

# The Electricity Market Design reform: making it fit for a more decentralized and democratic internal energy market

## Introduction

The Clean Energy for all Europeans Package (CEP) represented an unprecedented acknowledgment by the European Union (EU) that consumer empowerment and citizen participation are indispensable for a successful energy transition. Since then, the creation and implementation of enabling frameworks for Renewable Energy Communities (RECs) and Citizen Energy Communities (CECs) has remained elusive in many Member States. And yet, the energy crisis has only further driven interest by citizens and local communities to take ownership and become active. If the energy crisis has shown anything, it is that energy communities have a large role to play in building up local renewable energy production and ending Europe's reliance on imported fossil energy.

The Electricity Market Design (EMD) reform represents a pivotal opportunity to clarify and improve upon the new concepts that originated in the CEP, such as energy sharing, and to make the internal energy market (IEM) more accessible to the EU's citizens. However, significant questions remain about whether the Commission's proposal prioritises the right approach towards building the foundations of decentralised energy markets, and ensuring the EMD remains consistent with the EU's vision, expressed in 2015, of putting citizens at the core of the energy system where they can take ownership of the energy transition.<sup>1</sup>

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<sup>1</sup> "Most importantly, our vision is of an Energy Union with citizens at its core, where citizens take ownership of the energy transition, benefit from new technologies to reduce their bills, participate actively in the market,

While the EU Commission proposes to open up energy sharing and to make it easier for smaller market actors to enter into power purchase agreements (PPAs), the devil is in the details. In particular, there is significant room, and therefore risk, for utilities and investors - the very ones that have been pushing up wholesale market energy prices since post-covid - to creep in and dominate the development of decentralised energy markets. As the EU builds the foundations of decentralised energy markets, we need to be clear in setting rules to ensure that smaller, less-professionalised and non-commercial market actors (local authorities, non-profit, social economic enterprises) are not simply pushed out by larger for-profit energy companies. If proper rules are not put in place, the EMD could make it harder for citizens, SMEs, local authorities and energy communities to be meaningful participants in the energy transition. This would go against the aims of the CEP and the European Green Deal.

## Key Recommendations for Amending the EMD Legislative Proposal

The EMD needs to clarify and improve the EU rules by which active customers and energy communities are able to operate in specific segments of the IEM. In order to deliver a more democratic energy market based on the EU legal principle of equal treatment, the following amendments to the EMD are needed:

1. Local ownership of renewable energy production and supply needs to be enshrined as a principle of the IEM;
2. The definitions of 'active customer' and 'energy sharing' need to be refined so that they more concretely build upon existing concepts and provide legal clarity;
3. Third parties should be prevented from owning renewable energy production installations used for energy sharing, while the ability of participants to determine the price they pay for shared energy should be ensured;
4. Energy sharing should promote a decentralised approach. Specifically:
  - The geographical scope allowed for collective self-consumption should be significantly reduced so that production remains close to consumption;

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and where vulnerable consumers are protected'. EU Commission (2015). A Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy. COM(2015)80 final.

- It should be made clear that large enterprises and energy companies should be excluded from energy sharing; and
  - Network tariffs related to energy sharing should be connected to the actual infrastructure used to share energy.
5. As part of the social economy, locally-owned and governed energy communities should not be prevented from using local sites for production or accessing the grid simply because of their small size and limited resources. Specifically, to be able to operate alongside other commercial market actors, energy communities should enjoy:
- Priority use of public spaces that are made available for installation of renewable energy production;
  - Priority when it comes to obtaining a grid connection and gaining access to the grid; and
  - Benefit from technical assistance and streamlined procedures for energy sharing projects.
6. The rights, roles, and responsibilities for different actors involved in energy sharing should be further clarified. Specifically, improvements are needed on the rights and responsibilities of active consumers participating in energy sharing with regards to:
- Choice of supplier and third party service provider;
  - The role and scope of responsibilities for third party facilitators;
  - Simple notification for smaller installations; and
  - The choice of co-efficients.

