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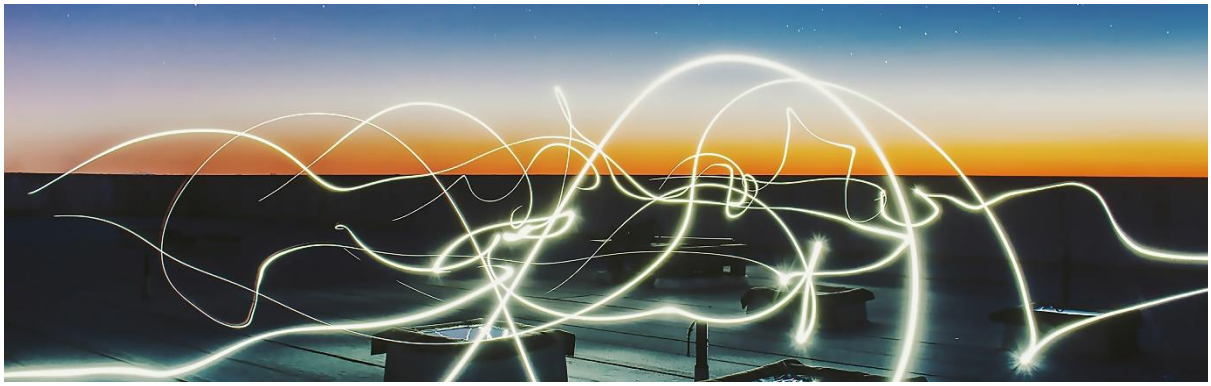

Policy benchmark for Energy communities

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Contents

Objective of this deliverable

Report with overview of legal developments on energy communities within the context of the Clean Energy for All Europeans Package. In particular, the report contains an analysis of the (ongoing) transposition of the newly introduced concepts of citizen energy communities (Electricity Market Directive (EU) 2019/944) and renewable energy communities (Renewable Energy Directive (EU) 2018/2001) within the countries of the Interreg 2 Seas area (i.e. Belgium (Flanders), Netherlands, United Kingdom and France) and Ireland. The report shows that some countries, notably the Netherlands and Ireland, are lagging behind with their transposition initiatives (in breach of the transposition deadlines laid down in the Electricity Market Directive and the Renewable Energy Directive). In the Netherlands, only a draft act (awaiting introduction in Parliament) is available which seems to include a very concise and even incomplete transposition of the Electricity Market Directive and the Renewable Energy Directive. The Flemish transposition, on the other hand, shows better alignment with the EU directives. In the UK, the Electricity Market Directive and the Renewable Energy Directive do not need to be implemented post-Brexit. The UK currently lacks a dedicated legal framework for energy communities.

LECSea countries

Belgium: Flanders

Introduction

Since the competence for renewable energy and electricity distribution / retail markets lies with the regions (Flemish Region, Brussels-Capital Region and Walloon Region), a significant part of the Clean Energy Package has to be transposed on regional level. This assessment focusses on the Flemish Region specifically.

The legal framework for energy communities

On 25 February 2021, the Flemish government has introduced its draft decree ("*Ontwerp van decreet*"[1]) for the adaptation of the Energy Decree ("*Energiedecreet*"[2]) of 8 May 2009 in parliament. The draft includes the amendments necessary for the transposition of both the Renewable Energy Directive (EU) 2018/2001 and the Electricity Market Directive (EU) 2019/944. The Flemish Parliament finally adopted the transposition decree on 2 April 2021.[3] Subsequently, the Flemish Government presented a draft implementation order on 9 July 2021[4], which would further implement the transposition decree.

Aside from the inclusion of the concept of energy communities and collective self-consumption, the adoption is accompanied with several changes with regard to the operation of the distribution grid, including closed electricity distribution networks (as opposed to private networks).

The transposition for energy communities is a clear and rather direct inclusion of the related aspects from the Clean Energy Package, albeit rather conservative compared to the transposition in countries as Luxembourg and Slovenia.

The Flemish legislator has opted for combining several concepts in a smaller number of definitions. The below section presents the transposed concepts of active consumer (combining the "active consumer" and the "self-consumer of renewable energy"), citizen energy community and renewable energy community and the newly included activities such as energy sharing and peer-to-peer (P2P) trading. It is important to note that the concept of collective self-consumption, to be considered at the level of a building (e.g. an apartment) is not given a separate definition. The transposition decree of 2 April 2021

[1] Flemish Parliament, Draft decree amending the Energy Decree of 8 May 2009 partially transposing Renewable Energy Directive (EU) 2018/2001 and the Electricity Market Directive (EU) 2019/944, available through https://docs.vlaamsparlement.be/pfile?id=1668780.

[2] Decree of 8 May 2009 containing general provisions on energy policy ("Energy Decree"), available through https://codex.vlaanderen.be/portals/codex/documenten/1018092.html.

