, Annex SWD (2020) 257 final, 30.10.2020, page 104

existing EEAG will need to be amended to fit the new context of the CEP, including its intent to ensure citizens can participate both individually and collectively through energy communities across the energy market.

Specifically, the EEAG should include a new chapter on energy communities, particularly RECs. A new chapter on energy communities is needed in order to fully support coherence between the EEAG and the CEP's provisions on energy communities. In particular, it will need to ensure Member States can develop tailored measures so RECs have a level playing field in accessing national renewable support schemes.

Furthermore, **the revisions of the EEAG and the GBER will need to support and reinforce the national enabling frameworks that Member States are required to put in place for RECs.** In particular, these enabling frameworks need to include, inter alia, measures to ensure the participation in the RECs is accessible to all consumers, including those in low-income or vulnerable households, and tools to facilitate access to finance and information are available. Such measures are likely to implicate some form of support that may qualify as State aid. Therefore, the EEAG need to be revised to permit the granting of aid for such measures. Specifically, this new chapter of the EEAG should permit Member States to put in place other supportive measures for RECs regardless of their size.

Benefits the energy communities bring forward

The development of community RES projects is connected to several additional benefits that other RES projects do not entail. All of these benefits are connected to the fact that the primary purpose of an energy community is **to provide environmental, economic or social community benefits to its members or shareholders or to the local areas where it operates, rather than to generate financial profits.**¹² This shows that the energy communities do not limit their activities to profit making, as the other market players, but they reinvest their surplus into the community's activities (e.g. renewables generation projects), or use them to pursue general public interest aims such as local development, education, or solidarity programmes.¹³ As a result, their impact cannot only be seen through an economic perspective.

¹² Article 2(16)(c) of the RED II and article 2(11)(b) of the IEMD.

¹³ REScoop.eu and ClientEarth, *Energy Communities under the Clean Energy Package*, Transposition Guidance, page 21 Available at: <https://www.rescoop.eu/news-and-events/press/energy-communities-under-the-clean-energy-package>

Examples of economic benefits

- **promotion of local development.** The participation of local people and local authorities in RES projects through RECs has brought great added value, as it has allowed access to more private capital resulting in local investment. This leads to regional value creation, as the money stays in the local economy.¹⁴ Moreover, there is greater choice for the consumers and increased citizen participation in the energy transition;
- **share of national/local ownership.** In many European countries, a significant part of the investment in the increasing renewable energy capacity installations is coming from foreign countries. Most of the time, local citizens don't have the opportunity to invest in such projects and, therefore, lose an "investment opportunity". The development of community RES projects has a positive impact on the share of nationally owned new renewable energy capacity installed. From a territorial point of view, as community-driven projects are more attached to the geographical area of the promoters, initially they will be more decentralized, avoiding monocropping and the concentration of installed capacity in "hot spots", thus promoting landscape diversity and better resilience;
- **a return on investment to members;**
- **better local security of supply in case of power disturbances elsewhere in the grid;**
- **investment in public infrastructure; and**
- **reduced energy bills - at least for households and other non-professional customers.**

Examples of environmental benefits

- **increased production of locally developed renewable energy.** Local commitment is essential in the context of the increased renewable energy generation capacity. The focus of energy community activities is on renewable energy sources (RES) only, and not on fossil and/or nuclear fuels, like big market actors. As a consequence, less money is spent on fossil fuels;
- **greenhouse gas emissions reductions** (e.g., carbon dioxide, CO₂). The renewable energy community projects contribute to the reduction of fossil fuel emissions. Moreover, energy communities increase awareness about energy conservation in the local area they operate, inspire more conscious energy consumption and thus lower emissions;

¹⁴ More information can be found in two studies available at: <https://www.erneuerbareenergien.de/archiv/local-added-value-from-a-community-wind-farm-150-437-96249.html> and [Note technique - Etude Retombees eco - Energie Partagee \(energie-partagee.org\)](https://www.energie-partagee.org/Note-technique-Etude-Retombees-eco-Energie-Partagee).

- **environmental protection.** From the environmental point of view, usually community projects are more accepted by local citizens, therefore they tend to be more respectful with the local environment, since their impact is closely supervised and assessed by the citizens who are directly involved as members. Furthermore, since the purposes of community projects are not only oriented to profitability, the incentive to overlook environmental requirements with the aim to achieve better investment returns is not present in these cases.