In addition, more clarification is needed on the roles and responsibilities of the system operators and retail suppliers with regards to:

- Information provision requirements;
  - Prevention of discriminatory treatment;
  - Calculating shared energy;
  - IT infrastructure;
  - Regulatory incentives for DSOs to prioritise local use of the grid; and
  - Monitoring and reporting.
7. Member States should be required to ensure, particularly through State-backed guarantees, that energy communities, SMEs and local authorities can access PPAs.

8. Contracts for difference (CfDs) should not undermine the ability of RECs to access national support, or prevent energy community suppliers from hedging in order to meet their members' consumption needs at the lowest possible cost.
9. Energy community suppliers need to be able to maintain flexibility in accordance with their non-commercial and consumer-focused supply business models when developing hedging strategies.

## 1. Prioritize local ownership

The EU's goal to move away from imported fossil fuels and rid the energy market of gas will require an unprecedented rollout of renewable energy production in the coming years. Much of this new renewable generating capacity will be built in rural areas, which often suffer from depopulation and other socio-economic issues.

The installation of new renewable energy projects and grid infrastructure will have significant impacts on local communities. Under the EU's REPowerEU Plan, and the revision of the Renewable Energy Directive in particular, the role of environmental impact assessments will be weakened, go-to areas for renewables production will be created, and renewables production could take precedence over biodiversity protection through 'public interest' exceptions. Public backlash towards these trends can already be seen in different Member States.<sup>2</sup> Taking into account that much of the new renewable energy production is being installed at the distribution level, citizens at the local level should not be prevented by larger commercial market actors from utilising the grid, which is a public resource, to meet their consumption needs through renewable energy production.

Therefore, the EMD reform should be anchored in a principle of prioritising local ownership of production and supply of renewable energy. Concretely, such a principle would ensure that local sites for the installation of renewable energy production, particularly on publicly-owned land, and available grid connection and access capacity is prioritized for local communities themselves, including citizens, public authorities and small and medium enterprises (SMEs).

The Commission neglected to include any proposals on ensuring local ownership in its legislative proposal. As such, we recommend that the Council and the European Parliament add this principle. This rollout of additional renewable energy production will only be successful if local communities are able to take ownership and to benefit from local production capacity, particularly in rural areas. Ensuring communities and

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<sup>2</sup> Gumbau, A (2023). Energy Monitor. "[What Spain's latest cinema hits say about its energy transition](#)", published 20 April 2023.

citizens can take ownership will promote trust and public acceptance in the energy transition, while contributing to building social cohesion, local investment, long-term security of supply at the local level, and the ability of citizens to control the cost of the renewable energy they consume.

## 2. Legal clarity – the energy sharing and active customers definitions

No formal legal definition of energy sharing exists at EU level, creating a lack of legal clarity about what energy sharing actually is and how it should be regulated. The Electricity Market Design reform represents a good opportunity to revisit concepts that were only first conceived under the Clean Energy Package, to ensure that they are clarified and are more accessible to EU citizens.

We understand that the Commission's proposal aims to clarify that energy sharing encompasses two existing activities that were defined in Directive (EU) 2019/2001 (Recast Renewable Energy Directive, or RED II):<sup>3</sup>

- Renewables self-consumption and jointly-acting self-consumption (Article 2(14) & (15)); and
- Peer-to-peer energy sharing (Article 2(18)).

We also understand that the proposal aims to expand the right of renewables self-consumption by guaranteeing that self-consumed renewable energy can be produced off-site.

It is good that the Commission proposed a concrete definition of energy sharing, clarifying it as an activity that is open to different market actors. Overall, the proposal strikes a good balance by aiming to clarify existing concepts, and building out the scope of how the concept works in practice without creating something new.

However, the Commission's proposed energy sharing definition is worded too vaguely and does not provide enough specificity to provide legal clarity. First, the energy sharing definition itself is not explicit enough in what it means. Article 2(10a) subparagraph a) really means renewables self-consumption and jointly-acting renewables self-consumption within the meaning of Article 2 (14) and (15) of the RED II, but this provision is not referenced, which adds complexity.

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<sup>3</sup> Directive (EU) 2018/2001 on the promotion of the use of energy from renewable sources (recast) OJ L328/82, 21.12.2018 (RED II).

