

REScoop.EU

# How can the State aid guidelines help energy communities address the energy crisis?



## Table of Contents

|                                                                                      |    |
|--------------------------------------------------------------------------------------|----|
| Introduction .....                                                                   | 2  |
| EU legal framework for RECs .....                                                    | 2  |
| The CEEAG: how Member States can develop targeted support schemes for RECs .....     | 4  |
| 1. Addressing RECs in the design of national renewables support schemes .....        | 4  |
| 1.1. Exemptions from competitive bidding for RECs .....                              | 4  |
| 1.2. Integrating RECs into competitive bidding processes with RECs in mind .....     | 5  |
| 1.3. Forms of aid .....                                                              | 7  |
| 2. Issues to consider when designing national support schemes targeting RECs .....   | 7  |
| 2.1. Requirements for the qualification of a measure as state aid .....              | 9  |
| 2.2. Justifying support to RECs to the Commission .....                              | 10 |
| Amendments to the Temporary Crisis Framework for State aid measures (TCF) .....      | 14 |
| Concluding recommendations .....                                                     | 16 |
| Annex: support schemes of Ireland and Germany .....                                  | 18 |
| 1. Ireland's support for RECs under its Renewable Energy Support Scheme (RESS) ..... | 18 |
| 2. Exempting citizen energy companies from wind and PV tenders in Germany .....      | 19 |

## 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, and must guide Member States so they can comply with their legal requirements under the CEP.

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. With its Climate, Energy and Environmental Aid Guidelines (CEEAG)<sup>1</sup> that were recently published, the European Commission (Commission) has acknowledged RECs as unique market actors and has introduced specific provisions, including exemptions from tendering procedures, in order to allow them to access renewables support schemes.

The CEEAG now provide clear and positive options that allow Member States to innovate in designing renewables support schemes that can help jump-start local community ownership of renewables production and promote social innovation.

Below we provide an analysis of the different options that the CEEAG allows Member States to pursue so they can implement their obligations under the RED II to create dedicated space for RECs in their support schemes. Moreover, we highlight the recent amendments to the Temporary Crisis Framework for State aid measures (TCF), which could be useful in helping RECs and CECs to weather some of the particular challenges in the energy crisis. Finally, in an Annex to this paper the support schemes of Ireland and Germany are highlighted as examples of Member States that have introduced specific measures for RECs in their supporting framework for renewables.

## EU legal framework for RECs

The CEP explicitly acknowledges the unique characteristics of energy communities generally and RECs in particular, and the need to mitigate challenges they face operating in the market. Their unique characteristics, including their choice of business model, non-commercial purpose, size, professional, governance and organizational structure, and way of financing projects, put them in a different legal and factual position compared to other undertakings. The Renewables Directive (RED II) recognizes that these specific characteristics of RECs "*can hamper their competition on an equal footing with large-scale players.*"<sup>2</sup> As such, the RED II foresees the adoption of national policies and measures to

---

<sup>1</sup> Guidelines on State aid for climate, environmental protection and energy 2022 C/2022/481, OJ C 80, 18.2.2022 (CEEAG)

<sup>2</sup> 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 71.

offset disadvantages RECs face due to their characteristics, in order to ease their market integration and allow them to operate in the energy system.<sup>3</sup>

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 to remove unjustified regulatory and administrative barriers, provide tools to help RECs access finance and information, and build capacity of 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.

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.”<sup>4</sup>*

Hence, Member States can reduce administrative requirements so that RECs do not have to comply with overly-rigorous criteria to be eligible to participate, or even to succeed, in tenders. Moreover, community-based bidding criteria can be introduced, meaning criteria that are not only based on best price, such as social (public acceptance, ownership/participation, local socio-economic benefit) criteria. The RED II also allows for the creation of tailored bidding procedures for RECs, taking into account that they are not commercial market actors and they cannot compete on a level playing field against commercial market participants.

Furthermore, Article 4 of the RED II allows small-scale installations to receive direct price support (i.e. fixed Feed in Tariffs (FITs)) and to be exempted from tendering procedures.<sup>5</sup> Most – if not all – of the measures that Member States may take to fulfill their obligations under the RED II have the potential to implicate State aid. That is why Member States need to navigate through the relevant provisions of State aid rules in order to design support schemes that will be accepted from the Commission.

---

<sup>3</sup> Id.

<sup>4</sup> Recast Renewable Energy Directive, Recital 26.

<sup>5</sup> Recast Renewable Energy Directive, Article 4(3)-(4).

## The CEEAG: how Member States can develop targeted support schemes for RECs

The new CEEAG include dedicated provisions for RECs acknowledging their unique market position and challenges as non-commercial market actors. First, the CEEAG include a reference to the RED II provisions on RECs highlighting that '*renewable energy community*' means renewable energy community as defined in Article 2, point (16), of the RED II.<sup>6</sup> Therefore, the specific provisions included in the CEEAG only apply to RECs and not CECs. This reinforces the importance of a correct transposition of the provisions for RECs and CECs at the national level (particularly the definitions), as it will also play a role in determining which actors receive support and how such support is designed.

The CEEAG provide a number of different ways Member States can address RECs in the design of their national support schemes. In particular, the CEEAG envision two general categories of the possibility of policies and measures regarding:

- 1) **Design of competitive bidding procedures for RECs** – the CEEAG provide the possibility for Member States to create tailored bidding processes for RECs, or to exempt RECs from competitive bidding altogether. Member States also have the discretion to include non-price-based criteria in tenders such as other policy-based objectives (local socio-economic benefit, citizen and community ownership, participation, public acceptance, etc.);
- 2) **Different types of aid for RECs** – the CEEAG provide Member States with more discretion in terms of the type of aid they award RECs.

In addition, there are a number of procedural hurdles that must be overcome in order to get a national scheme approved by DG Competition. Below, we examine the different support that the CEEAG envisions for RECs, as well as some practical, procedural and administrative issues that a Member State may need to navigate in order to design a successful support scheme.