[3] Decree of 2 April 2021 amending the Energy Decree of 8 May 2009 partially transposing Renewable Energy Directive (EU) 2018/2001 and the Electricity Market Directive (EU) 2019/944, available through http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&cn=2021040248&table_name=wet.

[4] Draft order of the Flemish Government to amend the Energy Order of 19 November 2010, regarding energy communities, phasing and timing of energy sharing and peer-to-peer trading of green electricity by one active customer to another active customer and the provision of information by the supplier to the grid user, available through https://beslissingenvlaamseregering.vlaanderen.be/document-view/60E80356364ED90008000A18.

links the role of "active consumer" (located in a building) with the newly defined activity "energy sharing".

Active consumers, citizen energy communities and renewable energy communities

The concepts of active consumer, citizen energy community, and renewable energy community are presented below:

- **Active consumer**: An active consumer is defined as a consumer connected to the electricity distribution network, closed electricity distribution network or heating or cooling network who performs one or more of the activities as described in Article 4.4.2 whilst these activities do not constitute his main commercial or professional activity.

  Article 4.4.2 specifies the following activities:
  - producing energy from renewable energy sources or electricity at its own residence or site, whether or not through a direct line, where the generation facilities are connected directly or indirectly via the connection of the active customer to an electricity distribution network, the local electricity transmission network, a closed electricity distribution network or a heating or cooling network;
  - Self-consumption of abovementioned renewable energy production on its own residence or site, whether or not via a direct line;
  - Storing energy;
  - Participating in energy services, including flexibility and aggregation;
  - Acting as flexibility service provider;
  - Exchanging energy (P2P) and energy sharing under certain conditions (see below);
  - Selling self-generated energy, including via power purchase agreement.

  The management of the mentioned activities can be delegated to a third party, which is considered a service provider and not itself an active consumer.

- **Citizen energy community**: A citizen energy community is defined as a legal entity that is based on the open and voluntary participation of its associates or members, and whose main objective is to provide environmental, economic or social benefits for its associates, members or the environment in which it operates, which is non-profit making or has a profit motive that is subordinate to its main purpose, and which can carry out the activities referred to in Article 4.8.4, §1 (see below).

  Natural persons, local authorities or small enterprises[5] not involved in large-scale commercial activities and for whom the energy sector is not the main economic activity, have control[6] over

[5] 'Small enterprises' are defined as "*enterprises which cumulatively satisfy the following conditions: (i) employ fewer than 50 employees; (ii) have an annual turnover not exceeding EUR 10 million or an annual balance sheet total not exceeding EUR 10 million; (iii) satisfy the independence criterion*" (see Article 1.1.2, 75° of the Energy Decree of 8 May 2009).

[6] 'Control' is defined as rights, contracts or any other means which, either separately or jointly confer the possibility of exercising decisive influence on the activities of an undertaking, notably: (i) ownership or use rights to all or parts of the assets of an undertaking; (ii) rights or contracts which confer a decisive influence on the composition, voting

the activities of the citizen energy community of which they are associate or member. The members or associates of the same citizen energy community each enter into an agreement with the citizen energy community on their rights and obligations. If energy sharing takes place within the citizen energy community, the agreement contains the rights and obligations of the members or associates regarding the distribution key. The Flemish Government may determine the minimum content of such agreement.[7] Each citizen energy community determines in its articles of association the rules of control of its members or associates.

With regard to the activities, the following is included in Article 4.8.4. §1:

- producing energy from an installation, directly connected or indirectly connected via the connection of associates or members of the citizen energy community to an electricity distribution network, the local electricity transmission network, a closed electricity distribution network, or a heating or cooling network, whereby the citizen energy community is the owner of or has the right to use the production facility;
- self-consumption of such self-generated energy;
- storing energy;
- offering or participating in energy services
- acting as a flexibility service provider or participating in flexibility or aggregation;
- selling self-generated energy, including via power purchase agreement;
- offer charging services for electric vehicles;
- sharing self-generated energy between associates or members.

Article 16(2)(a) of the Electricity Market Directive (EU) 2019/944 provides that "*Member States may provide in the enabling regulatory framework that citizen energy communities are open to cross-border participation*". The Flemish legislator did not implement such possibility. It was recognised that cross-border cooperation, not only across national borders but also across regional borders within Belgium, could bring a number of benefits (e.g. knowledge sharing and economies of scale), but still deemed undesirable due to the technical complexity e.g. in terms of measurement, registration, settlement, allocation and reconciliation within the context of

or decisions of the organs of an undertaking (see Article 1:14 of the Belgian Companies and Associations Code of 23 March 2019).