The proposed energy sharing definition and the proposed changes to the active customer definition create a logical incoherency with the RED II. In Article 2(14) of the RED II it is stated that Member States have discretion whether to allow off-site production to qualify as self-consumption. The Commission's proposal fundamentally amends this rule, by proposing to change the active customer definition, which encompasses language to reflect renewables self-consumption as one of the activities that active customers perform. To ensure legal clarity in national implementation, as well as coherency between the different Directives, the self-consumption and jointly-acting renewables self-consumption definitions should be cross-referenced in the energy sharing definition.

Second, subparagraph b) of article 2(10a) of the EMD proposal references some characteristics of peer-to-peer trading, while peer-to-peer trading itself is cross-referenced separately. This duplication should be removed and the peer-to-peer trading cross-reference should be integrated directly into the energy sharing definition. Otherwise, subparagraph b) is meaningless and increases complexity.

Third, we do not agree with the Commission's placement of a geographical proximity requirement (namely, bidding zones) into the active customer definition. This proximity requirement pertains to energy sharing specifically, and is too specific for such a high level definition. The active customer definition should broadly encompass the different activities that individual final customers can 'actively' participate in. We recommend that any reference to a geographical proximity pertaining to energy sharing be included in the relevant definition.

### **3. Building out the EU framework for energy sharing**

Energy sharing allows consumers to take collective ownership of local renewable production, reduce the amount of metered electricity that they purchase from the wholesale market, and reduce their energy prices. REScoop.eu has identified that several barriers prevent energy communities from setting up sharing initiatives including overly-burdensome regulatory approaches, delays and lack of clear procedures from distribution system operators (DSOs), interference and lack of cooperation from incumbent suppliers, lack of awareness and information, insufficient IT infrastructure and/or smart meter rollouts, technical restrictions, and growing competition from professional service providers for grid connections and spaces to install renewable energy production.

The Commission's proposal addresses some of these technical issues. However, it also neglects other issues, while potentially exacerbating another tremendous challenge - namely corporate capture. We go through each of these issues in turn below.

### **3.1. Third-party ownership of production installations used for energy sharing should be prevented**

We support the Commission's proposal to open up energy sharing beyond energy communities. Not all energy communities perform energy sharing as an activity, and not all market actors that want to facilitate energy sharing are interested in setting up an energy community. All final customers, including households, SMEs, and local authorities should be able to benefit from sharing energy that has been produced locally.

However, we oppose the Commission's proposal to allow third parties to own production installations. This would significantly water down the empowering aspect that comes from participating in energy sharing. One of the main added benefits of energy sharing is that it gives consumers control over their own means of production. If third party ownership is allowed, consumers will not be able to determine for themselves what price should be paid for the production, further exposing them if the third party owner decides to raise prices or withdraw the installation. When shared electricity is sold by a third party, they have an incentive to drive up the price to increase the profit margin or to realise a quicker return on investment. Furthermore, because the size of the margin and the duration of the return may change over time, profit incentives can lead to price volatility. In a crisis, when the difference between the price of shared electricity and the wholesale market becomes larger, the incentive for the third party to capture more profits by increasing the price of shared electricity becomes greater. This is exactly what we have seen with the selling price of prosumer surplus solar during the energy crisis.

We recommend the deletion to references to third party ownership in Article 15a. It should be made clear that for citizens to benefit, ownership of production and storage facilities used for energy sharing should be kept within the hands of the participants, whether this be municipalities, citizens, energy communities or SMEs. This will ensure that the participants of energy sharing are ultimately responsible for determining the price they pay for the energy they produce and share amongst each other, therefore maintaining control.

If ownership of production installations for energy sharing is opened to third parties, there is a significant risk that energy sharing will not result in shielding customers from future energy crises and high prices, which is the main intent of the Commission's initiative. In the end, instead of being empowered to free themselves from the hands of utilities operating in the wholesale market, consumers may simply rush themselves into the hands of utilities - or worse off, impersonal third party investors - capturing the energy sharing market.



