

European Energy Communities

With recommendations derived from
the Interreg North Sea Region project
'Delivering Community Benefits of
Civic Energy (COBEN)'

Position Paper

July 2021



Objective of this Position Paper

The aim of the COBEN project is to promote civic energy by delivering and showcasing tangible community benefits of renewable energy projects. The European Economic and Social Committee defines civic energy as renewable energy sources that are at least 50% owned, operated or controlled by local shareholders (citizens, local authorities, SME's, farmers, institutions).

While civil society is an important driving source for the EU's energy transition, civic energy still remains a niche player in the energy market. An opportunity to boost civic energy arises via the concepts of "citizen energy communities" (CEC) as defined by the Directive 2019/944/EU (EU rules on the internal electricity market, -in the following "Electricity Directive 2019") and "renewable energy communities" (REC) as defined by the Directive 2018/2001/EU (Renewable Energy Directive).

Whether these opportunities can be capitalized on, depends highly on the way the Directives' articles on CECs and RECs are transposed into legal frameworks by the EU member states. COBEN's work on a broad variety of civic energy initiatives throughout the North Sea Region (NSR) can therefore support the EU's vision by offering a perspective based on practical experience. Therefore, drawing on COBEN's applied knowledge can highlight which barriers need to be addressed in order to facilitate the energy transition by enabling a shift in energy value chains from centralised business models to community-owned renewable energy initiatives that provide tangible economic, environmental and social benefits to the communities involved.

In this position paper we analyse the opportunities for and obstacles to civic energy uptake in the Electricity Directive 2019 and the Renewables Directive, look into the way these articles on CECs and RECs are transposed into national law in a selection of member states in the North Sea Region, and examine how the opportunities and obstacles are handled in those member states. We conclude with policy recommendations at EU and member state level.



Approach

Drawing on the practical experiences of the COBEN partners, an exchange was conducted on the national transposition of the two relevant Directives of the Clean Energy Package (CEP). The information gathered from this exchange was then systematically analysed as the basis for the recommendations of this position paper.

Opportunities and obstacles in the Clean Energy Package

Regulations and Intentions

The final CEP contains two definitions of energy communities: The Citizen Energy Community (CEC) of the Electricity Directive, and the Renewable Energy Community (REC) of the Renewables Directive.

Table 1 - Definitions of energy communities in Clean Energy Package Directives

Article 2(16) Renewables Directive – ‘Renewable Energy Community’	Article 2(11) Electricity Directive – ‘Citizen Energy Community’
<p>A legal entity:</p> <ul style="list-style-type: none"> a. which, in accordance with the applicable national law, is based on open and voluntary participation, is autonomous, and is effectively controlled by shareholders or members that are located in the proximity of the renewable energy projects that are owned and developed by that legal entity; b. the shareholders or members of which are natural persons, SMEs or local authorities, including municipalities; c. the primary purpose of which is to provide environmental, economic or social community benefits for its shareholders or members or for the local areas where it operates, rather than financial profits. 	<p>A legal entity that:</p> <ul style="list-style-type: none"> a. is based on voluntary and open participation and is effectively controlled by members or shareholders that are natural persons, local authorities, including municipalities, or small enterprises; b. has for its primary purpose to provide environmental, economic or social community benefits to its members or shareholders or to the local areas where it operates rather than to generate financial profits; and c. may engage in generation, including from renewable sources, distribution, supply, consumption, aggregation, energy storage, energy efficiency services or charging services for electric vehicles or provide other energy services to its members or shareholders.
<p><i>While not part of the definition, RECS are entitled to produce, consume, store and sell renewable energy, including through renewables power purchase agreements, to share renewable energy within the community, and to access all suitable markets</i></p>	

CEP match with COBEN pilots

The over thirty COBEN pilots are mainly active in power generation, e-mobility and community heating throughout the North Sea Region (see Figure 1). Participants in the pilots are citizens, municipalities, district and regional authorities and SMEs. All the pilots aim to deliver community benefits from renewable energy sources, which include social, financial, economic and environmental benefits. Hence, the COBEN pilots, as a cross-section of civic energy initiatives in the North Sea Region, could be classified according to the definitions of RECs or CECs. On the other hand, it is questionable whether or not the introduction of RECs and CECs actually creates additional possibilities and opportunities for the COBEN initiatives, especially since the civic energy initiatives claim active roles in all elements of the energy value chain, with a view to creating as much local value as possible.

The aim of the Clean Energy Package is not only to introduce energy communities as actors in the energy market but also to ensure a level playing field throughout the entire energy value chain. Unfortunately, there are many ambiguities in the Clean Energy Package that need to be clarified in the transposition at member state level in order to ensure a level playing field for energy communities.