Examples of social benefits

- **active citizen participation and investment in energy efficiency, energy poverty/solidarity initiatives.** Community projects have a higher and specific impact in the social sphere when compared to other RES projects, in the sense that they can extend RES projects benefits to consumers and citizens who usually do not have access to them. In other words, the economic benefits of the project are better distributed, reaching those who usually do not take advantage of them and consumers have access to energy resources independently of their income. Also, if the project is led by the local community, it will be easier for them to detect cases of vulnerable consumers and therefore find better and more adapted solutions for issues related to energy poverty;
- **provision of different services** (e.g., energy supply, sharing, advice) to members;
- **change of behaviour in the field of energy.** The involvement of citizens in the energy sector signals a change of behaviour towards cleaner energy and lower energy consumption, which is spread among the members of the energy community and the local area it operates;
- **acceptance of renewable energy projects.** Citizen participation and community co-ownership schemes raise the acceptance of renewable energy;¹⁵
- **promotion of energy democracy and effective control by local citizens;**
- **citizen empowerment.** RES projects developed by energy communities empower the citizens in the sense that the latter acquire technical knowledge, skills and capacities that go beyond the ones acquired by a traditional investor (who is usually focused only on the profitability of its shares);

¹⁵ This is acknowledged by recital 70 of the REDII, which highlights that RECs bring particular added-value on the energy market in terms of local acceptance of renewable energy project and access to additional private capital which results in local investment that traditional market players cannot provide. As the REDII stresses: “Such local involvement is all the more crucial in a context of increasing renewable energy capacity”.

- **social innovation of the energy system.** Energy community projects extend beyond generation to new areas such as energy supply, energy efficiency and electro-mobility;
- **strengthen community cohesion,** in the sense that the ability to share gains amongst their members is key for their long-term sustainability;
- **good cooperation between energy communities and local authorities.** Energy communities work close with the local authorities, while also municipalities and other local authorities can be members of an energy community. This collaboration helps both actors achieve their renewable energy and emission goals and promotes citizen participation in the energy transition;
- **education and training for members, school children, and/or the broader public.**

Citizen and community participation are crucial for a successful transition to a clean, decarbonized energy system. Participation in community projects has additional social, economic and environmental benefits, as analysed above, compared to the RES projects developed by other market players. The EU's Energy Union Strategy, and the CEP, in particular REDII, both acknowledge this. Furthermore, the IEMR (the Electricity Regulation) establishes the empowerment of consumers to act as market participants in the energy market and the energy transition as a principle of the internal energy market. The current state aid regime will need to be reformed so that it is aligned with this principle and the support allowed under this regime should take into consideration the added benefits that the community projects bring forward.

Problems the Energy Communities face

Administrative burden and costs

As stressed by the Commission in the public consultation on the EEAG, **bidding procedures may increase the administrative burden and costs**, specifically for smaller participants. This is particularly true for RECs, not only because of their size but also of their ownership structure.¹⁶ With competitive bidding for RES support, the EEAG has in several Member States precipitated a move away from fixed feed-in tariffs (which have provided the most investor certainty to smaller non-traditional market actors) towards market-based forms of support. This has made it harder for community projects to obtain finance. Second, the move to tenders has pushed energy communities out of the market. There is also evidence that the level of new installations coming on line has decreased since the

¹⁶ See Article 2 (16) (b) of the REDII: The shareholders or members of renewable energy communities shall be natural persons, SMEs or local authorities, including municipalities.

introduction of tenders. This is the case in Germany, where the latest onshore wind tender was undersubscribed. At the same time, the EEAG, and DG Competition's decisions **on capacity remuneration mechanisms, have contributed towards distortion of the market.** This is evident in the Court of Justice of the EU's recent decision to annul DG Competition's decision to approve the UK Capacity Mechanism, which favoured fossil fuels. This further distorts the market for RES and flexibility.

Increased complexity and investment risks

In more detail, when developing a project in "self-consumption" regimes, therefore when the only revenue generated with the RES project is related to consumers, **energy community projects' complexity increases (passing from 1 consumer to many) and the investment risk increases** as well, particularly for projects involving citizens in LV (e.g., energy community for condominium or city's neighbourhoods). One of the causes of the complexity's increase is the management (e.g., billing each member, sharing electricity in a fair way for all etc) that does not occur in traditional big RES project where all the electricity produced is sold on the market. Due to this, **there is no interest for private companies to invest in energy communities.** The problem increases as much as the size of the communities decreases. On a similar note, energy communities face difficulties in obtaining bank loans for their projects, as there is lack of understanding of the community energy movement. This misconception leads to lack of trust from the banks, which do not easily provide loans to finance community energy projects.