### 3.2. Energy sharing should promote decentralization

The EMD needs to put the building blocks in place now for the creation of more decentralised, local energy markets of tomorrow. The ability to produce, share and sell renewable energy close to production is a building block for the creation of decentralised energy markets. For energy sharing to play its part in building decentralised energy markets, the EMD should reflect the following three principles:

First, geographic proximity matters. If collective self-consumption can be performed all the way across the country, it has very little added benefit. Therefore, we do not support the Commission's proposal to use bidding zones as a limit for energy sharing, as it is much too broad. We recommend a much more localised geographical scope, for instance within the same and/or bordering distribution network management areas. Expanding the scope beyond one distribution network management area will help account for Member States, such as Germany, that have many small distribution networks.

Second, energy sharing should be limited to small and medium sized final consumers. If large enterprises, which have larger financial resources, are given the right to share larger production or consumption loads with each other and across great distances, they are likely to take up disproportionate capacity on the grid that should be reserved for smaller market actors. We support the Commission's decision not to include large enterprises within the scope of energy sharing and we urge the European Parliament and the Council to support this position.

Third, energy sharing should entitle consumers to pay only for the actual physical grid that they use to self-produce and share renewable energy. This principle is not well-articulated in the proposed Article 15a. Specifically, language should be added that provides national regulatory authorities with the duty to produce a cost-benefit analysis that informs network tariffs for energy sharing. Such language is already in Article 16 of Directive (EU) 2019/944 (Internal Electricity Market Directive, or IEMD),<sup>4</sup> which pertains to CECs. This language fits better in Article 15a, as it is specific to the activity of energy sharing - not energy communities per se.

### 3.3. Energy communities need a bike lane to access energy sharing

The EU included CECs and RECs in the CEP based 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

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<sup>4</sup> Directive (EU) 2019/944 on common rules for the internal market for electricity OJ L158/125, 14.6.2019, (Internal Electricity Market Directive, or IEMD).



energy system. In doing so, the Commission noted the significant potential of community ownership of renewables to contribute to a clean energy transition in Europe.<sup>5</sup> As part of the social and solidarity economy, energy communities - particularly cooperatives - represent non-commercial market actors.<sup>6</sup>

The unique characteristics of energy communities, including their choice of business model, non-commercial purpose, size, professional and organisational structure, and way of financing projects, put them in a different legal and factual position compared to other undertakings. In particular, these characteristics make it harder to find suitable spaces to install production, and to navigate administrative procedures around licenses, permits and grid connections. As such, they face an inherent competitive disadvantage vis-a-vis other larger market actors.

When it comes to energy sharing, energy communities experience disproportionate challenges in finding local space to install renewable energy production and obtaining a connection and access to the grid. Available grid capacity is usually determined either on a first-come first-served basis (e.g. Spain) or through an auction process (e.g. Portugal). Both methods place smaller actors at an inherent disadvantage, as they are not able to move as fast as others, navigate administrative procedures as easily, or even submit a competitive bid. In Portugal for instance, auctions for grid capacity have been taken up by outside investors that want to monetize rights to a grid connection. If a developer wants to act outside of the tender process, they must shoulder all the reinforcement costs. In Ireland, community projects have become economically unviable after being asked to pay for very high transmission network reinforcements within an unrealistic time frame.

Under the EU legal principle of equality, the distinct characteristics of energy communities may justify different treatment. This is supported by the Court of Justice of the EU (CJEU).<sup>7</sup> The CEP acknowledges the unique characteristics of energy communities and the need to mitigate challenges they face so that they are able to operate in the market.<sup>8</sup> The RED II and the IEMD require that RECs and CECs be subject to fair, proportionate and transparent registration and licensing procedures, and the REDII requires unjustified regulatory and administrative barriers for RECs to be removed. Several Member States are now putting in place provisions to allocate grid connection capacity for energy communities and self-consumption projects, including Latvia, Ireland and Spain. However, many national level decision makers have

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<sup>5</sup> CE Delft (2016). [The Potential of Energy Citizens in the European Union](#). This study found that half of EU citizens – including local communities, schools and hospitals – could be producing their own renewable electricity by 2050, meeting 45% of their energy demand.

<sup>6</sup> United Nations General Assembly (2023). [Resolution on "Promoting the social and solidarity economy for sustainable development"](#), UN A/77/L.60.

<sup>7</sup> 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.

<sup>8</sup> IEMD, Recital 46; and RED II, Recital 71.

communicated that the language under the Directives is not specific enough, and therefore they are unsure how far they can go to concretely implement them.