Figure 1 – Regions with COBEN Pilot locations



Unclarities

From a COBEN pilot perspective it is important that the following unclarities inherent to the Clean Energy Package and its relevant Directives are addressed:

- What are minimum requirements to comply with “effective control”?
- How is the element of 'proximity' to be defined in respect of RECs?
- How is citizen involvement guaranteed in citizen energy communities?
- How is ‘energy storage’ defined and demarcated?
- Does a CEC have the right to operate or control a distribution grid?
- How is ‘trading and sharing’ between CEC or REC members defined?
- What are the conditions and obligations for DSOs to cooperate with a CEC?

Without adequate clarification of these ambiguities, the introduction of a legal framework for CECs and RECs fails to provide additional opportunities for civic energy initiatives.

State of the transposition process in NSR member states

Denmark

The transposition process of the Electricity Directive 2019 was completed in Denmark by January 2021. This transposition includes a legal framework for both RECs and CECs. In the definition of CECs the potential members are more precisely defined than in the Electricity Directive 2019. A CEC must be effectively controlled by participants and/or capital owners, which means that, besides a cooperative business model, also a shareholder business model is possible as long as the primary purpose of the CEC is to generate environmental, financial or social community benefits rather than profit. There is a specific section on the conditions for municipalities to participate in a CEC, which means that it is also possible for local authorities to run a CEC in order to generate community benefits. Distribution System Operator (DSO) or Transmission System Operator (TSO) membership of CECs is explicitly excluded, as are power distribution activities. The Danish government stated in the transposition notes that the Electricity Directive is unclear on a number of issues as it is not well-defined how the legal framework will work in practice, for instance on the issue of network tariffs, grid charges and taxes in the case of sharing electricity within a CEC. Therefore, the Energy and Climate Minister was mandated to set up ministerial decrees to further specify the legal framework based on concrete cases.

Sweden

An extensive draft for the transposition of the clean energy package into national law is ready for decision making, including a legal framework for both RECs and CECs. Both must be effectively controlled by private citizens, local authorities (including municipalities) or SMEs. Furthermore, SMEs can be members of RECs as long as the participation in the community is not their primary commercial activity. RECs must be organized around a renewable energy source that is owned by the REC, whereas CECs have no geographical boundaries. RECs are in Sweden open for all renewable energy sources and solutions, while CECs are limited to the electricity market only, but not limited to renewable electricity sources. The possibilities for CECs to engage in power distribution and storage are limited to the property where the power is produced (an apartment building for instance).

Germany

The Renewable Energy Directive has been transposed in the legislative procedure for the fundamentally amended Erneuerbare-Energien-Gesetz (EEG-2021), which is in place as of January 2021. Neither RECs or CECs are defined or mentioned in the EEG-2021. The German legislative authorities stated that there is no need for a legal framework for CECs and RECs in Germany, as all fields of activity for RECs and CECs are already possible and permissible under German law. The Electricity Directive will be transposed into the forthcoming amended German 'Energy Industry Act', but it is likely the current reasoning regarding a legal framework for CECs and RECs will be maintained.

Conversely, it is argued, e.g. by the Citizens' Energy Alliance (Bündnis Bürgerenergie e.V.), that there is a definite need for a legal framework on RECs and CECs. The representatives of citizen energy cooperatives stated that the German government fails to implement European law and thus hinders the development of renewable energy by communities. Furthermore, they stated that the legislation already in place marginalizes citizen participation in solar-pv and wind energy rather than enabling such participation.

The Netherlands

The transposition of the Clean Energy package is part of the legislative procedure for a new Energy Law to be in place in 2021. In the draft of this law there is no differentiation between RECs and CECs. Energy Communities are introduced as market players in one definition. An Energy Community should be effectively controlled by members or shareholders that are individual citizens, local authorities (including municipalities) or SMEs.

In deviation from the Electricity Directive, the legal structure for energy communities is more restrictively defined than the broader term 'legal entity'. Partnerships, for instance, are excluded. The activities and rights for energy communities to engage in the energy market are not defined. As a consequence, the energy law does not bring any additional possibilities beyond the scope of the already existing local energy cooperatives, except for the possibility to supply electricity to community members

without a license to 'secondary allocation points'. It is however not clear yet how supply to secondary allocation points will work in practice and how this concept helps create benefits for energy communities. The responsible minister has been granted the power to issue further rules on energy communities by decree.

Belgium

In both Wallonia and Flanders draft decrees for the transposition of the Clean Energy Package have been adopted. Not only an extensive legal framework for CECs and RECs is described but also for the concepts of 'active consumer', 'prosumers of renewable energy' and 'groupwise prosuming of renewable energy' have been defined. In Belgium the transposition is being used to announce further regulation on facilitating energy communities and eliminating barriers for them to operate in the energy market. Facilitating regulation on energy sharing, peer-to-peer trade and self-consumption is to be regulated in executive decisions. Furthermore, the role for energy communities in offering flexibility to the grid operators has been specified.

From this overview it can be concluded that the ambiguities in the European regulations on energy communities have not been adequately clarified or elaborated by the member states. It is unlikely that the national legal frameworks will advance civic energy initiatives or contribute to the delivery of local benefits.