The following Section covers options that Member States have in designing renewables support schemes more tailored to RECs. The subsequent section covers practical and procedural issues that Member States need to navigate in order to get these design options approved by the Commission.

### 1. Addressing RECs in the design of national renewables support schemes

#### 1.1. Exemptions from competitive bidding for RECs

The CEEAG provide guidance on how the Commission will assess the compatibility of environmental protection, including climate protection, and energy aid measures, which are subject to the notification requirement under Article 107(3), point (c), of the Treaty on the Functioning of the European Union (TFEU). The new State aid guidelines introduced an exemption from the requirement to allocate aid and determine the aid level through a

---

<sup>6</sup> CEEAG Section 2.4 paragraph 68.

competitive bidding process for projects that are 100% owned by a REC or Small and Medium Enterprises (SMEs). This exception provides the eligibility to receive support outside of tenders and auctions based on two thresholds:

- 1) equal to or below 6 MW installed capacity or maximum demand for all technologies; and
- 2) specifically for wind generation, equal to or below 18 MW of installed capacity to receive support without the need to go through a tendering process.<sup>7</sup>

Under the same paragraph, there are also tendering exemptions for small electricity and gas production, storage, heat generation, and electricity consumption projects under 1 MW. There is also a threshold for energy efficiency measures that do not involve generation, where they benefit SMEs and where the beneficiaries receive less than 300,000 euros per project.

This exemption from tenders perfectly aligns with the requirement of the RED II to take the specificities of RECs into account when designing support schemes. The CEEAG allow Member States to design dedicated direct support schemes (FiTs, premiums, Contracts for Differences, etc.) for RECs, without having to navigate the competitive bidding process entirely. Such schemes will be in line with the CEEAG and can be accepted by the Commission. Germany recently used the CEEAG to exempt REC wind and PV projects from competitive bidding. The details of this scheme are analysed in more detail in the Annex.

## **1.2. Integrating RECs into competitive bidding processes with RECs in mind**

The CEEAG incorporates a general presumption stating that if a Member State puts measures in place to facilitate the participation of RECs in competitive bidding, the scheme will be looked upon favorably.<sup>8</sup> This broad statement constitutes a clear signal that the Commission will be supportive of measures proposed by Member States to promote participation by RECs in their support schemes. It also aligns with recital 26 of the RED II that provides examples of what form such support can undertake.<sup>9</sup> The CEEAG also contain further specific provisions on how to integrate RECs into competitive bidding.

### **a) Design of specific tenders only for RECs**

The CEEAG includes a process for how beneficiaries, including RECs, can access different types of aid. In particular, the CEEAG allow dedicated bidding process to be designed limited to one or more specific categories of beneficiaries, when it is evidenced that a single process open to all eligible beneficiaries will create an unlevel playing field.<sup>10</sup> This can be seen as an exemption from the general rule that aid for reducing greenhouse gas emissions should in general be granted through a competitive bidding process, so that distortions of competition and trade are minimised.<sup>11</sup> These provisions allow Member

<sup>7</sup> CEEAG, Section 4.1.3.5. paragraph 107 (iv) and (v).

<sup>8</sup> CEEAG, Section 1.1.1.3. paragraph 75.

<sup>9</sup> Recital 26 highlights that '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'.

<sup>10</sup> CEEAG, Section 4.1.3.5. paragraph 104.

<sup>11</sup> CEEAG, Section 4.1.3.5. paragraph 103.

States to break up tenders into different categories so that specific types of market actors can compete against other similar market actors.

The Irish Renewable Energy Support Scheme (RESS)<sup>12</sup> serves as a good example of how Member States can design such a support scheme.<sup>13</sup> Ireland's scheme allows applicants for support to apply under a **specific Community Preference Category**. Specifically, 1.5% of the total tender capacity has been set aside for REC projects, so that they only have to compete against each other.<sup>14</sup> To be eligible, the project seeking support must qualify as a 'community-led project', meaning the project is 100% owned by a REC, either through direct ownership of the project's assets or by direct ownership of the shares in the Generator. Furthermore, 100% of the profits, dividends and surpluses derived from the project must be returned to the REC. The Irish scheme is analysed in more detail in the Annex.

## b) Non-price selection criteria in tenders

With regards to the selection criteria that will be used for ranking bids and, ultimately, for allocating the aid in the competitive bidding process, the CEEAG allow for the introduction of selection criteria based around objectives other than the price, such as social criteria like public participation and engagement. In such cases, these other criteria must account for not more than 30% of the bidding criteria.<sup>15</sup> Therefore, this provision allows Member States to create tenders aimed to balance different objectives, making sure that the social impacts of the energy community projects are taken into consideration in the process. It is unclear how the Commission would assess a scheme that aims to promote the achievement of social objectives (e.g. tackling energy poverty). As such, some guidance from the Commission on what this 30% limit means in practice would be useful.

## c) Flexibility for the realization of REC projects

In general, in order to avoid a budget being allocated to projects that are not realised, the CEEAG require Member States to demonstrate that reasonable measures will be taken to ensure that projects granted aid will actually be developed. This can be achieved, for example, through setting clear deadlines for project delivery, checking project feasibility as part of prequalification for receiving aid, requiring collateral to be paid by participants, or monitoring project development and construction. However, the CEEAG also allow Member States to adapt prequalification criteria, as well as deadlines associated with winning bids, so that they are more flexible for REC projects. Similar to eligibility for being exempted from competitive bidding, flexibility may only be provided to projects that are 100 % owned by SMEs or by RECs as a means to reduce barriers to their participation.<sup>16</sup> In practice, these requirements can penalize REC projects, which often take more time to be

---

<sup>12</sup> The current estimated budget for the RESS is between 7.2 and 12.5 billion EUR over 5 years.