In addition, due to their unique characteristics, **RECs do not have the same means to reduce risks for investors and thus access to capital financing compared to companies and profit-oriented market players.** Young RECs cannot spread higher risk across multiple projects, because they have a small or non-existent portfolio of projects to hedge risk against. Moreover, while the REDII defines the primary purpose of a REC as to provide environmental, economic or social community benefits rather than financial profits for their shareholders or members, bidding procedures often focus on economic criteria¹⁷ without taking sufficient account of social or environmental aspects of projects. This is mainly due to the capital-intensive nature of renewable energy projects, but restricts access to state aid almost exclusively to traditional economic market players.¹⁸

¹⁷ Putting the focus only on best economic offers and the requirement for advancing a high guarantee.

¹⁸ For example, within the third tendering period for onshore wind energy in France, only one project with participatory investment was selected out of the twenty-one. In France, the risk of a decrease in the social acceptance of the projects like in Germany has thus emerged.

Access to market and local mobilisation

Furthermore, due to their local nature, RECs rely largely on finance from local members who are mostly households and small businesses. Many citizens are unable or unwilling to take on the risk of financing sunk costs for feasibility studies, permits and other administrative procedures without certainty of success, or to meet high tender participation criteria. On the same note, RECs also face the **problem of access to locations**. As they are local and they cannot compete on a national or international scale, it is harder to find locations for their projects. In this sense, access to the market is much more difficult for them. Many RECs also lack decision-making efficiency due to their democratic decision-making structures. Their reliance on volunteers or part-time staff prevents them from operating as efficiently as other project developers. As a result, in addition to the usual costs borne by applicants, RECs face additional costs related to the time and budget dedicated to local mobilization and dialogue specific to democratic decision-making structures.¹⁹

Conclusion

Consequently, it can be concluded that:

1. the current state aid regime does not adequately address this class of non-commercial market actors. The existing EEAG have prevented Member States from expanding schemes providing direct support (i.e., FiTs) to medium-sized projects, [creating a financing gap](#).

Example – UK

The UK government declined to expand FiTs for community projects from 5 MW to 10 MW due to potential issues related to the EEAG. **The EEAG's tender requirements have thus pushed citizen-owned projects out of the market.** While several national support schemes have made special provisions for citizen energy projects using the EEAG, none have actually succeeded in ensuring RECs have a level playing field.

¹⁹ ClientEarth, Competition policy supporting the Green Deal Our call for a sustainable competition policy, November 2020, page 49.

Example – France

In France, successful bids in onshore wind/solar and rooftop solar tenders that provide for citizen ownership or investment are eligible for a 'bonus' (bonus participative) in addition to a market premium. However, in order to receive the bonus, the project must be successful and there are no tools in place to address challenges local citizens face in trying to participate in the tenders. Therefore, while 36% of successful participants in tenders claim the bonus, a significant majority are crowdfunded projects that remain fully controlled by the developer and do not offer any ownership or decision-making rights to citizens.

2. Along the same lines, while the existing EEAG make special provisions for small renewable energy projects, the thresholds allowing for direct support (i.e., FITs) and exemption from participating in tenders place artificial limitations on the size of projects, regardless of the project's ownership or objectives.

RECs experience significant, distinct difficulties raising finance for projects and participating in tenders due to other unique characteristics, not just size.

Therefore, these characteristics should be taken into consideration during the revision of the EEAG and the GBER. In any case, the EEAG's thresholds exempting smaller projects and enabling aid in the form of FIT²⁰ or exemption to bidding procedures²¹ are not high enough as community projects develop and they should be increased.

3. Finally, although the EEAG, particularly the provisions on tenders, have contributed towards integrating renewables into the market, they have not been successful in lowering societal costs. As confirmed by CEER's 2018 Status Report on Renewable Support Schemes in Europe for 2016 and 2017, average support levels are still high and have only decreased slightly for new installations. Furthermore, many Member States still exempt industry from having to pay levies or taxes associated with national renewable support schemes (12 out of 28 Member States) or they even subsidise them to level the difference with neighbouring countries (e.g., Flemish Region²²). Where tenders have resulted in lower costs, for example in Germany, these lower levels of

²⁰ See para.125 and 127 of the EEAG.

²¹ See para.127 of the EEAG.

²² See the Press release of the Flemish environmental rooftop organization BBL, available at: <https://www.bondbeterleefmilieu.be/artikel/vlaamse-regering-blijft-miljoenen-geven-aan-vervuilers-om-te-blijven-vervuilen>

support have come at a significant societal cost, in particular the ability of communities to develop renewable energy projects.

