

RESCOOP.EU's response to CEER's consultation on its 3D Strategy and 2019 Work Programme

Questions on 3D Strategy

1. To what extent have we captured the key ongoing and anticipated trends and challenges as part of the changing energy system?

Europe is rapidly moving from a centralized energy system dominated by large companies that produce energy from dirty fossil fuels, to a decentralised energy system that values local optimization and is composed of many small actors at the distributed level that can provide clean, CO₂-free energy supply and system services. Therefore, we welcome CEER's effort to develop a strategy for how to tackle the energy transition from a regulatory perspective. We do not underestimate the challenge of regulators to keep pace with what will be an ever-changing energy system landscape.

In this respect, CEER's 3D strategy does a good job capturing the anticipated technological trends that will face the energy system as the energy transition progresses, particularly as citizens become more active in different activities across the energy system. The only thing that is largely missing is coupling between electricity and heating and cooling.

However, the 3D strategy fails to properly acknowledge the social innovation needed for the energy transition to be a success, or that this type of innovation can be met through energy communities. By *social innovation*, we mean enhancing more local and democratic ownership and decision making around energy infrastructure and resources by citizens, and by using renewable energy resources as a way to tackle local socio-economic needs such as helping vulnerable and energy poor consumers, and contributing to investments in public buildings renovations and energy efficiency, as well as broader local and regional economic revitalisation.

The Strategy also fails to convey or acknowledge that energy communities, as non-commercial market participants, may face specific and distinct challenges operating in the market compared to other traditional actors.

First, there is a need for the 3D Strategy to better acknowledge the nature of energy communities, in particular as a distinct type of market actor that brings social innovation to the energy system rather than aiming to generate profits. The Strategy does a good job at highlighting the emergence of new business models in the energy system, and in particular the active involvement of citizens (as consumers). However, this should not only be seen from a technological perspective, whereby new (typically smaller) actors, which are introducing the use of new technologies to provide innovative services, are trying to enter into the market.

Regulation needs to also acknowledge that not all participants engage in the market in order to commercialise services or to prioritise maximisation of profits for its shareholders. The distinguishing characteristics of energy communities must be acknowledged by regulators in order to ensure

equality and to develop a level playing field at national level consistent with what has been agreed in the EU Clean Energy Package.

In particular, energy communities often limit themselves in terms of market position and their ability to raise finance, because they incorporate a different statutory model of ownership and corporate governance (usually one-person-one vote) that emphasizes social capital and democratic decision making over economic expediency. Energy communities, particular energy cooperatives and social enterprises, also employ a distinct purpose that prioritises providing environmental, social and economic benefits to its members and/or to the local community, often limiting return on investment and operating with a lower profit margin. This places energy communities in distinct legal and factual situations, which even the European Court of Justice has acknowledged (see *Ministero dell'Economia e delle Finanze v Paint Graphos Soc. Coop. arl* (Joined Cases C-78/08 to C-80/8) [2011] ECR I-07611). The 3D Strategy need not provide solutions to these issues, but this dynamic should at least be acknowledged so that it can be addressed moving forward.

Second, the strategy fails to account fully for the costs and benefits of energy communities operating in the energy transition. While it is understandable that regulators would want to ensure “decarbonization at least cost”, this should not be interpreted as a purely market-based approach or a sole focus on economic cost-efficiency. There are many factors that need to be taken into account when calculating costs, in particular social costs, e.g. public acceptance (or lack thereof), and opportunity costs associated with keeping smaller actors out of the market.

More fundamentally, the calculation of costs should not be one-sided. Benefits of energy communities must be equally factored in, including greater competition, local energy security, addressing vulnerable customers, local and regional development, provision of other local social services, promotion of a circular economy, and greater return to the local economy vis-a-vis centralised (or foreign) ownership. The final 3D Strategy should take a more balanced approach to costs and benefits.

2. To what extent do our proposed strategic objectives protect and empower consumers in light of the identified opportunities and challenges?

The strategic objectives listed in CEER’s 3D Strategy provide a good start towards empowering citizens across the EU to participate in the energy transition. However, in order to fully unlock this potential, the Strategy will need a broader focus, particularly on social innovation.

Specifically, CEER’s strategic objectives to promote a market-first approach should be broadened to ensure that this approach does not prevent citizens from being empowered to develop non-commercial entities in order to participate in the market. A market-based approach must be balanced with the need to ensure there is space for smaller non-traditional market participants to get involved in the energy sector, particularly those that aim to provide public interest and social or environmental objectives, rather than profits for shareholders.

Along these lines, CEER’s strategic objectives for developing oversight and regulatory approaches for new business models and market actors needs to acknowledge small and non-traditional market actors that do not fit the traditional model of corporate ownership, control, or internal governance in the energy sector.