<sup>13</sup> The European Commission approved the Irish support scheme (RESS) under the previous EU State aid guidelines (EEAG) with the Case SA.54683 (2020/N). The case can be found here: [https://ec.europa.eu/competition/state\\_aid/cases1/202032/286233\\_2178932\\_128\\_2.pdf](https://ec.europa.eu/competition/state_aid/cases1/202032/286233_2178932_128_2.pdf)

<sup>14</sup> A more detailed analysis of the Irish scheme can be found in the following summary document: <https://www.rescoop.eu/toolbox/what-member-states-should-know-when-designing-support-schemes-for-energy-communities-the-example-of-ireland>

<sup>15</sup> As described in CEEAG, Section 3.2.1.3. para 50.

<sup>16</sup> CEEAG, Section 4.1.4. paragraph 120.

developed due to their small size, non-professionalised nature, non-commercial purpose, and their democratic governance.

### **1.3. Forms of aid**

The previous Energy and Environmental State aid guidelines (EEAG) included more complicated rules limiting the possibility to combine different forms of operational aid (the aid a project receives for the export of renewable energy to the grid) and investment aid (the aid a project receives before starting constructing the project). Both types of aid are very important for RECs. Investment aid is typically necessary at early pre-construction phases of renewable energy and energy efficiency projects, when they are still in the feasibility and planning stages. Operational aid, such as FITs or market premiums, is necessary so that RECs can generate revenue through the production of renewable electricity to make the project bankable. It is also necessary for enabling the REC to demonstrate bankability of a project to private lenders.

The CEEAG aim for a more flexible approach than the previous guidelines. In particular, the CEAG allows the cumulation of aid (i.e. the combination of operational and investment aid, provided that there is no overcompensation).<sup>17</sup>

The CEEAG also allow Member States to design support schemes targeting decarbonisation or energy efficiency in the form of reductions in taxes or parafiscal levies such as levies financing environmental policy objectives.<sup>18</sup> The application of a competitive bidding process is not obligatory for such schemes. This provision provides room for incentivizing individuals (i.e. households) through tax reductions to invest in community renewable energy projects, although it is worth mentioning that providing support to natural persons is not considered state aid, as natural persons are not undertakings.

## **2. Issues to consider when designing national support schemes targeting RECs**

This section covers practical and procedural issues that Member States need to navigate in order to get these design options approved by the Commission. The table below summarises these issues.

---

<sup>17</sup> CEEAG, Section 1.1.1.3, paragraph 56.

<sup>18</sup> CEEAG, Section 4.1.3.5.(109).



Table 1: Issues Member States should anticipate when designing RES support schemes for RECs

| Issue to navigate                                                                       | When is it implicated                                                                                                                                                                                                                                                                                                                                                                                                                      | Why it is important                                                                                                                                                                                                                                                                                                                                                                                        |
|-----------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Relevant questions during the design phase</b>                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                            |
| <b>Is the public support State aid?</b>                                                 | Investments in RES by individuals and entities that do not exercise economic activities and that use at least 80 % of the electricity generated by that specific RES installation for "self-consumption" may fall outside the scope of State aid rules. This may create a narrow exception for REC projects that share energy, as long as production can be optimized so that at least 80 % of production is directly consumed by members. | If it is not State aid, it does not need to be notified to DG Competition. This can greatly simplify the administrative process.                                                                                                                                                                                                                                                                           |
| <b>Is the aid 'de minimis aid'?</b>                                                     | Aid is considered to be de minimis if the total amount of aid granted per Member State to a single undertaking does not exceed 200 000 EUR over any period of three fiscal years and the other conditions laid down in the de minimis Regulation are respected.                                                                                                                                                                            | If it is not State aid, it does not need to be notified to DG Competition. This can greatly simplify the administrative process.                                                                                                                                                                                                                                                                           |
| <b>Does the aid fall under the General Block Exemption Regulation (GBER)?</b>           | Currently unclear, as the GBER is still being revised.                                                                                                                                                                                                                                                                                                                                                                                     | If the aid falls under the GBER, it does not need to be approved by DG Competition - it only needs to be notified. This can greatly simplify the administrative process.                                                                                                                                                                                                                                   |
| <b>Notification and approval: Justifying support schemes for RECs to DG Competition</b> |                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                            |
| <b>Connecting REC support to a concrete policy objective</b>                            | When support is targeted towards RECs, the Member State must demonstrate that the positive effect of the aid exceeds its potential negative effects on trade and competition, which must also be minimized. This will be implicated in all types of aid to RECs.                                                                                                                                                                           | The Member State will need to link the REC support measures to the achievement of a particular policy objective. This highlights the importance of having established national objectives around the promotion of RECs or citizen participation in the energy transition.                                                                                                                                  |
| <b>Determining the funding gap</b>                                                      | If a Member State designs a competitive bidding process that is tailored for RECs (e.g. REC-only bidding), or where RECs are exempted from competitive bidding altogether.                                                                                                                                                                                                                                                                 | The Member State will be required to demonstrate that the measure fills an 'identified funding gap', to ensure that the aid is not disproportionate. This requires the development of a methodology for creating factual and counterfactual scenarios, which requires detailed knowledge around the cost-structure of the national REC sector. It also implicates a higher level of administrative burden. |
| <b>Ex post evaluation of REC support measures</b>                                       | If it is not possible for a Member State to determine the funding gap, due to the novelty of the sector.                                                                                                                                                                                                                                                                                                                                   | In Member States where the sector is new or non-existent, and development of factual and counterfactual scenarios is not possible, support for RECs may be able to be designed so that it can be monitored, evaluated, and changed over time to account for new circumstances.                                                                                                                             |
| <b>Safeguards attached to REC support</b>                                               | When support is targeted towards RECs it is likely that traditional market actors will want to access such support, which could lead to abuse of support. Safeguards are meant to protect against abuse and to ensure the aid is proportionate.                                                                                                                                                                                            | Where support is targeted towards a narrower set of market actors, built-in safeguards to avoid abuse are often seen favourably and can assist in the approval process with DG Competition. Examples of such safeguards are presented below.                                                                                                                                                               |