[7] In the aforementioned draft Flemish Government order of 9 July 2021 the following mandatory elements are provided: (i) name, legal entity type and address of the energy community; (ii) provisions on the duration and dissolution of the energy community; (iii) the point of contact of the energy community; (iv) a description of the environmental, economic or social objectives of the energy community; (v) the provisions on the expenses of the community and the allocation of any profit generated by the activities of the energy community; (vi) where applicable, the provisions on the management of the green certificates, co-generation certificates and guarantees of origin; (vii) the provisions on effective control or supervision over the activities of the energy community and the voting method within the bodies of the energy community; (viii) in case of a renewable energy community, the manner in which autonomy is ensured; (ix) the activities which the energy community will carry out; (x) if applicable, and in accordance with the technical distribution grid code, the determination of the applicable allocation key and any financial consequences in the context of energy sharing and the conditions and procedure under which the allocation key can be changed. The rules for energy sharing shall be fair, transparent and non-discriminatory; (xi) he conditions for joining and leaving the energy community and, if applicable, the conditions for joining and leaving an energy sharing scheme in accordance with the technical distribution grid code; (xii) if applicable, and in accordance with technical distribution grid code, the method of reporting errors in relation to the allocation key applied; (xiii) the method of submitting a complaint to the energy community; (xiv) the method of initiating dispute settlement procedures with the energy community; (xv) the provisions on the rights and obligations of the energy community and its members or associates with respect to privacy and the protection of personal data.

energy sharing.[8] Furthermore, it was also not deemed clear which law would apply to cross-border participation.

- **Renewable energy community**: a renewable energy community is equally defined as a legal entity that is based on the open and voluntary participation of its associates or members, whose main objective is to provide environmental, economic or social benefits for its associates, members or the environment in which it operates, which is non-profit making or has a profit motive that is subordinate to its main purpose.

  The activities that renewable energy communities may carry out are the same as those of citizen energy communities (see above), provided however that any self-generated energy comes from renewable energy sources.

  The associates or members of the renewable energy community are natural persons, local authorities or small and medium-sized enterprises whose participation in the energy community is not the main commercial or professional activity and who are located in the vicinity of the renewable energy projects of the renewable energy community. The associates or members have control over the activities of the renewable energy community. Two important differences with citizen energy communities have to be emphasised: first of all, unlike citizen energy communities, medium-sized enterprises[9] are allowed to participate in renewable energy communities. Secondly, members and associates of renewable energy communities have to be located near the renewable energy installations of the renewable energy community. In particular, renewable energy communities must limit participation based on technical or geographic proximity, taking into account the function of the objectives or activities they seek to achieve. Renewable energy communities can thus decide for themselves what the most appropriate 'proximity' is.[10] The Flemish Government is authorised to lay down criteria to further define the concept of technical or geographical proximity. Some parties (e.g. REScoop and the ROLECS consortium) argue to consider the whole Flemish region as falling within the proximity of a renewable energy community.[11]

  Another difference is that, where it suffices for citizen energy communities to merely have use rights over its production installations, renewable energy communities must have ownership rights over the production installations it uses to carry out its activities. The legislator referred

[8] See p. 15 of the preparatory documents of the transposition decree of 2 April 2021, available through https://docs.vlaamsparlement.be/pfile?id=1668780).

[9] 'Medium-sized enterprises' are defined as "*enterprises which cumulatively satisfy the following conditions: (i) employ fewer than 250 employees; (ii) have an annual turnover not exceeding EUR 50 million or an annual balance sheet total not exceeding EUR 43 million; (iii) satisfy the independence criterion*" (see Article 1.1.2, 86° of the Energy Decree of 8 May 2009).

[10] "*For small projects (e.g. small PV installation) a more limited proximity will be desirable, for larger projects (e.g. wind energy project) a larger proximity is recommended. Sometimes this will be of a technical nature (e.g. in connection with local grid configuration), in other cases it is better to determine the geographical proximity*" (see p. 93 of the preparatory documents of the transposition decree of 2 April 2021, available through https://docs.vlaamsparlement.be/pfile?id=1668780).

[11] VREG Consultation Report of 17 March 2020, 15-16 (available through https://www.vreg.be/sites/default/files/document/rapp-2020-08.pdf).

to the EU directives to justify this distinction[12]. In our view, however, no such distinction follows from the Renewable Energy Directive (EU) 2018/2001 or the Electricity Market Directive (EU) 2019/944.[13]

Furthermore, it is specifically provided that the renewable energy community is autonomous[14] with respect to the individual members and associates or other market participants that participate in it through other means, such as investments.

The members or associates of the same renewable energy community must each enter into an agreement with the renewable energy community on their rights and obligations.
If energy sharing takes place within the renewable energy community, the agreement contains the rights and obligations of the members or associates regarding the distribution key. The Flemish Government may determine the minimum content of such agreement. [15] Each renewable energy community must determine in its articles the rules of control of its members or associates and on the autonomy of the renewable energy community.

Article 22(6) of the Renewable Energy Directive (EU) 2018/2001 provides that "*Member States may provide for renewable energy communities to be open to cross-border participation*". The Flemish legislator did not implement such possibility (for the same reasons as mentioned earlier for citizen energy communities).