When it comes to energy sharing, opening up the activity to everyone will create new business opportunities across the EU to facilitate energy sharing. However, it will also exacerbate existing challenges already experienced by energy communities by creating a rush at the distribution level to find sites for production and to connect installations. Due to their alternative characteristics, if a safe space is not created to allow energy communities to set up their projects, they are likely to lose out on utilising local space and grid infrastructure. We have seen this happen before, particularly when national support schemes moved from fixed feed-in-tariffs to competitive bidding procedures.

The Market Design reform must, therefore, provide legal clarity to public authorities and system operators so that they are able to take measures to secure space for energy communities to engage in energy sharing. Specifically, locally owned and governed projects should:

- Have priority over public spaces that are made available for renewable energy production. Energy communities bring citizens, SMEs and local authorities together to collectively realise larger projects. Because these projects aim to promote community benefits such as social cohesion and innovation, they should be allowed to be prioritised over individual projects;
- Receive priority when it comes to obtaining a grid connection and gaining access to the grid. It should be clear that system operators, particularly DSOs, have a duty to ring-fence grid capacity for local energy community production installations. Member States should also be required to ensure that costs of a grid connection for energy community projects, particularly to engage in energy sharing, are proportional to the level of the grid that is used, and that they can be paid back in a realist way that reflects the financing model of energy communities.; and
- Benefit from technical assistance and streamlined procedures. Energy communities should be able to access information and register projects through a single contact point that is separated from other larger commercial market actors. Furthermore, to help them navigate the administrative process and professionalise, they should be able to receive technical assistance.

### **3.4. Clarification of the rights, roles and responsibilities for different actors involved in energy sharing**

In general, we support the Commission's approach in Article 15a to elaborate more specific rights for active customers that participate in energy sharing, including prevention of discrimination by other market actors, and more concrete duties for system operators in facilitating energy sharing. Our comments below reflect

improvements that could be made to the Commission's proposal. In this section, we distinguish between the rights and responsibilities of active customers, as well as the roles and responsibilities of other market actors, namely system operators and retail suppliers.

## **Rights and responsibilities of active consumers participating in energy sharing**

### ■ Choice of supplier and third party service provider

We support the Commission's proposed approach in Article 4 on the free choice of supplier, and this choice should be maintained where active customers choose to share energy with each other. More specifically, customers participating in energy sharing should not be forced to have the same supplier as other participants. While utilising the same retail supplier between all the participants makes sharing energy easier from a technical perspective, this does not outweigh the value of allowing consumers to choose their own supplier. Otherwise, commercial utilities and service providers might be incentivised to use integrated offers as a way to lock in customers and discriminate against other market actors.

Article 4 should also apply to third party service providers that facilitate energy sharing. At any time, the active customers should be able to collectively decide to switch service providers without facing dissuasive penalties, charges or barriers (an issue that could be exacerbated if third party ownership is allowed). In this sense, Article 12 of the Electricity Directive, which pertains to the right to switch and rules on switching-related fees, should also apply to Article 15a.

### ■ The role and scope of responsibilities for third party facilitators

When acting at the direction of the customers participating in energy sharing, third party facilitators can take care of the administrative and technical complexity that often burdens normal people. It is important to clarify that these facilitators can be empowered by the participants to act on the behalf of participants of an energy sharing initiative, including during the registration process, and in communicating with relevant public authorities and system operators.

### ■ Simple notification for smaller installations

In paragraph 1(e) of Article 15a, the Commission has proposed exemptions regarding the application of consumer rights for peer-to-peer through smaller installations by households. This language is not clear enough and risks creating confusion. As such, the references to consumer rights should be deleted. Instead, we recommend that this provision be modified to ensure that simple notifications are allowed for collective self-consumption installations. The RED II, as well as the Emergency Regulation to

accelerate the deployment of renewable energy<sup>9</sup> strengthen rules for faster permitting procedures. However, they only apply to installations for individual self-consumption, excluding collective self-consumption. This distinction presents a barrier for the timely installation of new installations.