3. Please indicate if you identify any missing objective on which regulators should focus.

In line with our responses above, CEER's 3D Strategy should be expanded to focus on objectives which have a more 'social focus'. In particular, we identify the following missing objectives:

- **In D2**: the contribution of local, community ownership of distributed energy resources to social objectives (including citizen involvement and public acceptance of the energy transition, provision of local services, alleviation of energy poverty, empowering vulnerable consumers, social cohesion particularly between local governments and citizens) and local and regional economic development.
Furthermore, while we support the idea that all consumers should benefit in a fair way so that there is no discrimination between prosumers/passive customers, we feel that CEER's approach to the issue of fairness is far too narrow. The 3D Strategy in no way addresses the challenge of fairness with regard to how costs of the energy transition are to be allocated, particularly across industrial consumers, which are usually connected to the high voltage grid, and households and small businesses which are connected to the low and medium voltage grid. This issue cuts at the heart of fairness, and needs to be made more transparent. The existing framing of the debate pits active consumers against non-active customers, but it does so without acknowledging that overall, households and small businesses pay the majority of grid costs – not industry. The simple fact that households and small businesses are paying a majority of these costs means that, as a matter of fairness, they need to be able to benefit from participating in the energy transition. This will be essential if there is to be long-term political buy-in for the energy transition.
- **In D3**: The design of regulatory oversight and new regulatory approaches that acknowledge not just new market actors but also alternative non-commercial market actors that utilise a distinct set of ownership, control, governance, and community purpose compared to other commercial, profit-oriented market participants.

Questions on the individual deliverables

Does each work item contribute to the achievement of CEER's 3D strategy?

Yes, we believe that CEER's work items can contribute to its strategy, particularly as they pertain to citizen and community empowerment in the energy system. However, there is a need to integrate citizens and communities into CEER's general, or overall, approach towards these work items.

This is particularly relevant for the work items that have a more general, or cross-sectoral nature. For instance, the Status Review (1), the ACER/CEER Market Monitoring Report (2), the Retail Market Monitoring Report (3), and the cross-sectoral Report on Investment Conditions (9), should all contain a specific focus on active customers and energy communities.

There is a strong need to broaden this focus, as currently we see a large gap in the papers that are released from CEER. For instance, in CEER's latest report on *Tendering procedures for RES in Europe: State of play and first lessons learnt*, there is no mention/analysis of the impact that competitive

bidding has on smaller actors generally, and energy communities in particular. All that is mentioned in the report is the experience with citizen energy companies (almost none of which would actually fit the definition of a ‘renewable energy community as defined in the new Renewable Energy Directive) in onshore wind tenders in Germany. However, this description has no proper context or framing, and hence it is not very useful in providing a broader picture of the competitive disadvantages that smaller and non-traditional commercial actors can face in participating in auctions or tenders, and how these barriers can be overcome.

o Please indicate the deliverables you consider as “very important”, “important” or “not important”.

In line with our response above, we identify Work Items No 1, 2, 3, and 9 as being very important, due to their general relevance for active customers and energy communities, given the significant changes in the Clean Energy Package.

In addition, we consider the following work items to be very important:

- Work Item NO 4 – Recommendations on Dynamic Price Implementation;
- Work Item No 7 – Report on Investment Signals with Increasing RES Penetration;
- Work Item No 11 – Paper on Smart Economic Regulation of DSOs;
- Work Item No 12 – Report on Digitalisation and the DSO;
- Work Item No 13 – Report on Decarbonisation Developments in the DS Grid; and
- Work Item No 14 – Report on Procedures of Procurement of Flexibility.

Lastly, we would consider the following work items as important: Work Items 5, 8, and 15.

For the deliverables with public consultations, public hearings, workshops etc. do you intend to actively participate?

It goes without saying that we welcome any opportunity to provide input into any public discussions on items that have potential to shed light on the value of energy communities, or that have the potential to impact a level playing field for energy communities across the energy market.

Do you have any specific comments on any of the individual deliverables?

As we mentioned above (concerning Work Items No 1, 2, and 3) we hope that CEER will include a dedicated focus on active customers and energy communities, with a particular focus towards monitoring their development, the market and regulatory challenges they face, and ensuring the new rights these actors have are respected.

Furthermore, we hope that CEER can include a citizen and SME focus in Work Items No 7 and 9, as it would be particularly helpful to have a better regulatory overview of investment signals and investment conditions for citizens as a distinct group of investors in renewables and other distributed energy resource. Much of the focus on investor certainty in the energy sector to date has related to large energy companies and institutional investors.

As non-professional investors, citizens face many distinct challenges in investing in technologies so they can become active customers, including lack of information/awareness, responsibilities,

regulatory and administrative burdens, and policy uncertainty. Furthermore, energy communities, along with local authorities and other SMEs, face a number of practical and regulatory challenges in raising finance for projects, which relate to forms of support, competitive bidding procedures, and regulations around public share offers.

Lastly, we would like to emphasise that CEER's Work Items 11-14, which relate primarily to DSOs, are likely to have a significant impact on the more technologically innovative activities that energy communities envision for the future. Much of the practical, technical and regulatory arrangements around establishment and operation of community networks (i.e. micro-grids), virtual power plants, energy sharing arrangements, and procurement of flexibility services at local level will require engagement with the energy communities – not just by CEER but also by the DSOs themselves. We would like to flag these initiatives as important opportunities to begin a dialogue on how energy communities can provide benefits to the energy system, in particular by facilitating more efficient use and operation of distribution networks.