

REScoop.eu feedback on Roadmaps pertaining to the EEAG

Introduction

REScoop.eu is a European federation that represents local citizen-owned cooperatives and energy initiatives, now recognised as ‘citizens energy communities’ (CECs) and ‘renewable energy communities’ (RECs) by the *Clean Energy for All Europeans* (CEP) Package.¹ We currently represent around 1,500 of these energy communities across 13 different Member States. These energy communities operate across the energy system, from generation and supply of renewable energy to performance of energy efficiency services, heat and electricity distribution, electric mobility, demand response, and other activities involving flexibility. Almost all of our members are small and medium enterprises (SMEs).

We would like to respond to the Roadmaps that were released by DG Competition, namely on:

- 1) the Fitness check of State aid rules; and
- 2) the Prolongation of the State aid rules reformed under the State aid modernization (SAM) package and expiring by the end of 2020.

Below, we would like to highlight several points that we intend to expand upon as DG Competition’s Fitness Check of State aid rules continues. In this regard, we are currently putting together data on our members experience with the existing Energy and Environmental Aid Guidelines (EEAG). We look forward to providing this data to DG Competition as it conducts a Fitness Check of the EEAG.

Before responding to the Roadmaps, we would like to provide some policy context regarding the type of business model represented by energy communities, and cooperatives in particular.

1. Energy communities represent a unique business model that the EU has determined is indispensable for a successful energy transition

Energy communities, in particular RECs, represent a different type of market actor compared to traditional commercial undertakings. Together, their unique characteristics place energy communities, and those that organise as cooperatives in particular,² in a legally and situationally different position.

First, the aims of energy communities are different from traditional commercial enterprises. This is reflected in the use of social or cooperative-oriented ownership models, instead of the pursuit of profits. Relatedly, the participants in an energy community are often required to accept a lower level of return on investment. This alternative purpose allows the community to focus on developing additional local renewables projects or providing its members with services. It also allows energy communities to focus on delivering socio-economic benefits to the local community, for example fight energy poverty, creating solidarity schemes to help members that

¹ For the purposes of our submission, to the extent possible we will refer specifically to RECs or CECs. In instances where no differentiation is required, we refer generically to ‘energy communities’.

² See Court of Justice of the EU (CJEU). Joined Cases C-78/08 to C-80/08, *Paint Graphos Soc. coop. arl* [2011] C 311/06.

are vulnerable, fund education initiatives on energy, or invest in/renovate local infrastructure, such as public buildings.

Second, energy communities operate internal ownership and governance structures based on voluntary, open and democratic (or autonomous) decision-making based on the one-person-one-vote principle. Cooperatives in particular integrate a set of seven *International Cooperative Alliance Principles*.³ This model is advantageous in that it promotes benefits that energy communities provide. At the same time, however, this particular governance model presents challenges for energy communities in terms of decision-making efficiency, and obtaining finance for their activities.

Third, energy communities are often organised at local level through the dedicated commitment of individuals, which may or may not have expertise in the energy field. Because of their start-up nature, they often rely on limited paid staff or volunteers. Therefore, energy communities often experience difficulties navigating complex administrative procedures and engaging with distribution system operators and regulators.

The new CEP explicitly acknowledges the unique characteristics of energy communities, citing them as providing added value in terms of different environmental, economic and social benefits, as well as challenges in operating in the market. The Provisional Agreement on the Recast Electricity Directive acknowledges the alternative purpose of CECs, stating that “Community energy initiatives focus primarily on providing affordable energy of a specific kind, such as renewable energy, for their members or shareholders rather than prioritising profit-making like a traditional energy company.”⁴ Furthermore, it acknowledges that:

“Citizens energy communities constitute a new type of entity due to their membership structure, governance requirements and purpose. They should be allowed to operate on the market on a level-playing field without distorting competition subject to rights and obligations as the other electricity undertakings in a non-discriminatory and proportionate manner.”⁵

Furthermore, Directive 2018/2001 (Recast Renewable Energy Directive) states that the specific characteristics of RECs, including size, ownership structure, and their number of projects “can hamper their competition on an equal footing with large-scale players.”⁶

The Commission based its proposals for a new EU framework for energy communities on the premise that acknowledgment and support for particular forms of citizen ownership and involvement in the market is necessary to successfully transition Europe to a clean, decarbonised energy system. In particular, the Renewable Energy Directive acknowledges that RECs help address socio-economic issues such as energy poverty, and allow those that could not otherwise be able participate in the energy transition, such as vulnerable consumers and tenants.⁷ The Directive also notes that RECs add value in many different ways, including enhancing local acceptance of new renewables projects, increasing the amount of capital available for local investment, choice for consumers, and greater participation by citizens in the energy transition.⁸

³ International Cooperative Alliance. *Cooperative identity, values and principles*. Available at: <https://www.ica.coop/en/cooperatives/cooperative-identity>.

⁴ Provisional agreement between the European Parliament and the Council on Directive (EU 2019/.... Of the European Parliament and of the Council on common rules for the internal market in electricity (recast) (Provisionally Agreed Electricity Directive), Recital 30.

⁵ Provisionally Agreed Electricity Directive, Recital 30c.

⁶ Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources (recast) OJ L328/82, 21.12.2018 (Recast Renewable Energy Directive), Recital 71.

⁷ Recast Renewable Energy Directive, Recital 67.

⁸ Recast Renewable Energy Directive, Recital 70.

For the above reasons, the Provisional Agreement on the Recast Electricity Directive and the Recast Renewable Energy Directive aim to promote and support the development of energy communities by ensuring a level playing field so they are able to participate in the energy market along with other market actors.