In the short-term, tenders have led to a significant decrease in the amount of bottom-up citizen energy projects. In the long-term, this could have a negative impact on public acceptance of new renewable energy production installations, particularly wind.²³

Public acceptance of RES

The necessity for maintaining public support for RES is supported by the Commission's Impact Assessment for the REDII, which cited that allowing local citizens to invest can reduce negative attitudes on new projects from 60 to 12%. It is also borne out by the results of the latest onshore wind tender on Germany, the results of which were released in May 2019. Specifically, the tender was undersubscribed and of the 700 MW capacity tendered, total bids only amounted to 499 MW. According to the German Wind Energy Association (BWE), this undersubscription was due to the uncertainty in the industry due to regulatory changes, licensing procedures, and growing local resistance.

To sum up,

EEAG have made community renewable projects harder to achieve.

Moreover, it allows capacity mechanisms that favour large companies focused on keeping dirty fossil fuels in the energy system, at a high cost to consumers and at the expense of a properly functioning energy market capable of valuing flexibility.

²³ Jacobs, D., Grashof, K., Del Rio, P., Fouquet, D. (2020), The Case for a Wider Energy Policy Mix in Line with the Objectives of the Paris Agreement: Shortcomings of Renewable Energy Auctions Based on World-wide Empirical Observations. IET- International Energy Transition, IZES, Spanish National Research Council (CSIC), Becker Buttner Held. A study commissioned by Energy Watch Group (EWG), World Future Council/Global Renewables Congress (WFC/GRC), and Haleakala Stiftung, pages 34-36.

Competitive bidding process - the example of Germany

Context

Taking the above problems that the energy communities face into consideration, competitive bidding processes should not be the general rule to allocate investment and operating aid for energy and environmental purposes.²⁴

In addition to the above analysis, bidding processes being the rule leads to inequalities among the different market players. Under the principle of 'equal treatment', EU law prohibits

"treating similar situations differently and treating different situations in the same way unless there are objective reasons to do so."²⁵

If a particular market actor or class of market actors is in a sufficiently different factual and legal situation from other market participants, they should be subject to different rules unless justified by an overriding objective. Likewise, where actors are in sufficiently different positions or situations, different treatment is not considered discriminatory. If one accepts that RECs, which take on a non-commercial purpose and integrate unique ownership and governance principles, are different from other traditional commercial energy companies, then **legislation and regulation must take into account these differences to ensure equality in the internal electricity market.**

As the Commission highlights in the consultation questionnaire, competitive bidding processes require a sufficient number of projects and those projects should be sufficiently comparable. There may therefore be areas in which competitive bidding processes are less suitable, because there are not enough projects on a regular basis to organise a competitive bidding process or because projects are so diverse that a comparison of costs-only would not seem adequate. This is exactly the case with community energy projects, as their unique characteristics and additional benefits that they bring forward, like the promotion of local development and the contribution to the local economy are not taken into account in the bidding processes.

On the same note, competitive bidding procedures open to several technologies/sectors usually focus on one or very few parameters, on which participants bid and are compared,

²⁴ Question 96 of the consultation questionnaire.

²⁵ VEMW & Others (Case C17/03); Citiworks AG (Case C-439/06); & Paint Graphos Soc. coop. arl. (Joined Cases C-78/08 to C-80/08).

such as the actual aid amount for the construction of the project or the cost of delivering a MWh of renewable energy or the costs of reducing one ton of CO₂. However, there are also important environmental or social costs or benefits that cannot be internalised in a competitive bidding procedure with a broader scope. Indeed, the price is an element of the bidding procedures, but the participation of citizen or the return to the local economy can also be elements that should be taken into account in the bidding process.²⁶ Furthermore, a competitive bidding procedure across heterogeneous projects, where projects of different types all contributing to decarbonisation would compete and be compared on the basis of the cost per unit of CO₂ emission reduction would be detrimental for some sectors and lead to job loss (e.g., if only solar projects won the tenders, then the wind power industry would collapse etc).²⁷ However, in order to reach the climate neutrality target, we need all different types of projects and actors to contribute to the energy transition.

In case bidding procedures are established as a general rule, certain bidding participants could bid strategically due to their market power, preventing fair competition and obstructing the diversity of actors.²⁸ In this way, community project realisation would be so uncertain that fewer projects overall would be developed. The larger companies will prevail in all auctions,²⁹ as

"typically [the auctions] do not incentivise different project sizes simultaneously",³⁰

which leads to discrimination and unbalanced competition and clashes with the requirement of the CEP to create an enabling framework for energy communities, so that they can compete on an equal footing with other players. The fact that the bidding processes will create unfair competition and will push energy communities out of the market is vividly depicted in the example of Germany.