## 2.1. Requirements for the qualification of a measure as state aid

There are several requirements Member States must meet in order to have a state aid scheme with measures for RECs approved.<sup>19</sup> First, in order for a support measure to be considered State aid, it should constitute **support for activities of an economic nature**. The production of renewable energy for sale on the market is generally considered economic in nature. However, investments in renewable energy by individuals and entities that do not exercise economic activities and that use at least 80% of the electricity generated by that specific RES installation for "self-consumption" may fall outside the scope of State aid rules.<sup>20</sup> Also, the measure should involve the **transfer of public resources** and be **selective**, therefore targeting specific undertakings, as is the case for RECs. Moreover, what is needed is an **advantage**, within the meaning of Article 107(1) TFEU, which is any economic benefit that an undertaking could not have obtained under normal market conditions.<sup>21</sup>

Investment and operating support provided through State resources to renewable energy generation generally meets the conditions of Article 107(1) TFEU and is thus normally considered to be State aid. However, certain measures may not have an **effect on trade between Member States** and they may not **distort competition**. There might be cases of support measures which have a purely local impact and thus have no effect on trade between Member States. The Commission states that this is the case if the beneficiary supplies products or services to a limited area within a Member State and is unlikely to attract customers or investors from other Member States, and if it cannot be foreseen that the measure will have more than a marginal effect on the conditions of cross-border investments or establishments.<sup>22</sup>

### a) De minimis aid

Taking into account the high degree of liberalisation of energy markets under the EU legal framework establishing an Energy Union between Member States, renewables production may attract cross-border investments, and the relevant support measures will affect trade between Member States in most cases, if not all.<sup>23</sup> Nevertheless, the distortion of competition and effect on trade can be excluded in cases of very limited amounts of aid ("de minimis aid").<sup>24</sup> **De minimis aid** is not considered State aid. In this case, Member States do not have to notify the Commission, which does not need to approve the scheme. Aid is considered to be de minimis if the total amount of aid granted per Member State to a single undertaking does not exceed 200,000 EUR over any period of three fiscal years and the other conditions laid down in the de minimis Regulation are respected.

<sup>19</sup> The analysis of this section is based on the Commission Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union, OJ C 262, 19.7.2016

<sup>20</sup> See footnote 305 of the Notice on the notion of State aid.

<sup>21</sup> These requirements are analyzed at the Commission guiding template on aid to renewables under the RRF. The Guiding template is a working document drafted by the services of the European Commission for information purposes around the investment/operating aid for energy from renewable sources. It can be found in this link:

[https://ec.europa.eu/competition/state\\_aid/what\\_is\\_new/template\\_RFF\\_renewable\\_power\\_generation.pdf](https://ec.europa.eu/competition/state_aid/what_is_new/template_RFF_renewable_power_generation.pdf)

<sup>22</sup> Id.

<sup>23</sup> As highlighted in the Commission's guiding template on aid to renewables under the RRF.

<sup>24</sup> More information on the De minimis rule can be found here: <https://eur-lex.europa.eu/EN/legal-content/summary/de-minimis-rule-exemption-of-small-amounts-of-state-aid-from-notification.html>

## b) State aid granted without notification

As a next step, when a support measure meets the conditions above and is considered State aid, then it may be considered compatible with the internal market and can be granted without notification in the following instances:

- When the aid is covered by an existing state aid scheme, as long as the conditions of the authorisation decision are complied with;
- Any increase of up to 20% of the original budget of an aid scheme already approved by Commission decision is not considered an alteration to existing aid;
- If State aid falls under the General Block Exemption Regulation (GBER), Member States do not have to notify such State aid. However, they still have to inform the Commission that this is the case.

It is not clear how much scope Member States have to slightly modify existing schemes in order to integrate RECs, without having to go through the notification and approval process with the Commission. Further guidance would be useful, particularly for Member States looking to test new approaches, or to gradually integrate RECs into their support schemes.

## c) The General Block Exemption Regulation (GBER)

The GBER exempts certain categories of State aid from the requirement of prior notification to the Commission when the benefits to society outweigh the possible distortions of competition that the aid may cause to the Single Market. The GBER thus allocates smaller amounts of State aid as de minimis aid that does not require a priori notification to the Commission. This means that if an aid category is indicated in the GBER, a Member State can move forward with it without having to notify the Commission and they will not scrutinize it. This can save time and administrative burden for Member States. The GBER is currently under revision and it is very likely that it will include supportive provisions on RECs.

### **2.2. Justifying support to RECs to the Commission**

If the measure constitutes State aid and does not fall under one of the cases above, the Member State should notify the measure to the Commission for approval before implementation. Investment aid and operating aid to energy from renewable sources may be declared compatible under Article 107(3)(c) TFEU if it facilitates the development of certain economic activity in a manner that contributes to environmental protection and does not adversely affect trading conditions to an extent contrary to the common interest.<sup>25</sup>

In order to assess whether State aid to renewable energy, thus a potential measure to support REC projects, can be considered compatible with the internal market, the Commission analyses:

- whether the design of the aid measure ensures that the positive effect of the aid on the development of the supported economic activity (positive condition) exceeds its potential negative effects on trade and competition (negative condition); and

---

<sup>25</sup> As highlighted in the Commission's guiding template on aid to renewables under the RRF.

- whether the latter are kept to the minimum.

In this process summarized above, there are certain practical issues that a Member State must consider when justifying a renewables support scheme for RECs to the Commission, some of which are complex and technical.