## ■ Choice of Co-efficients

Active customers have the possibility to choose different methods of allocating shared energy between themselves, most notably through a static sharing coefficient or through a dynamic sharing coefficient. Under static sharing coefficients, a fixed part of the generation is shared with each consumer. Dynamic sharing coefficients allow sharing according to the generation and consumption profiles of the different participants. This can help to optimize sharing, allowing a bigger portion of the generated energy for sharing, further improving the business case. Article 15a should empower active customers to choose which coefficient to use. Furthermore, it must be possible for this coefficient to be modified over time in order to allow members to easily enter and leave the initiative.

## **Roles and responsibilities for system operators and retail suppliers**

### ■ Information provision requirements

Locally-owned energy sharing initiatives, particularly those driven by energy communities and other non-professionals, require access to clear information about how to get their initiative started. Therefore, we support the Commission's inclusion of a contact point to register energy sharing projects, as well as requirements for template contracts.

However, the proposal could be further improved. Specifically, single contact points by system operators should also ensure dissemination information. Furthermore, system operators should be required to state up-front what information is required from an energy sharing project to get registered. Currently, DSOs go back to energy sharing initiatives multiple times to ask for different pieces of information, creating further delays.

Participants of energy sharing also need to have upfront information about applicable geographical proximity requirements pertaining to energy sharing. This should include implications for applicable network charges and grid connection requirements, depending on the level of infrastructure that is being utilised.

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<sup>9</sup> Council of the EU (2022). [Proposal for a Council Regulation laying down a framework to accelerate the deployment of renewable energy](#). 2022/0367(NLE).

In order to save time for active customers, third party facilitators, and system operators in dealing with information requests, the system operator should be required to make all relevant information on realising an energy sharing initiative available online. This will reduce the amount of requests that the system operator has to deal with, as well as facilitate awareness raising and education.

## ■ Prevention of discriminatory treatment

We support the Commission's proposal to prevent discriminatory treatment of active customers that engage in energy sharing by other market actors. There are a number of ways that utilities that do not welcome energy sharing make it harder for final consumers to engage in energy sharing, all of which should be prohibited. We recommend further clarifying which actions amount to discriminatory treatment by third party market actors, in order to enhance legal certainty for active customers that want to participate in energy sharing.

## ■ Calculating shared energy

In addition, we would support providing the system operator with the role of calculating shared energy for each of the participants in energy sharing and separating it from surplus electricity that must be provided by a retail supplier. First, it makes more sense for the system operator to perform such calculations, because they already have the necessary data. Second, suppliers have an inherent conflict of interest to calculate shared energy in a way that maximises the amount of consumption needed from the supplier. This should not restrict energy sharing participants from deciding on the distribution key applicable to the overall mechanism.

## ■ IT Infrastructure

Without an appropriate IT infrastructure, the system operator is not capable of operationalising energy sharing within its network management area. It is necessary for the system operator to have the technical capability of monitoring and collecting data from smart meters attached to production installations and participating active customers in line with the market settlement period, as well as a way to validate this data and share it with the active customers and other market participants that are implicated by energy sharing, such as retail electricity suppliers. Where the system operator fails to put such infrastructure in place, it is technically impossible to allow energy sharing. We propose adding a requirement that system operators put in place the appropriate IT infrastructure to allow energy sharing within one year.

## ■ Regulatory incentives for system operators to prioritise local use of the grid

System operators will likely be inundated with requests from all types of project developers. To ensure that they do not get pushed to the back of the lines, smaller, local, less professionalised actors should receive priority treatment from the system

operator in getting their initiative and grid connection registered. This could require expenditure of more resources and effort by the system operator. Nevertheless, system operators should be supported through regulation, so that they are able to proceed with clarity that they are able to recover any additional expenses they incur to ensure local distribution networks can be freely accessible to local active customers.

- Monitoring and reporting

The rollout of energy sharing will have significant impacts on the distribution system, as well as the development of local, decentralised energy markets. System operators should therefore be required from the outset to collect data on the development of energy sharing, so that this data can be used to inform further development of the legal and regulatory framework. This information should be transmitted to the national energy regulator, so that they are capable of monitoring the growth of energy sharing over time.