In Germany the 2017 EEG (German support mechanism) established a definition and special rules for 'citizens' energy companies' for onshore wind tenders. In the first three rounds of bids, 97% of successful bids came from eligible citizens energy companies. However, after assessing the individual projects in detail, it was shown that nearly all of these projects were established by bigger market players, and only 8 projects could be considered a real citizen energy project. On the other hand, for solar PV there were no preferential conditions for community projects. In the first four rounds, cooperatives

²⁶ Question 110 of the consultation questionnaire.

²⁷ Question 110 of the consultation questionnaire.

²⁸ Jacobs, D., (n 23) page 64.

²⁹ Jacobs, (n 23) pages 23-28.

³⁰ Ibid 30.

submitted 11 bids, of which only two were successful – both occurring in the third round. Co-operatives have declined to participate in subsequent rounds because they have concluded it is not possible to compete in the bidding process. They have therefore been excluded. In sum, the mechanisms that have been designed to integrate RECs into tenders show what to avoid - not best practice. A number of State aid decisions pertaining to citizen energy have been approved under the EEAG provisions exempting small installations from participating in competitive bidding. However, those decisions, and the schemes involved, have not properly addressed the particular situation of energy communities.

German tenders			
Onshore wind (preferential conditions for community projects)		Solar PV (no preferential conditions for community projects)	
First 3 rounds of bids	97% considered as citizen energy companies	First 4 rounds of bids	- 11 bids submitted by cooperatives - 2 successful bids (in round 3)
After assessing projects in detail	- nearly all of these projects were established by bigger market players - Only 8 'real' citizen energy projects	After round 4	- No more Co-operatives have participated



Analysis of German REScoop.eu members

The following analysis summarises the feedback we received from two of the REScoop.eu members in Germany describing the problems they face regarding bidding procedures.

In Germany, the problem with the auctions is the following: German energy cooperatives are not able to attend the German bidding process or have an extremely low chance of winning a bid. This is because German energy cooperatives are mostly micro or small enterprises, thus they only have limited financial capacity and work force. In contrast to big market players, they implement only one big local solar or wind power project at a time. The board of directors of the cooperative has to ask its members for this sum as equity. However, the board of directors has to tell its members that they cannot guarantee the implementation of the projects as they do not know whether the cooperative will win a bid with the project. If the cooperative does not win any tender the planning costs of up to 72.000 € for a one MW ground-mounted solar system and up to 300.000 € for one wind turbine are lost. Therefore, the members of the cooperative will not give this sum to the

board. In contrast, big market players can hand in several bids or receive several accepted bids and spread the risk over different projects and accepted bids.³¹

In addition, planning costs for small ground-mounted solar systems, which are implemented by energy cooperatives, are higher per MW installed electricity capacity than big solar projects. German energy cooperatives run mostly ground-mounted solar systems up to 5 MW. The practice shows that ground-mounted solar systems of an installed electricity capacity up to 5 MW have a cost disadvantage due to economies of scale in comparison to ground-mounted solar systems of an installed electricity capacity between 5 MW and 10 MW. Moreover, big market players can realise their projects with a lesser share of equity and lower interest on debt capital.

As a result, energy cooperatives have little chance in solar and wind tenders. They hardly take part in tenders or receive any surcharges. The figures show³² that the tender design needs to be further revised so that all market players can participate on an equal footing in tenders and the diversity of players in the expansion of renewable energies is maintained. A pragmatic and quick solution for the next EEG amendment would be the introduction of a support program with a separate envelop for citizen energy projects in solar and wind tenders.

More specifically for the wind tendering regime, the result is sobering: out of 198 successful "Citizen Energy Projects" as defined by the EEG 2017 in the first four tenders, only eight projects can be attributed to the sub-category of "open-participation" citizen energy. The overwhelming majority of the other successful bidders can be attributed to the categories regional (non-citizen-energy) and national actors and big market actors.³³ It is obvious that the first four tenders have significantly disturbed the actor plurality in the German wind onshore market. Citizen energy/community energy ("open-participation" citizen energy) has been inadequately represented in the tenders.³⁴

³¹ Jacobs, D et al, (n 23) page 34

³² At the launch of solar tenders on 1st April 2015 in Germany, there were 19 call-up rounds with a total of 730 surcharges. Energy cooperatives received only three direct surcharges. In the case of wind tenders there were five direct surcharges for 857 surcharges (15 tender rounds since 1 May 2017).