#### a) The aid should aim to reach a REC objective

First, the Member States will need to justify the aid by connecting it to the establishment of national objectives for the development of RECs.<sup>26</sup> In other words, they need to identify an objective that they plan to achieve by supporting energy communities. The Member State also needs to showcase, or explain, how the aid will be directed towards achieving this policy objective.

The example of the Irish support scheme is instrumental in this case. Ireland justified the preference category and additional features for RECs on the basis of **the longer term potential of the energy community projects to contribute to environmental protection and decarbonization**. The Commission considered their support scheme compatible with the State aid guidelines and the justification adequate. Ireland has also integrated a specific objective to support RECs in their National Energy and Climate Plan (NECP). Although such an objective is not a formal requirement for Member States, it is helpful in providing a policy basis for setting up a support scheme for RECs, which can be effectively communicated to the Commission.

#### b) Developing a factual and counterfactual scenario

Under the CEEAG, there is a general presumption that open competitive bidding for support will ensure competition and minimise market distortion. Where a Member State wants to create a more targeted bidding procedures for different market actors, the CEEAG require the Member State to justify why such exclusion is necessary. This may create additional administrative burden, and needs to be taken into account where a Member State decides to design a competitive process for RECs.<sup>27</sup>

Specifically, when the aid is not granted to RECs through an open competitive bidding process, the Member State must show that there is a 'funding gap', which must be demonstrated through designing a factual and counterfactual scenario.<sup>28</sup> The funding gap determined for REC projects can be calculated as follows: it is the difference between the cost a REC undertakes to get a project operationalised and the amount of support that is needed to get the project up and running.

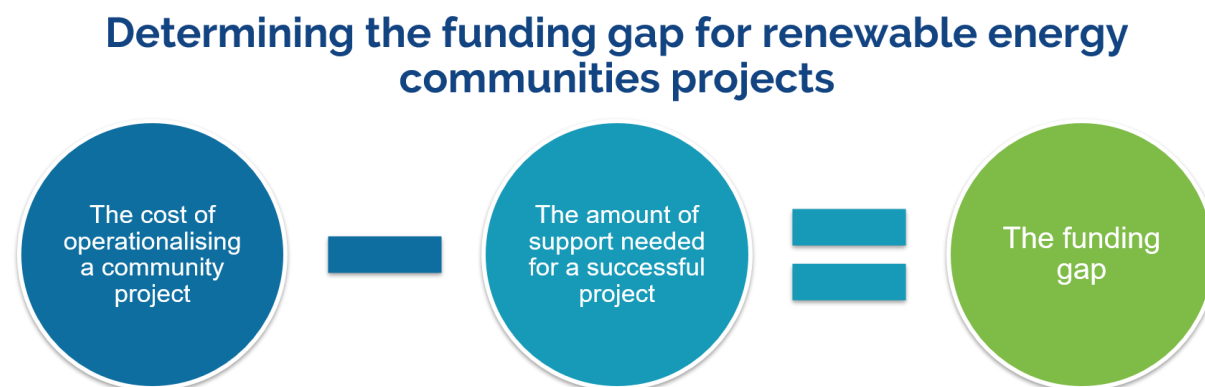
---

<sup>26</sup> Article 25 of the CEEAG states that 'Member States must also describe if and how the aid will contribute to the achievement of objectives of Union climate policy, environmental policy and energy policy and more specifically, the expected benefits of the aid in terms of its material contribution to environmental protection, including climate change mitigation, or the efficient functioning of the internal energy market.'

<sup>27</sup> CEEAG, Section 3.2.1.3. paragraph 49.

<sup>28</sup> CEEAG, Section 3.2.1.3. paragraph 51.

Figure 1: Justifying the need for closed tenders: demonstrating the funding gap



This funding gap must normally be determined through the development of a counterfactual scenario for community-specific schemes. This is a methodology aimed to demonstrate to the Commission that the project would not be as big or might not be realised at all without such aid. What is needed is to basically demonstrate what can be achieved without the aid, and what can be achieved with the aid, with the funding gap being the difference between those two figures.<sup>29</sup> It is important to note that unless RECs are well understood or developed at national level, it may be difficult for a Member State to develop a counter-factual scenario.

#### c) Ex post evaluation

Often for newer schemes, or where a sector is still nascent, it can be hard to develop such a scenario. In this case, the CEEAG provide for the possibility of an ex post evaluation.<sup>30</sup> With the ex post evaluation the Commission allows a scheme to go forward, but requires the Member State to put in place requirements to monitor and oversee how it operates. This is required because new approaches do not always work as planned, for instance when certain market actors try to hijack incentives provided for other targeted beneficiaries. The Commission thus wants to include the element of monitoring and oversight, so that these findings are fed into the process.

An example of such ex post evaluation can be found in the Irish case, as the RESS scheme, together with specific measures for RECs and community projects, will be evaluated after 5 years according to an evaluation plan.<sup>31</sup> The evaluation will include questions and indicators in order to assess the overall impact and effects of the RESS scheme, including specific elements such as the community preference category in the auctions. The central focus of the evaluation will be on assessing what would have happened in the absence of the RESS scheme.<sup>32</sup> As more Member States, particularly in Central and Eastern Europe, begin to design support schemes for RECs, it is likely that they will need to focus on developing ex post evaluation measures. This will also reduce the administrative burden involved in getting the support scheme approved by DG Competition.

<sup>29</sup> A more thorough explanation can be found in paragraphs 51-54 of the CEEAG.

<sup>30</sup> CEEAG, Section 3.2.1.3. paragraph.

<sup>31</sup> See section 2.7. of the Case on Ireland.

<sup>32</sup> Paragraph 64 of the Case on Ireland.

#### d) Safeguard measures

Specific safeguard requirements are not included under the CEEAG. However, safeguard measures can be helpful to ensure support is not abused, and will generally be more likely to be seen favourably by the Commission if they are included within a scheme's design. Given past experience and abuse of previous support schemes for RECs by other market participants, particularly in Germany, safeguard measures are likely to be needed to ensure that the support scheme balances achievement of policy objectives against potential market distortion.