## **4. Make it easier for energy communities to enter into Power Purchase Agreements (PPAs)**

Without mechanisms to support small actors, PPAs will be in practice dedicated to big actors (industrial ones). Energy communities face several barriers preventing them from entering into PPAs. Many of them have small installations, whereby it might be difficult to provide enough production to make a PPA interesting. Furthermore, because of their small size and non-commercial nature (e.g. registration as a cooperative), it can often be difficult to obtain adequate financing from lending institutions, due to the perceived high risk nature of the project. Furthermore, a supplier's license is still often required in order to enter into a PPA with a household customer.

Therefore, we welcome the Commission's proposal to make it easier for energy communities and other SMEs to enter into PPAs to help finance projects. Nevertheless, the proposal could be strengthened to provide more clear guidance about how Member States should create a more level playing field so smaller market actors can access PPAs.

First, the articles on PPAs should include specific references to energy communities to ensure that RECs and CECs are targeted and can benefit from instruments that Member States put in place to reduce the barriers to entering into PPAs. Specifically, Member States should be required to ensure that specific instruments, in particular guarantee schemes, are accessible by RECs and CECs.



## 5. Make sure two-way Contracts for Difference (CfDs) do not negatively impact energy communities

Member States should be able to take back windfall profits that many for-profit companies are making to help ease the crisis' impact on consumers. However, this must be done in a way that does not undermine the ability for energy communities to invest in local renewables production, or provide services to their members and the local community. CfDs are not suitable for smaller community suppliers or producers, as they negatively impact on the business model by capping their ability to hedge on behalf of their members and provide other socially innovative services. As such, we do not support the Commission's proposal to mandate the use of two-way CfDs. This choice should be left to the discretion of Member States.

If CfDs are introduced at the national level, they must provide a safety net for renewable energy generated by energy communities as a core design principle. First, CfDs are usually issued through competitive bidding procedures. As acknowledged in the RED II and CEEAG<sup>10</sup>, energy communities and smaller market actors are not capable of competing in competitive bidding with other larger more professional market actors. While we welcome a reference to Article 22 paragraph 7 of the RED II, legal clarity would be enhanced if it were referenced directly in Article 19b(3).

Furthermore, CfDs can undermine the ability of community suppliers that rely on their own production to meet their members' consumption needs. Specifically, a supplier could be capped in the revenue they get from selling electricity to the market, while being forced to purchase the electricity back from the market at a higher price. The ability to sell the electricity at the higher price would allow the supplier to hedge when they have to go to the wholesale market to purchase electricity. A two-way CfD would take away this ability. Therefore, we propose an addition to article 19b(3) highlighting that the design of CfDs should not undermine the ability for energy communities to supply their members or to hedge on their behalf.

Finally, we do not support the Commission's inclusion of nuclear energy as a resource that qualifies for direct support schemes. Nuclear energy is not cost-effective, it poses a significant risk to the environment and human health, and is not a viable long-term strategy for decarbonising the energy system. Therefore, we recommend that the reference to nuclear in article 19b(2) be deleted.

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<sup>10</sup> EU Commission. Guidelines on State aid for climate, environmental protection and energy 2022. OJ C80/1, 18.2.2022 (CEEAG). See also REScoop.eu (2022). [How can the State aid guidelines help energy communities address the energy crisis?](#)



## 6. Hedging and energy communities

Energy communities that supply electricity from self-owned renewable energy production, particularly cooperatives, have a different business model that is non-commercial in nature, compared to other suppliers that focus on profit-making activities. These lead to different hedging strategies, such as securing own-productions to protect their consumer-members. Due to their small size, cooperative suppliers also often experience difficulty financing guarantees necessary to trade on wholesale and forward markets, a challenge that has been made more difficult through national interventions in response to the energy price crisis. The electricity market design must ensure that the imposition of hedging requirements do not result in hurdles to community-owned electricity suppliers' ability to prioritise supply of own-production at cost and on a not-for-profit basis to their members.

Therefore, the proposed article 18a(2) on supplier risk management should be modified to state that supplier hedging strategies may include the use of power purchase agreements without excluding other hedging strategies, in order to allow Member States to take the specificities of energy communities into account. On the same note, the language in paragraph 3 of the same article should be strengthened to guarantee that Member States shall ensure the accessibility of hedging products for CECs and RECs.