³³ Jacobs, D et al, (n 23) page 32

³⁴ The analysis is based on a scientific report written as the foundation for the Renewable Energy Act's experience report. Fraunhofer-Institut für System- und Innovationsforschung ISI (Dr. Marian Klobasa, Dr. Ben Pfluger, Benjamin Lux); Fraunhofer-Institut für Energiewirtschaft und Energiesystemtechnik IEE (Michael von Bonin, Norman Gerhardt); Institut für Klimaschutz, Energie und Mobilität (IKEM, Verena Lerm, Simon Schäfer-Stradowsky); im Unterauftrag: Prof. Dr. Uwe Holzhammer (erstellt im Auftrag des Bundesministeriums für Wirtschaft und Energie): Vorbereitung und Begleitung bei der Erstellung eines Erfahrungsberichts gemäß § 97 Erneuerbare-Energien-Gesetz; Teilvorhaben I, Querschnittsvorhaben; Wissenschaftlicher Gesamtbericht. März 2018. Its appendix is an "actor structure analysis for Wind energy onshore for the tenders May, August 2017 and February 2018", written by izes gGmbH and Leuphana University, commissioned by the German Environment Agency. German title. Akteursstrukturanalyse Windenergie an Land für die bislang erfolgten Ausschreibungsrunden Mai 2017, August 2017, November 2017 und Februar 2018. Cf. Vorbereitung und

However, the situation before the introduction of the tendering regime was different. Data up to the year of 2012 reveal that roughly 50 percent of installed capacity in Wind onshore can be attributed to citizen energy actors in a wider sense.³⁵ Another study counts 655 active cooperatives and other community energy projects in Germany dealing in Wind energy onshore.³⁶ Given the sheer amount of active community Wind projects before the tenders, it is striking to see so few (8!) actual successful projects in the first four tenders.

Regarding the solar tendering regime, in the first six tender rounds (April 2015 – December 2016) every ground-mounted solar plant between 100 kilowatts (kW) and 10 megawatts (MW) had to take part in a competitive bidding process in order to obtain the market premium. From the 1st of January 2017, every solar plant above 750 kW had to take part in a competitive bidding process in order to obtain the market premium. Only the market premium guarantees economic feasibility for solar plants above 750 kW up to now (except in rare cases of direct power purchase agreements). In the first four bidding rounds (April 2015-April 2016) eleven direct bids of energy cooperatives were accepted, while in the third round this number diminished to only two. In the following ten bidding rounds (August 2016 - March 2019) no direct bids or direct accepted bids were submitted by energy cooperatives. Furthermore, during the first six rounds only 9 out of 174 (5%) accepted bids came from solar plants from 100 kW to 750 kW.³⁷ Thus, small solar plants have hardly a chance to win a tender against big solar plants. Therefore, energy cooperatives do not have a non-discriminatory access to the German market of solar plants above 750 kW.

The period for which renewable plants in Germany receive market premiums, FiTs or landlord-to-tenant supply premiums will end for many plants in the coming years.³⁸ The above analysis illustrates that citizen energy is not particularly represented in the tenders regime. Small companies also present a downward trend since the tenders were introduced compared to large companies, which seem to establish a more dominant

Begleitung bei der Erstellung eines Erfahrungsberichts gemäß § 97 Erneuerbare-Energien-Gesetz; Teilvorhaben I, Querschnittsvorhaben; Wissenschaftlicher Gesamtbericht. April 2018., page 115.

³⁵ Cf. Trend:research and Leuphana university, 2013: Definition und Marktanalyse von Bürgerenergie in Deutschland [Definition and market analysis of citizen energy in Germany], p. 45, illustration 10. See

https://www.buendnis-buergerenergie.de/fileadmin/user_upload/downloads/Studien/Studie_Definition_und_Marktanalyse_von_Buergerenergie_in_Deutschland_BBEn.pdf. For the differentiation between Citizen Energy in a wider sense and CE in a narrow sense, see page 28.

³⁶ Franziska Kahla, Lars Holstenkamp, Jakob R. Müller, Heinrich Degenhart, 2017: Development and State of Community Energy Companies and Energy Cooperatives in Germany, page 18.

³⁷ German Federal Network Agency, available at:

https://www.bundesnetzagentur.de/DE/Sachgebiete/ElektrizitaetundGas/Unternehmen_Institutionen/Ausschreibungen/Solaranlagen/BeendeteAusschreibungen/BeendeteAusschreibungen_node.html.

³⁸ Paragraph 129 of the EEAG states that "*the aid is only granted until the plant has been fully depreciated according to normal accounting rules and any investment aid previously received must be deducted from the operating aid*".

position.³⁹ This increases market concentration⁴⁰ and distorts competition, pushing smaller players and community energy projects out of the market.

Different ways of supporting energy communities

As mentioned above, a new chapter of the EEAG should be created for RECs, which should permit Member States to put in place supportive measures that will take into account their unique characteristics regardless of their size. There are different ways of supporting energy communities, which will facilitate their development and add to the realization of an enabling framework that promotes their operation. Some of these measures will be highlighted here.