The Irish support scheme incorporates a number of measures intended to contain its overall impact on the RESS scheme and to ensure learning can be obtained for the design of future support measures. First, the scheme includes several caps. Specifically, RESS sets a maximum size limit for community projects of 5 MW installed capacity. Furthermore, the overall scheme is capped at 30 GWh / year (subject to achieving sufficient competition in the auction) of community projects, which is 1% of the potential maximum renewable energy that will be supported in the first auction. This could be met, for example, by a 6 x 5 MW solar farm. After the first round, ownership requirements were also raised from 51% REC ownership to 100% ownership.

Second, in order to qualify as a community-led project under RESS, a project must submit a declaration to the Transmission System Operator (TSO) stating that it meets the criteria of being a REC. In turn, the TSO's handling of qualification for RESS is monitored by an Auction Monitor, which is overseen by the National Energy Regulator for Ireland, the Commission for the Regulation of Utilities (CRU). The inclusion of monitoring and oversight in the support scheme's design can be done by assigning a monitoring body that supervises and checks (ex-ante and ex post) that RECs comply with the national legislation and thus avoid abuse of the concept. Such a supervisory function is lacking in countries where a hijacking phenomenon has been observed, such as Greece and Germany.<sup>33</sup>

Another simple safeguard measure is to have a robust REC definition in place. This includes proper transposition of the REC definition from the RED II, along with further and more precise details on how each of the criteria of the definitions should be met (i.e. non-commercial purpose, openness, voluntary participation, local effective control and autonomy).

Finally, what should be highlighted is that energy communities are sensitive to changes in policy, especially changes in support schemes. Therefore, it is important to balance the need for investors certainty of RECs and their members when designing a flexible ex post evaluation framework that might imply necessary changes over time.

---

<sup>33</sup> In Germany, the National Regulatory Authority, Bundesnetzagentur, oversees the functioning of auctions. However, the definition of a 'citizen energy community' was too broad and they did not have a duty to scrutinize compliance with the definition until after the auction results were available.

## Amendments to the Temporary Crisis Framework for State aid measures (TCF)

In March 2022, the Commission adopted the TCF to support the economy following the invasion of Russia to Ukraine. This framework provides compatibility assessment criteria for aid measures that Member States may take to remedy the liquidity shortage faced by undertakings directly or indirectly affected by the aggression against Ukraine. In July 2022,<sup>34</sup> the Commission introduced amendments to the TCF adding two new aid categories in line with the REPowerEU Plan, one of which focuses on aiding measures accelerating the rollout of renewable energy, storage and renewable heat. Under this category, Member States can set up schemes for investments in renewable energy.

The Member States still have to notify their measures under the TCF to the Commission and there are certain compatibility requirements. The aid should be limited in time and the Member State needs to prove that it is necessary, appropriate and proportionate to remedy a serious disturbance in its economy. The aid can be provided in the form of direct grants, repayable advances, loans, guarantees or tax advantages. It is mandatory to set up competitive bidding procedures, except if:

- The aid is granted in the form of tax advantages, if it is granted the same way for all beneficiaries in the same sector; or
- The aid is granted per undertaking and per project less than 20 million EUR and the aid beneficiaries are small projects.

In the latter case, the same thresholds hold true as provided in the CEEAG, meaning that there is an exception from tendering processes for 100 % RECs owned projects that are less or equal to 6 MW installed capacity or maximum demand and 18 MW for wind projects. The main difference between the TCF and the CEEAG in this case is that the Commission has a fast track procedure to assess those schemes quicker, as they are limited in time. The aid should be granted by 31 December 2023 at the latest, while the installations should be completed and in operation within 24 months after the granting date.

Germany already submitted an amendment to their scheme under the TCF, which was accepted by the Commission.<sup>35</sup> Under the TCF, the Commission has approved the amendments to existing German umbrella schemes, including their prolongation and an up to €45 billion overall budget increase, to support companies in the context of Russia's war against Ukraine. Germany notified, among others, the following modifications of the existing schemes:

- i. an extension of the period in relation to which aid may be granted, until 31 December 2023; and
- ii. the introduction of the possibility to convert debt instruments, such as loans and guarantees, into other forms of aid, such as direct grants.

When it comes to limited amounts of aid in particular, Germany notified:

<sup>34</sup> The TCF has been amended a second time in October 2022. More information on the changes can be found here: [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_22\\_6468](https://ec.europa.eu/commission/presscorner/detail/en/IP_22_6468)

<sup>35</sup> The Commission decision can be found here:

[https://ec.europa.eu/commission/presscorner/detail/en/IP\\_22\\_7084](https://ec.europa.eu/commission/presscorner/detail/en/IP_22_7084)

- i. an increase of the maximum aid ceilings, in line with the TCF as amended, resulting in an overall budget increase by up to €45 billion; and
- ii. the introduction of the possibility to channel the aid through an energy supplier.

The Commission found that the German schemes, as modified, remain necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State, in line with Article 107(3)(b) TFEU and the conditions set out in the TCF as amended on 28 October 2022 and therefore approved the amendments under EU State aid rules.



## Concluding recommendations

Taking the above analysis into consideration, a renewables support scheme that takes the specificities of RECs into account is possible under the CEEAG and required under the RED II. The example of Ireland shows that even under the previous State aid guidelines, which did not mention RECs explicitly, supportive measures such as exemptions from tenders and other tailored bidding procedures for RECs were possible, as they were considered in line with the requirements of the Clean Energy Package, albeit more difficult to get approval by DG Competition. Nevertheless, the CEEAG provide much more clarity and supportive language for Member States so they can integrate RECs into their renewables support schemes in line with their obligations under the RED II.