Energy sharing, peer-to-peer renewable energy trading and self-consumption

The aforementioned activities of energy sharing, peer-to-peer renewable energy trading and self-consumption of energy are described below:

- **Energy sharing**: the exchange between consumers over a single imbalance settlement period of all or part of the self-generated energy injected into an electricity distribution network, the local electricity transmission network or a closed electricity distribution network, or the exchange between consumers of renewable thermal energy through a heating or cooling network;

  Participation in energy sharing is open to the following persons/entities:

  - the active customer in a building, with respect to the jointly produced energy from renewable sources in or on the building or its appurtenances, up to a maximum of the

[12] See p. 93-94 of the preparatory documents of the transposition decree of 2 April 2021, available through https://docs.vlaamsparlement.be/pfile?id=1668780).
[13] At least for energy sharing within citizen energy communities and renewable energy communities, both directives refer to "*production units **owned** by*" (see Article 22(2)(b) Renewable Energy Directive (EU) 2018/2001 and Article 16(3)(e) Electricity Market Directive (EU) 2019/944).
[14] *Cf.* recital 71 of the Renewable Energy Directive (EU) 2018/2001: "*To avoid abuse and to ensure broad participation, renewable energy communities should be capable of remaining autonomous from individual members and other traditional market actors that participate in the community as members or shareholders, or who cooperate through other means such as investment.*"
[15] See above.

offtake at its access point in the building in which it is located, whereby the electricity production installations are connected to an electricity distribution network, the local electricity transmission network or a closed electricity distribution network;

A 'building' is defined as a building containing at least two residential units or other units with one or more common connection points at the same address and which are connected to an electricity distribution network, the local electricity transmission network or a closed electricity distribution network.

Previously, jointly developing e.g. a PV installation on the rooftop of an apartment building was often not practically feasible. Due to the prohibition of interconnection of indoor electrical installations (for reasons of technical safety)[16], such PV installation could only be connected to the common areas (e.g. for the operation of lifts, lights in the halls and corridors etc.). If the solar panels were to be connected to the individual residential units, then the PV installation had to be physically divided into an equal number of smaller PV installations (with their own inverter) so that each installation could be connected to one residential unit. Only in this way could it be avoided that the indoor electrical installations of the residents would be interconnected via the PV installation. The concept of energy sharing now makes it possible to connect a PV installation to the main access point of the apartment building to the electricity distribution network while still allowing the individual residents to enjoy the electricity produced by the PV installation. It is, however, provided that the measured energy at the access point will not be altered by energy sharing when calculating imbalance, charges, taxes, surcharges and contributions, including contributions for public service obligations. [17] Therefore, energy sharing only affects the energy component of electricity bill. In other words, 'energy sharing' is not as beneficial as 'self-consumption', since the latter allows for avoiding network tariffs, charges, taxes, surcharges and public service obligations. This is an important difference between residents of an apartment building and house owners.

- an associate or member of a citizen energy community with respect to the energy produced within the citizen energy community, up to a maximum of the offtake at its access point;

- an associate or member of a renewable energy community, with respect to the energy from renewable energy sources produced within the renewable energy community, up to a maximum of the offtake at its access point.

[16] Article 2.2.43 Technical Distribution Grid Code of 25 June 2021 (available through https://www.vreg.be/nl/technische-reglementen): "*Installations located behind different access points may not be interconnected in any way without the explicit consent of the electricity distribution system operator.*"

[17] Suppliers will therefore need to charge such costs to their customers for the volume that was obtained via energy sharing, although they have not supplied such volume.

- a fourth category will be added in the near future, namely energy sharing by an active consumer between different access points (in his possession). This would e.g. allow someone who owns multiple buildings to share electricity between various locations.[18]

- **Peer-to-peer renewable energy trading** means the sale of renewable energy between active consumers through an agreement with predetermined conditions for the automatic execution and settlement of the transaction, directly between participants or indirectly through a third market participant such as an aggregator. Active consumers can participate in peer-to-peer renewable energy trading, insofar this is not their main commercial or professional activity. If such active consumer sells its self-generated renewable electricity to only one other active consumer up to a maximum of the latter's offtake at its access point, the selling active consumer does not need to have a supply licence nor to comply with the public service obligations for suppliers. As for energy sharing, peer-to-peer renewable energy trading merely affects the energy component of a consumer's bill.

- **Self-consumption of energy**: self-consumption of energy is defined as self-producing and then momentarily consuming or storing energy without injecting the energy into the electricity distribution network, the local electricity transmission network, a closed electricity distribution network, or a heating or cooling network. In other words, self-consumption occurs 'behind the meter', while energy sharing occurs 'in front of the meter'.

In accordance with the aforementioned draft order of the Flemish Government of 9 July 2021, energy sharing and peer-to-peer renewable energy trading (between two active consumers) would be made possible as from 1 January 2022. A step-by-step implementation is deemed necessary to allow distribution system operators to adapt all operational and technical processes to these new activities:

- Energy sharing within collective buildings (apartment buildings, office complexes, etc.) can be started in early 2022;
- In mid-2022, energy sharing between access points of the same owner will be added and peer-to-peer trading between two active customers can be started;
- In 2023, energy sharing within energy communities can be started.