Direct Aid

To start with, direct aid is necessary to support the activities of RECs. This aid is justified by the unique benefits the community energy projects bring forward compared to the regular RES projects. Moreover, a development fund could be devoted to community energy projects, possibly at municipal/regional level, to support new energy community projects through **direct investments or mechanisms to minimize investments' risk**.

These support measures should be combined with the provision of **technical and legal advice**, which is of vital importance for the realization of community projects, as citizens that participate in energy communities often lack the technical capacity needed for the development of a renewable energy project.⁴¹ Furthermore, **the thresholds should be maintained and raised**, to guarantee the viability of community energy projects. In any case, the small installations exemptions in the EEAG should be used to directly support community projects below the thresholds and simplified rules should apply for them. This would help to lower the risks of implementing community projects, therefore increasing the chance to attract outside investors.

Simplified rules for small projects

On the same note, **simplified rules should apply for small projects**, as they face additional obstacles in entering the market.⁴² Defining small projects in the energy sector

³⁹ This information is taken from a presentation given by Katja Weiler (IZES gGmbH) on the Monitoring Akteursvielfalt-Abschlussworkshop on 28.09.2020.

⁴⁰ Jacobs, D et al, (n 23) pages 29, 32-33.

⁴¹ Three ways to promote the starting up of energy communities are: Licht approach ([The LICHT approach - REScoop](#)), Energy4All (<https://energy4all.co.uk/>) and CARES (<https://www.localenergy.scot/>).

⁴² Question 128 of the consultation questionnaire.

by their capacity installed in MW is a simple and objective method. Nevertheless, this raises issues for determining the appropriate threshold to set. **Moreover, small projects, in particular citizen-led projects such as those owned by renewable energy communities, face obstacles to participate in tenders that are partially independent from their size.**

As the Commission acknowledges in the consultation questionnaire, there is the possibility of abuses consisting in slicing projects into a multitude of small installations so they become eligible to FITs or are exempted from bidding procedures under paragraphs (125) and (127) EEAG. There are examples of **abusive small-scale renewables operators and the risk of false renewable energy communities** (that are in fact created and managed by large utilities). Even though preventing this practice is primarily a matter for national authorities – by denying concessions, operating permits and State aid to abusive projects – the Commission and the EEAG have a role to play in subjecting the grant of aid to small projects to the verification that these are genuinely independent from one another or from larger utilities and are not part of an integrated project. Member States should systematically provide evidence to the Commission that they performed an in-depth and independent control of the project in this particular respect (in addition to all controls that should be performed otherwise).⁴³

Community energy target

Another supporting measure would be for the restriction of certain capacity to be produced only from community projects, e.g., the Community Energy target in Scotland.⁴⁴ The energy communities would be better able to develop RES projects if they only compete against other energy communities.⁴⁵ This measure would incentivize the citizen participation in the energy sector and would enable fair competition environment for the creation of new energy community projects, as long as it doesn't limit the scope of the new community energy projects. An alternative could be to develop local auctions instead of national ones and incorporate other types of social and environmental indicators that would better reflect the unique characteristics of energy communities and the benefits they bring to the local society.

Moreover, following the Scottish example, governments could provide grants or loans to help community projects undertake feasibility studies, get planning and environmental or grid connection permits and so on. In Scotland, there are a number of funding

⁴³ When support falls under the scope of the GBER, Member States should keep records of such evidence at the Commission's disposal (question 129 of the consultation questionnaire).

⁴⁴ More information on the Community Energy target in Scotland can be found here:

http://www.parliament.scot/S4_EconomyEnergyandTourismCommittee/Inquiries/Community_Energy_Scotland.pdf

⁴⁵ This adheres to the principle of equality.

opportunities provided under the Community and Renewable Energy Scheme (CARES).⁴⁶ First, local non-profit community groups, community benefit societies and cooperatives, housing associations, faith groups and local authorities are eligible to receive up to GBP25k enablement grants, which can fund feasibility for energy systems or renewable energy projects, investigation of shared ownership opportunities or work to maximise the impact of community benefit societies with renewable energy projects⁴⁷. Second, these groups, along with rural businesses, are eligible to receive a loan of up to GBP150k for renewable energy projects with a reasonable chance of success. The loans can include a write-off facility that allows development risk to be mitigated.⁴⁸ Therefore, the government there provides a grant to the energy communities to participate in the tenders and if they succeeded, this grant became a loan, so it should be repaid.