Now that the CEEAG have been finalized, and in the context of the energy crisis and the TCF, this section provides national and EU level recommendations on how to make the most out of designing support schemes for RECs.

Some **recommendations for the Member States** include:

- 1) In order to be in line with the current CEEAG and the RED II provisions, Member States need to set up support schemes with specific references to RECs and ensure that they establish a good rationale (necessity) for any proposed REC measures. Furthermore, such eligibility should be limited according to size of production installations, and be limited to a certain percentage of overall support being granted under the scheme. Such schemes should be accompanied with proper safeguards to ensure against abuse, therefore oversight should be guaranteed with compliance quality control by an Authority. Furthermore, they should include monitoring mechanisms that are capable of feeding in new information around impacts (i.e. costs and benefits) of such measures, including their impact on competition and the ability for RECs to access support on a level playing field with other market actors.
- 2) While developing support schemes for RECs, it is important to keep in mind that energy communities are sensitive to changes in policy, especially changes in support schemes. As such there is a need to balance investor certainty of smaller market actors against having some flexible ex post evaluation framework, which might imply necessary changes over time.
- 3) Moreover, energy communities face several issues concerning access to financial support (e.g. difficulty in accessing loans due to their governance structure etc.) and therefore there is a need for a well-designed definition of RECs at the national transposition, as well as guidance to make sure that most energy communities can fall into the scope of the definition and receive State aid exemptions (keeping in mind that the CEEAG provisions only refer to RECs).
- 4) Member States should explore new types of renewables support schemes that support policy objectives, such as promotion of local ownership, benefit and public acceptance. Given the context of the energy crisis, and the acknowledgment that RECs can be part of addressing energy poverty, Member States should consider putting in place support schemes for projects that aim to prioritise energy solidarity or addressing vulnerable, low-income, or energy poor households.

- 5) Member States should ensure proper transposition of REC provisions contained in the RED II, particularly around the criteria of the REC definitions. This will help ensure against abuse, especially if it is connected to oversight by a regulatory authority. Furthermore, Member States should ensure important elements of their enabling frameworks are in place, particularly to address challenges around pre-construction finance, capacity building, and lack of expertise.

At the EU level, **recommendations directed towards the Commission** include:

- 1) The Commission (i.e. DG Competition) should publish guidance to Member States and RECs, in order to explain technical and substantive aspects of the CEEAG with regards to RECs that are not clear. This guidance should include:
  - how Member States can design support schemes around different policy (e.g. social) objectives,
  - how to operationalise the 30% limit on the social criteria in tenders;
  - how RECs can meet the 100% ownership requirement;
  - how counter-factual analyses can be undertaken by Member States;
  - concrete instances where Member States do not need to notify, or receive prior approval for their support schemes for RECs; and
  - provide specific guidance to Member States and to energy communities on how the TCF can be utilized during the energy crisis.
- 2) The Commission should make full use of ex post monitoring in lieu of requiring Member States to undertake a counterfactual scenario, particularly for Member States where RECs are a new concept. This will reduce administrative burden for Member States in getting their schemes approved, and it will allow for more experimentation in the early stages of developing renewables support schemes for RECs.
- 3) Finally, the Commission should make sure to align the CEEAG and the GBER and include references for RECs on the latter as well, so that Member States are better equipped and informed into the design of support schemes with specific provisions for energy communities.

## Annex: support schemes of Ireland and Germany

### 1. Ireland's support for RECs under its Renewable Energy Support Scheme (RESS)

Some Member States have already introduced measures for RECs in their national support schemes. Ireland included specific provisions for RECs in their RESS scheme, which aims to support renewable energy production in Ireland generally. Specifically, a percentage of capacity being auctioned off has been ringfenced for projects that qualify as community-led projects. Originally, projects needed to be 51% owned by RECs, although after the first round of RESS, this threshold was raised to 100% REC ownership in order to avoid abuse. Under this scheme, RECs only need to compete with each other, instead of larger project developers.

As part of RESS support, the Irish Department of Environment, Climate and Communications (DECC) has also put in place other supportive measures, such as access to expertise and advice, development assistance to help finance early works, and a special process to be able to apply for grid connections outside the normal 'batch' process. Furthermore, The Sustainable Energy Authority of Ireland (SEA) has been given the responsibility of setting up an online information portal, aimed to copy the CARES Scotland model. This will help establish an online one-stop shop, where RECs can get information on permitting, financing and other technical/legal questions that must be dealt with.

In more detail, Ireland's RESS Scheme provides a 2 way feed-in premium for community production projects. It also explicitly takes into account "other appropriate policy considerations such as community considerations and renewable generation technology diversity objectives" into the design of the scheme. Projects between 1 MW and 5MW that are community-led qualify for a special 'Community Preference Category' of RESS, which is a ringfenced tender process for community projects. If the project qualifies, it is not required to submit a Bid Bond or Performance Security. Furthermore, a community-led project does not need to have planning permission to apply for a grid connection (although it is necessary before a grid connection can be issued). Moreover, the Government is currently consulting on a 'Clean Export Premium', which would allow installations between 6 kWp and 50 kWp to receive a guaranteed export tariff support for new installations, which would be fixed for 15 years.

Ireland's RESS Scheme also includes the establishment of a "Community Benefit Fund", which must be set up by a Generator participating in RESS. Successful bids are required to contribute €2 per MWh to such fund for the benefit of the community. There is a 'Good Practice Principles Handbook' that lays out a range of principles and guidance for Generators in order to ensure the successful operation and delivery of Community Benefit Funds. This includes the need to ensure community participation in fund decision-making via the establishment of a local committee, which should encourage successful dispersal of funds.