In order to give the suppliers and balance responsible parties ('BRPs') sufficient time to organise themselves optimally (e.g. in the context of sourcing and balancing), consumers engaging in energy sharing and peer-to-peer traders must all have the same supplier (so that all access points concerned remain within the same portfolio of one supplier in order to avoid complexity in the first phase). From 2023 onwards, this restriction will cease to apply. Until 2024, energy sharing and peer-to-peer trading will not be possible together on the same offtake or injection point.

A new version of the Technical Distribution Grid Code, which contains the general framework for the necessary data exchanges between system operators, consumers engaging in energy sharing or peer-to-peer trading and their suppliers, currently awaits its entry into force.[19] In particular, the distribution

[18] See Article 8 of the draft decree that will be introduced in parliament following the decision of the Flemish Government on 9 July 2021, available through https://beslissingenvlaamseregering.vlaanderen.be/document-view/60E81F0A364ED90008000A1F.

[19] See Article 4.3.64 of the Technical Distribution Grid Code of 25 June 2021 (available through https://www.vreg.be/nl/technische-reglementen).

system operator is mandated to draft a data exchange protocol for energy sharing and peer-to-peer trading which will need to be approved by the Flemish regulator (VREG). A first proposal for such protocol should be delivered to the VREG at least three months before the start of energy sharing and peer-to-peer trading (which would be by 1 October 2021 at the latest pursuant to the draft order of the Flemish Government of 9 July 2021).

Energy communities and system operation

Article 16(2)(a) of the Electricity Market Directive (EU) 2019/944 provides that "*Member States may provide in the enabling regulatory framework that citizen energy communities are entitled to own, establish, purchase or lease distribution networks and to autonomously manage them […]"*. The Flemish legislator did not implement this possibility. It was recognised that providing such possibility for citizen energy communities could be beneficial (e.g. more democratic control, energy autonomy with no foreign investments, optimisation of electricity flows in a community grid preventing congestion problems and thus postponing the need for additional grid investments etc.).[20] Nevertheless, the legislator considered that it would be hard for energy communities to comply with all obligations imposed on distribution system operators (e.g. with regard to the roll-out of digital meters, social public service obligations, reporting to the regulator, cybersecurity etc.). Also other issues were identified such as unbundling, a risk of inefficient system operation due to too many parallel grids etc.

However, it is explicitly provided that the Flemish Government may, in order to stimulate innovative projects within the framework of regulatory sandboxes (see under), allow citizen energy communities or renewable energy communities to operate electricity distribution networks within their area (without violating the applicable regulations).[21]

It is important to note, however, that energy communities do have the right to operate a **closed electricity distribution network**[22] if they comply with the relevant provisions of the Energy Decree of 8 May 2009 (see Article 4.6.1 – 4.6.10). Although, in principle, unbundling requirements apply to the operators of closed distribution networks[23], the Energy Decree of 8 May 2009 provides that the operator of a closed distribution network may carry out supply or production activities, if his network serves less than 100.000 connected customers.[24] This is a necessary exemption for energy communities in order to

[20] See p. 14 of the preparatory documents of the transposition decree of 2 April 2021, available through https://docs.vlaamsparlement.be/pfile?id=1668780).

[21] Article 4.8.4, §4, al. 2 of the Energy Decree of 8 May 2009.

[22] A closed distribution grid is defined as a "*system used for the distribution of electricity or natural gas within a geographically delimited industrial, commercial or shared services site which does not supply household customers with electricity or natural gas, unless on an occasional basis, and meets one of the following requirements :*
(a) for specific technical or safety reasons, it provides for the integrated operation or production of the various users of the system
b) it distributes electricity or natural gas primarily to the owner or operator of the system or to undertakings which are affiliated or associated with them." (see Article 1.1.2, 56°/2 of the Energy Decree of 8 May 2009 and Article 38 of the Electricity Market Directive (EU) 2019/944). See also VREG Communication no. MEDE-2020-01 of 3 March 2020 on closed distribution networks, direct lines and private networks, available through https://www.vreg.be/sites/default/files/document/mede-2020-01.pdf.

[23] See Article 38(2) and 35 of the Electricity Market Directive (EU) 2019/944.