Investment opportunity for RECs in all RES projects

A support measure currently implemented in the Netherlands is offering an investment opportunity to RECs in all RES projects. This is an additional financial tool to promote energy projects where citizens participate and it would allow other actors, besides public administration, to contribute to financing RES projects with citizen involvement.⁴⁹ This measure has a very positive effect on accelerating the energy transition and on enhancing citizen participation in renewable energy projects.

Bonus payment for community projects

Support to energy communities could also be granted in the form of a bonus payment for community projects. Taking for granted that there would be a clear and strict definition for energy communities, this would be an excellent way to incorporate environmental and social criteria that go beyond economic profit in public auctions. As it would determine a clear financial advantage for energy communities, we should make sure that the definition would not allow for the incorporation of hidden interests driven by big companies. The principles of effective control and autonomy should be ensured. Finally, other possible ways of supporting energy communities include tax reductions for citizens investing in community energy.⁵⁰

⁴⁶ More information can be found here: <https://www.localenergy.scot/>

⁴⁷ More information can be found here: <https://www.localenergy.scot/media/110914/cares-funding-call-2020-information-and-guidance-pack.pdf>

⁴⁸ REScoop.eu and ClientEarth, *Energy Communities under the Clean Energy Package*, Transposition Guidance, page 51 Available at: <https://www.rescoop.eu/news-and-events/press/energy-communities-under-the-clean-energy-package>

⁴⁹ For more information, please check: [Factsheet 50% lokaal eigendom - Natuur en Milieufederaties](#)

⁵⁰ For more information, please check: [Postcoderoos-regeling in het kort - Energie Samen](#)

Final remarks

The benefits the energy communities bring to the internal energy market, the need to align the EEAG and GBER with the CEP, so as to achieve climate neutrality by 2050 and the problems the energy communities face reveal the need for changes in the current regime. The EEAG and the GBER thus ought to be adapted to improve the integration of RECs into the energy market and ensure a level-playing field, while contributing to the empowerment of citizens towards decarbonisation in line with the CEP. Their revision should also support the implementation by Member States of an enabling framework for RECs as required by Article 22(4) of the REDII by giving examples of acceptable support. After all, those who primarily finance the energy transition through their tariffs, their taxes and their savings -citizens and other low voltage grid consumers- should also be able to invest in the energy transition through energy communities.

Moving forward, the EEAG need to acknowledge that market integration, and specifically tenders, are not appropriate for non-commercial market actors, in particular RECs, which are now officially acknowledged in the CEP. In particular, the EEAG should support Member States in taking citizen and community participation into account in the design of their RES support schemes, to ensure they are not excluded from the market. It may very well be appropriate to maintain specific support mechanisms for RECs such as FiTs or exclusion from tenders. The EEAG should create sufficient space for Member States to make such determinations. Also, costly and complex administrative procedures that pose a burden in applying for aid should be removed and simplified rules should apply for energy communities.

As a consequence, the EEAG need to have a better basis to properly assess schemes for citizen-owned renewable energy projects. RECs need to be explicitly recognised (consistent with the new definitions of RECs and their acknowledgment as distinct, non-commercial market actors, in the REDII) and supported in the revised EEAG.

RECs experience significant, distinct difficulties raising finance for projects and participating in tenders due to other unique characteristics, not just size.

Therefore, these characteristics should be taken into consideration during the revision of the EEAG and the GBER to ensure equality in the internal market. Regarding the thresholds, due to the fact that almost all of our members are SMEs, the higher aid intensities allowed under the EEAG are helpful in facilitating development of their activities. The existing thresholds should therefore be at least be maintained. However, the EEAG should allow Member States to set proportionately higher thresholds allowing RECs to receive fixed FiTs and to be exempted from competitive bidding. At the very least, the EEAG should better account not only for small projects but also small-to-medium-sized projects, raising

the existing thresholds pertaining to the ability to receive fixed FiTs and be exempted from tendering schemes.

The Commission should therefore consider the following options:

- 1. increasing the level of thresholds for exempting RECs from bidding procedures,⁵¹**
- 2. including a new chapter of the EEAG on energy communities, particularly RECs.**

A new chapter on energy communities is needed in order to fully support coherence between the EEAG and the CEP's provisions on energy communities. Specifically, this new chapter should permit Member States to put in place other supportive measures for RECs (e.g., providing information, providing technical and financial support, reducing administrative requirements, including community-focused bidding criteria, creating tailored bidding windows for RECs) regardless of their size. The EEAG could explicitly set specific auctions for RECs (i.e., reserving a certain quantity of capacity to be procured only from renewable energy community projects) or totally exempt them from bidding procedures to apply feed-in mechanisms only. The ideas of supporting measures developed above could also well apply to them.

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⁵¹ See §127 of the EEAG.