There are additional rules for administration and distribution of funds including:

(a) in respect of Onshore Wind RESS 2 Projects, a minimum of €1,000 shall be paid to each household located within a distance of a 1 kilometer radius from the Onshore Wind RESS

2 Project. The 1 kilometer distance specified is measured from the base of the nearest turbine of the RESS 2 Project to the nearest part of the structure of the household, the location of which is identified in the postal geo-directory;

(b) a minimum of 40% of the funds shall be paid to not-for-profit community enterprises whose primary focus or aim is the promotion of initiatives towards the delivery of the UN Sustainable Development Goals, in particular Goals 4, 7, 11 and 13, including education, energy efficiency, sustainable energy and climate action initiatives;

(c) a maximum of 10% of the funds may be spent on administration. This is to ensure successful outcomes and good governance of the Community Benefit Fund. The Generator may supplement this spend on administration from its own funds should it be deemed necessary to do so; and

(d) the balance of the funds shall be spent on: (i) initiatives successful in the annual application process, as proposed by clubs and societies and similar not-for-profit entities; and (ii) in respect of Onshore Wind RESS 2 Projects, on "near neighbor payments" for households located outside a distance of 1 kilometer from the RESS 2 Project, but within a distance of 2 kilometers from such RESS 2 Project. The distance specified is from the base of the nearest turbine to the nearest part of the structure of the occupied residence, the location of which is identified in the postal geo-directory.

For its Offshore Competition under the Renewable Support Scheme (ORESS 1), DECC has set up a Community Benefit Fund, so that local coastal communities benefit from offshore renewables development. DECC is currently consulting on Rules & Guidance to include in ORESS 1. These Terms & Conditions will together set out the basis on which each fund must be established and how it must be conducted so as to be properly representative of the local community and wholly inclusive in all its decision-making. This includes regulatory and compliance obligations.

The RESS scheme so far has allowed REC projects to participate in the support scheme; however, due to other challenges around getting a grid connection, none of these projects are yet operational. Nevertheless, the scheme can provide inspiration to other Member States looking to get RECs off the ground. Having said that, there is still a lot of support measures missing from the enabling framework, and the Irish Government's transposition process is not yet complete.<sup>36</sup>

## **2. Exempting citizen energy companies from wind and PV tenders in Germany**

In an amendment to the Renewable Energy Sources Act (EEG) in 2022, the German Government reformed its framework for renewables support schemes. In particular, the government reintroduced exemptions for 'citizen energy companies' from the requirement to participate in tenders to be able to receive support.

Under a previous scheme, introduced in 2016, the government had introduced a fairly loose definition of citizen energy companies, allowing them to benefit from certain

---

<sup>36</sup> The REScoop.eu transposition tracker provides more information on how the transposition process of the EU provisions for RECs is moving forward in Ireland: <https://www.rescoop.eu/policy/ireland>

exemptions while still needing to participate in tenders for wind projects above 750 kW. However, the criteria was not strict enough, and therefore in subsequent tenders under the scheme, more than 90% of winning bids came from citizen energy companies that were not unique citizen initiatives.

Under the new amendments, this definition is strengthened significantly to prevent abuse or corporate capture. In return, REC-owned wind and solar projects (up to 18 MW for wind and up to 6 MW for solar) are fully exempted from having to participate in tenders. This is limited to one project every three years, limiting access to the scheme. Furthermore, a grant-to-loan scheme has been put in place so that citizen energy companies can fund necessary preliminary works before construction begins (e.g. feasibility studies, planning permits, legal assistance, etc.). If the project goes forward, the grant that the citizen energy company receives turns into a loan, so that it can be repaid.

Citizen energy companies that qualify under the new definition are exempted from the tendering process. This includes wind turbines on land owned by 'citizen energy companies' (defined in the EEG in line with the REC definition from the Renewables Directive) with an installed capacity of up to and including 18 MW. All solar systems with an installed capacity of up to and including 1 MW are exempted, and solar systems owned by citizen energy companies with an installed capacity of up to and including 6 MW are exempted from tenders. These thresholds make the most of what is allowed under the new CEEAG.

There are a couple of important elements that have been integrated into the tendering exemption for RECs, mainly to prevent corporate capture and abuse, as this was a big problem in previous schemes to allow RECs to participate in auctions. First is the definition. It has been significantly narrowed, in particular to require a high level of citizen involvement and control. There is also a limit to how often a REC can use this tendering exemption. Specifically, only companies who have not commissioned any plants of the same technology and the same segment (segment = either ground mounted or roof top above 1 MW) in the previous three years have the right to be exempted for the particular project of the same technology and the same segment.

The above limitations should help prevent abuse, while also providing RECs with a bike lane to access renewables support, without having to compete against larger more professional project developers.

With regards to the form of support for community production projects:

- Feed-in tariffs are available for installations under 100 kW;
- Guaranteed market premium is available for installations under 1 MW;
- Above 1 MW, citizen energy companies receive a price according to the winning bids from the tenders under the normal competitive bidding process (i.e. tender). In this sense, they do not need to worry about submitting a bid for their project.

The 2022 Amendments to the EEG establish a Grant-to-loan scheme for Citizen Energy Companies. Funding is provided for the costs of the planning and approval phase of onshore wind energy plants. Eligible measures include all measures in the preliminary planning of a project (such as feasibility studies, site analyses, economic feasibility calculations) as well as other necessary expert opinions that contribute to the realization

of the wind energy plants. Up to 70% of the costs for the planning and approval of wind energy projects can be subsidized, up to a maximum of 200,000 euros (maximum subsidy limit according to the De minimis Regulation within three fiscal years). The subsidy must be repaid if an EEG subsidy has been registered, or if an award has been made in an EEG tender procedure.

While the effectiveness of the scheme can only be determined after experience, this new scheme has the potential to help RECs grow in Germany, and serves as an example of how support schemes can evolve over time to ensure community-led renewable energy projects are able to receive support.<sup>37</sup>

---

<sup>37</sup> More information on the transposition process of the EU provisions for RECs in Germany can be found here: <https://www.rescoop.eu/policy/germany-2>