[24] Article 4.6.4, al. 1 of the Energy Decree of 8 May 2009 (implementing Article 35(4) of the Electricity Market Directive (EU) 2019/944).

e.g. own and operate production installations. In addition, the regulator (VREG) may allow operators of closed distribution networks to develop and operate storage facilities and recharging points for electrical vehicles.[25]

Energy Poverty

Important to note is that the policy makers evaluated the potential impact of introducing the concepts as they are currently presented with regard to energy poverty. The provided conclusion indicates no negative impact.[26] On the contrary, it is expected that the introduction of energy communities will have a positive effect on energy poverty since their objective is "*to provide environmental, economic **or social** benefits*" to their members: "*Thus, energy communities will also be established to pursue a social goal, for example targeting people living in poverty, vulnerable groups or disadvantaged neighbourhoods, and even providing an economic or financial benefit to their members. The revenues generated by such energy communities could be used directly to benefit their vulnerable members.*"[27]

Notwithstanding the fact that participation in energy communities is open, a **limited restriction does apply to customers for whom the distribution system operator acts as back-up (social) supplier,** i.e. in case a customer's supply contract was terminated e.g. due to payment difficulties and a new supplier could not be found quickly[28]. In those cases, it is not possible to participate in energy sharing and peer-to-peer trading by one active customer to one other active customer.[29] This is prompted by a number of (market) technical objections and complexities (e.g. interaction with the so-called 'budget meter' that is installed in case of supply by the distribution system operator). Furthermore, an exclusion is deemed logical since (i) 'social' supply by the distribution system operator occurs outside the commercial market, while energy sharing and peer-to-peer trading are commercial activities: and since (ii) it is always the distribution system operator's intention to act as 'social' supplier for a consumer only for a short period of time (while guiding such consumers back to more beneficial prices on the commercial market).

Registration

The legal entity has to be registered if it was not yet established. Even an already existing entity has to adapt the statutes in order to include the new NACE code that is being developed for energy communities.

Citizen energy communities and renewable energy communities have to be registered with the Flemish regulator. The aforementioned draft order of the Flemish Government of 9 July 2021 specifies that, within thirty days of its incorporation, the citizen energy community or renewable energy community

[25] Article 4.6.1, §4 of the Energy Decree of 8 May 2009 (implementing Article 38(2) of the Electricity Market Directive (EU) 2019/944).

[26] See p. 17 of the preparatory documents of the transposition decree of 2 April 2021, available through https://docs.vlaamsparlement.be/pfile?id=1668780).

[27] *Ibid*.

[28] Article 5.2.3 Energy Order of 19 November 2010.

[29] See Article 7.2.1, §1, al. 3 of the Energy Decree of 8 May 2009.

must report to the VREG all of the following information using an electronic form made available by VREG on its website:

(i) the type of energy community;
(ii) the activities which the energy community performs;
(iii) an overview giving insight to what extent the associates or members are natural persons, local authorities, small enterprises, medium-sized enterprises or large enterprises; and

in the case of a renewable energy community, the manner in which it gives effect to the concept of technical or geographical proximity, Changes have to be notified to VREG before 31 December each year.

Regulatory sandboxing scheme

The regulatory sandboxing scheme for the energy sector was introduced by Decree of 16 November 2018 inserting a new Title XIV/1 in the Energy Decree of 8 May 2009. The objective of regulatory sandboxes is to allow existing legal rules, which stand in the way of the implementation of a specific innovative energy project, to be temporarily suspended (as a small-scale 'legal experiment'). In implementation of this, the Flemish Government laid down the conditions for recognition as a regulatory sandbox by Order of 5 April 2019 (see Title X/1 of the Energy Order of 19 November 2010). Applications were opened as from 29 April 2019.

Only the provisions laid down in (in an implementation order based upon) Titles IV, IV/1, VII, IX, XI of the Energy Decree of 8 May 2009 are eligible to be derogated from. Moreover, under no circumstances may derogations be made from provisions transposing or stemming directly from EU energy law. This represents a significant limitation of the concrete possibilities for derogation. Network tariff-related derogations are also not possible, due to the regulator's exclusive competence in this area.

An application for a regulatory sandbox must include a justification as to why, for how long (maximum of 10 years, renewable once for a maximum of 5 years) and in which geographically defined area a derogation from which rules is requested. For each derogation, the applicant must demonstrate the need for it. The Flemish Government assesses whether the application is complete within one month of receiving it. Once it has found it to be complete, the Flemish Government will decide within three months on the recognition as a regulatory sandbox. A project can be recognised if it meets the following cumulative conditions:

(i) the project is sufficiently mature and developed;
(ii) the project is innovative and susceptible to replication;
(iii) the project has a demonstrable social interest that exceeds the purely individual interest and the social benefits (potentially) exceed the costs;
(iv) the project does not impose a disproportionate burden on third parties.