2. Fitness check of State aid rules

At the moment, RECs, are disadvantaged because of the existing EEAG. Specifically, the EEAG's move to eliminate fixed forms of remuneration (e.g. feed-in tariffs, or FiTs) in exchange for market-based tendering/auctions has made it much more difficult for RECs to finance renewable projects. While the EEAG adopts thresholds exempting smaller projects, it fails to provide sufficient space for RECs. This is largely due to the fact that RECs did not have any explicit acknowledgment in EU policy, or the EEAG itself, when they were adopted.

It is well known that auctions/tenders pose significant barriers to participation from smaller players.⁹ However, RECs experience significant difficulties raising finance for projects and participating in tenders due to other unique characteristics, not just size. For instance, due to their local nature, they rely largely on finance from local members, who are mostly households and small businesses. They also lack decision-making efficiency due to their democratic decision-making structures. In addition, their reliance on volunteers or part-time staff prevents them from operating as efficiently as other project developers. Furthermore, young RECs are unable to spread higher risk across multiple projects, because they have a very small or non-existent portfolio of projects to hedge risk against. Lastly, 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 participation criteria.

RECs can compete successfully in tenders. However, this is usually the case where tender criteria go beyond least-cost approaches and include other criteria such as citizen participation and local community benefits. Such an approach has existed for some time in local municipal tenders to develop renewables in Belgium, with relative success for RECs there.¹⁰

While the existing EEAG make special provisions for small renewable energy projects, the thresholds that are established place artificial limitations on the size of projects, regardless of the project's ownership or objectives. It also fails to acknowledge the challenges that energy communities face in participating in tenders and auctions, regardless of whether they are small or medium-sized. The EEAG's thresholds have in some cases prevented Member States from expanding support schemes for community projects, such as in the UK. In other instances, they have been used by Member States to place stricter requirements on energy communities to participate in tenders, such as in Germany.

During its fitness check, we expect DG Competition to look closely at the role RECs play in the market, their potential to contribute to EU climate and energy policy objectives, and the unique challenges that they face in participating in auctions and tenders, based on the characteristics that differentiate them from traditional commercial undertakings. We hope that based on this assessment, DG Competition will consider raising the thresholds that exist under the current

⁹ Ecofys (2013). *Design features of support schemes for renewable electricity, Task 2 report* within the European Project "Cooperation between EU MS under the Renewable Energy Directive and interaction with support schemes"; IRENA (2015). "Renewable Energy Auctions: A Guide to Design"; and AURES (2016). "Recommendations on the role of auctions in a new renewable energy directive".

¹⁰ REScoop MECISE (2019). *Mobilising European Citizens to Invest in Sustainable Energy: Final results oriented report of the REScoop MECISE Horizon 2020 Project*, p 57. Available at: <https://uploads.strikinglycdn.com/files/d6207111-e449-4d97-957e-0f89d5ba91fd/Mobilising%20European%20Citizens%20to%20Invest%20in%20Sustainable%20Energy.pdf>.

EEAG, in particular for solar photovoltaics, that exempt smaller renewables generation installations from participating in tenders and auctions.

3. Prolongation of state aid rules under the state aid modernization package expiring end of 2020

The EEAG need to support delivery of the EU's climate and energy objectives. In its original *Communication on a Framework Strategy for a Resilient Energy with a Forward-Looking Climate Change Policy*, 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."¹¹

Based on its vision for an Energy Union, the Commission made giving a fair deal to consumers one of the goals of its proposed CEP.¹² 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', and 'citizens energy communities'. Based on these definitions, the CEP establishes a set of clear rights and responsibilities, as well as requiring Member States to set up enabling national frameworks to promote their development through a level playing field. For RECs in particular, the Recast Renewable Energy Directive aims to provide special support to promote their development at national level.

The 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. In particular, the revisions of the EEAG will need to support and reinforce the national enabling frameworks that Member States will be required to put in place for RECs. Specifically, this framework should ensure:

"(a) unjustified regulatory and administrative barriers to renewable energy communities are removed;

(b) renewable energy communities that supply energy or provide aggregation or other commercial energy services are subject to the provisions relevant for such activities;

(c) the relevant distribution system operator cooperates with renewable energy communities to facilitate energy transfers within renewable energy communities;

(d) renewable energy communities are subject to fair, proportionate and transparent procedures, including registration and licensing procedures, and cost-reflective network charges, as well as relevant charges, levies and taxes, ensuring that they contribute, in an adequate, fair and balanced way, to the overall cost sharing of the system in line with a transparent cost-benefit analysis of distributed energy sources developed by the national competent authorities;

(e) renewable energy communities are not subject to discriminatory treatment with regard to their activities, rights and obligations as final customers,

¹¹ European Commission (2015). *Communication on a Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy*. 25.2.2015, COM(2015) 80 final.

¹² European Commission (2016). *Communication on Clean Energy for All Europeans*. 30.11.2016, COM(2016) 860 final.

producers, suppliers, distribution system operators, or as other market participants;

(f) the participation in the renewable energy communities is accessible to all consumers, including those in low-income or vulnerable households;

(g) tools to facilitate access to finance and information are available;

(h) regulatory and capacity-building support is provided to public authorities in enabling and setting up renewable energy communities, and in helping authorities to participate directly;

(i) rules to secure the equal and non-discriminatory treatment of consumers that participate in the renewable energy community are in place.”¹³

¹³ Recast Renewable Energy Directive, Article 22, paragraph 4.