Recommendations for the European Commission

A. Level playing field

One of the goals of the Clean Energy Package is to create a level playing field between energy communities and commercial market participants, both in the development of renewable energy projects and in the trading, distribution and storage of energy. However, granting equal rights does not automatically mean that energy communities can function in the same way as commercial market participants. From the practice of the COBEN pilots we know that facilitating instruments are needed to ensure that energy communities have equal access to expertise, financing, development budget, subsidy schemes and spatial planning procedures. All this is needed in order to successfully deliver community benefits.

With the exception of Belgium, none of the surveyed countries used the transposition to actively facilitate energy communities and remove barriers to their uptake, although this was explicitly intended by the European Commission (EC) with the Clean Energy Package. This might be due to the member states' currently insufficient knowledge of the necessary facilitation tools and existing barriers to design effective regulations.

Recommendation 1:

We therefore recommend that the European Commission takes back the responsibility for an inventory of obstacles that arise for energy communities to function as market players and provide guidelines on measures needed to overcome those. A next step could then be to include, not only a regulatory, but also a facilitating framework in the Electricity Directive and the Renewable Energy Directive for member states to build upon.

Recommendation 2:

As a needed support mechanism we propose the set-up of a European Civic Energy Forum to provide capacity building measures at municipal level in order to ensure a successful clean energy transition.

B. Distribution, balancing and storage

Energy communities have the potential to contribute to system efficiency and lower system costs given the ability to match supply and demand of renewable electricity at local level. Creating opportunities for realising this potential is one of the intended goals of the Clean Energy Package.

For this purpose, member states have to ensure that DSOs cooperate with CECs “to facilitate electricity transfer within the CEC”. This does not sufficiently define the relation between CECs and DSOs and potentially leaves a large degree of discretion to the willingness of DSOs in determining any form of cooperation. From the state of affairs in the surveyed member states, it can be concluded that the potential for decentralized energy management is not being used and that the relationship with DSOs or other system operators is not sufficiently clarified to tap this potential. In a number of NSR member states a role in energy distribution is even explicitly excluded.

From the notes of the transposition process in the surveyed member states, it can be concluded that national governments are especially uncertain about the effects at the local level. The energy infrastructure and its management differ greatly between regions, as does the stability and professionalism of energy communities. This inhibits the willingness of member states to include rights and obligations for energy communities to play a role in energy distribution, balancing and storage.

Recommendation 3:

We therefore recommend an appendix or amendment to the Electricity Directive 2019, with a more stringent legal description of the obligations for DSOs regarding CECs. In any case, it must be ensured that CECs and RECs can access the public grid without restrictive tariffs, permits or technical requirements, both for the connection of renewable sources and for the exchange of energy between members of the energy community. Support from a European program focusing on capacity building and knowledge transfer to enhance the role of CECs in power distribution is needed.

C. Knowledge base

Although many of the member states surveyed have regional policies to promote civic energy, this does not translate into a legal framework for RECs and CECs at the national level. With the exception of Germany, most member states have adopted the minimum obligations of the Clean Energy Package. Little attention has been paid to how the Electricity Directive and the Renewable Energy Directive can help strengthen the development of national civic energy policies. Possibly, within the time limit for transposition, it is difficult or too demanding for member states to oversee the extent to which energy communities add complexity to the energy market and what risks the introduction of new, non-commercial, market players generates for the functioning of the European energy market.

Recommendation 4:

In our view, member states need a knowledge base on how the granting of rights and roles to energy communities will affect the energy market. A European programme is needed in order to collect the practical learning experiences from existing civic energy initiatives and pilots, and to organize a permanent knowledge network that member states, but also local authorities, can call on for further development of a legal framework. The set-up of a kind of European Civic Energy Forum - as mentioned in recommendation 3 - could provide a knowledge resource pool for civic energy and be made accessible to civic energy adopters.

Recommendations for EU member states

The local level

From the practice of the COBEN pilots we know that the groundwork for civic energy projects takes place at the local level. Without organizational and policy support from local authorities, initiatives hardly get off the ground. Examples of very effective are guidelines for local authorities are already in place, e.g. to set up Local Energy Plans, in Scotland, Sweden and Denmark. Implementing these guidelines often results in an interaction between residents and local authorities leading to the initiation of energy projects to deliver community benefits. It is significant that in none of the surveyed member states has attention been paid to defining the role of local or regional authorities LRAs. Nor do the two featured EU Directives foresee a market role for LRAs: the rights of local authorities are limited to their possible participation in a CEC or REC. This has a detrimental impact on the effectiveness of the legal framework for both RECs and CECs and their potential market penetration.

Recommendation 5:

We advise member states to include a guideline in the legal framework for RECs and CECs for local authorities to set up community energy plans and to indicate in these plans in what ways civic energy initiatives are to be supported.

COBEN

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