The first regulatory sandbox was approved for the 'Thor Park'-project in Genk (which includes an energy community).[30] Only one exception was granted, namely an exception to the requirement to obtain a

[30] Order of the Flemish Government of 7 February 2020 to recognise Thor Park in Genk as a regulatory sandbox, available through

licence in order to act as electricity supplier. The only other known application (by Lovitas) was refused on 26 March 2021, since exceptions were requested that could not be granted (e.g. an extension of the definition of 'direct lines').[31]

ADV-2019-03 16/10/2019 11/11[32]

As indicated in chapter 3 of this advice, the application distinguishes between the so-called "regular market" and the so-called "shadow market": in the "regular" market, the customers within the requested regulation-free zone will be charged individually based on their offtake and injected energy, while in a "shadow market" a "combined metering" of the global group of customers will be assumed. This "combined metering" would "globally result in a lower injection and lower offtake for the entire local energy community (and thus a saving, provided that this optimization is actually compensated)", which would mean "that the distribution network costs, transmission costs and levies based on off-taken (and injected kWh) can decrease". -The VREG notes that the requested unregulated energy area aims to set up, in parallel with the "normal" market operation, a so-called "shadow market", within which the experiments within the first research section ("market organisation models within the framework of a CEC/REC") of the requested unregulated energy area would be carried out. The VREG emphasizes that the tariffing of the customers within the requested unregulated energy area, also after a possible recognition by the Flemish Government, should take place in accordance with the current Tariff Methodology which the VREG has established within the framework of its regulatory tasks (which it draws from EU law). Even if the application were to explicitly request a deviation from the Tariff Methodology, quod non, the Flemish Government would not be able to grant such deviation. Also within the unregulated zone for energy, charging of each customer on an individual basis, according to the Tariff methodology in force, would continue to exist.

Financial support schemes

No specific support scheme is developed for energy communities. The renewable energy support schemes[33] currently in force are open to renewable energy communities, but do not provide for a specific track or category. Several municipalities and provinces provide financial support and the Flemish innovation funding agency VLAIO additionally enables access to financial support for pilot, and research & development projects[34].

https://www.ejustice.just.fgov.be/cgi/article_body.pl?language=nl&caller=summary&pub_date=20-04-09&numac=2020040800.

[31] See the decision of the Flemish Government of 26 March 2021, available through https://beslissingenvlaamseregering.vlaanderen.be/?search=lovitas, and the negative advice of the VREG of 22 December 2021 no. ADV-2020-11, available through https://www.vreg.be/sites/default/files/document/adv-2020-11.pdf.

[33] Large wind (>300 kW) and solar (>2 MW) projects may apply for support under the green certificates scheme (Articles 6.1.1 – 6.1.24 and Articles 6.2/1.2 - 6.2/1.8/1 of the Energy Order of 19 November 2010). A tender scheme is in place for smaller wind (10 kW until 300 kW) and solar (40 kW until 2 MW) projects (see Articles 7.11.1 – 7.11.4 of the Energy Order of 19 November 2010).

[34] Projects and initiatives can join Regional and European funding programs such as Interreg, ERDF and Horizon Europe. It is to be noted that the amount of funding allocated to these EU programmes specifically to the topic of energy communities is high: mid 2021 over 113 million euro Horizon2020 project budget was allocated to energy community projects and an estimated 120 million euro was allocated to such projects under ERDF and Interreg.

The Flemish legal framework for energy communities does not provide any reductions on taxes, levies, DSO and TSO costs, nor on VAT (VAT is a federal matter) for energy communities. Instead, the regulator (VREG) was asked to assess whether the activities of energy communities and/or active customers within the same building "*can contribute to unburdening the distribution network, including the avoided investments and costs in the network and [to] examine the relevant fees and reductions in network tariffs that may be provided for this purpose*".[35]. As a consequence, the possible profit margin for energy sharing (or for peer-to-peer trading) compared to standard supply and injection contracts, is only in the commodity part of the tariff compared to the injection value: a typical 2 to 4 cents per kWh extra compared to the 3.5 to 4 cents for injection.

While banks, energy suppliers and many potential service providers (including software companies) have spent considerable budgets on R&D for the to-be-expected market, most realise that it will be challenging. However the acquisition cost of a consumer for a supplier is about 200 euro for electricity contracts and about 200 euro for gas contracts. Therefore, being able to offer a contract to members of an energy community could be beneficial for a supplier or an intermediary who does the customer acquisition for the supplier.

[35] Article 4.8.4, §4, al. 1 Energy Decree of 8 May 2009.

Netherlands

Introduction

Citizens in the Netherlands have been involved in community energy initiatives prior to the publication of the Renewable Energy Directive (EU) 2018/2001 and the Electricity Market Directive (EU) 2019/944. A draft act concerning the implementation of these EU directives was published for public consultation on 17 December 2020. At present, the draft act has not yet been adopted. Furthermore, the currently applicable regulatory sandboxing scheme is in a transition phase at the moment with no new sandboxes started.

The (non-)existing legal framework for energy communities in the Netherlands

Energy communities have not yet been explicitly regulated in Dutch regulation. However, since 2015 energy cooperatives and associations are granted the possibility to operate within a regulatory sandbox which allows for exemptions from regulations concerning the network operator, tariffs, electricity generation, measurement device requirements, supply, smart grids and data management (see under). Existing energy cooperatives have mainly been involved in production of electricity from renewable sources, renewable heating and electric mobility projects. Net metering is not available at the cooperative level, instead this is done at the individual level and will be phased out between 2023 and 2031 (see under).

A new Dutch Energy Act, which would replace both the currently existing Gas Act[36] and Electricity Act[37] as well as implement the Renewable Energy Directive (EU) 2018/2001 and the Electricity Market Directive (EU) 2019/944, is currently in preparation. A draft was published for public consultation on 17 December 2020.[38] Around 90 reactions were received, which are currently being reviewed in order to adjust and ultimately submit the draft act to the parliament. It is clear that the transposition deadlines of the EU directives will be significantly exceeded. The principles of the draft law are discussed below. The draft act seems to contain a very concise and even incomplete implementation of the EU directives. A lot of delegation provisions are included which leave the elaboration of a more detailed legal framework to the government.

- **Active consumers** are not defined. Article 2.1.3 merely prohibits energy undertakings to prevent a final consumer from generating electricity independently or in a group for its own use, storage, sale or supply to third parties. No other provisions are dedicated to the rights or obligations of (jointly) active consumers. Peer-to-peer trading is not explicitly included in the draft Energy Act nor energy sharing between active consumers located within the same (apartment) building ('jointly active consumers'). The explanatory memorandum explains that active consumers should be considered on the basis of existing market roles[39]:

[36] Act of 22 June 2000, containing rules on the transport and delivery of gas (Gas Act), available through https://wetten.overheid.nl/BWBR0011440/2021-07-01.

[37] Act of 2 July 1998, laying down rules for the generation, transmission and supply of electricity (Electricity Act 1998), available through https://wetten.overheid.nl/BWBR0009755/2021-07-01.

[38] See https://www.internetconsultatie.nl/energiewet.

[39] See Explanatory Memorandum to the draft Energy Act, p. 51-52, available through https://www.internetconsultatie.nl/energiewet.

> "*An active final customer consumes electricity, but can also become active in different ways and assume different market roles. When a final customer purchases solar panels, he not only consumes electricity but also produces it and is a producer as well as a final customer. When he sells the electricity he has generated to another final customer, he is supplying and assumes the market role of supplier. The different activities involve rights and obligations that also apply to other market players who fulfil the same market role. If a final customer wishes to supply electricity directly to other final customers, he will have to fulfil the requirements that apply to suppliers. For example, he must be able to participate in the central message traffic between market parties and ensure payment of, for example, energy tax and VAT.*"

An exemption from the requirement to have a supply licence is applicable for "*electricity [supplied] by a non-primary supplier*[40] *in so far as such electricity is produced on behalf and at the risk of a final consumer or group of final consumers and such production is not the primary activity of that final consumer or group of final consumers*".[41]

Doubts exist as to whether this approach is in line with the Renewable Energy Directive (EU) 2018/2001 and the Electricity Market Directive (EU) 2019/944 (e.g. the assimilation of energy sharing and regular supply).

- **Energy communities**: First of all, it is important to note that the draft Energy Act does not distinct between citizen and renewable energy communities as they are jointly considered under the concept 'energy communities'. An energy community is defined as a legal person which, on behalf of its members or shareholders carries out activities in the energy market and its main objective is to provide environmental, economic or economic or social benefits to its members or shareholders or to the local areas in which it operates, and not for profit.

  Energy undertakings are explicitly prohibited to prevent final consumers to participate in an energy community.
  An energy community shall ensure in its articles of association that: (i) participation in the energy community is open and voluntary; (ii) members or shareholders have the right to leave the energy community; and (ii) effective control of the energy community is vested in members or shareholders who are natural persons, small businesses or local authorities. An energy community that develops renewable energy projects **may**:
    - ensure in the articles of association that also medium-sized enterprises may become members or shareholders of the energy community,

[40] This refers to a supplier on a 'secondary allocation point' (as opposed to a 'primary allocation point'). Since mid-2017, it is possible to contract multiple electricity suppliers on a single connection point. This means that it is possible for the building owner to enter into a contract with one energy supplier for the purchase of electricity, while the operator of the PV installation (on the same building) can enter into another contract with another supplier for the feed-in of electricity. For the latter, a secondary allocation point will be granted by the system operator (see ACM Code decision of 13 July 2017 on facilitating multiple suppliers on a connection, available through https://www.acm.nl/nl/publicaties/publicatie/17467/Codebesluit-faciliteren-meerdere-leveranciers-op-een-aansluiting).

[41] Article 2.2.15(2)(b) draft Energy Act.

- allocate the actual control of the energy community to those members or shareholders of the legal entity who are located in the vicinity of the renewable energy projects.

No other provisions are dedicated to the rights or obligations of energy communities. Energy sharing within energy communities is not explicitly included in the draft Energy Act. The same reasoning applies as for active consumers (see above).

Doubts exist as to whether this approach is in line with the Renewable Energy Directive (EU) 2018/2001 and the Electricity Market Directive (EU) 2019/944 (e.g. the integration of citizen energy communities and renewable energy communities, the assimilation of energy sharing and regular supply).

Regulatory sandboxing scheme

Article 7a of the existing Electricity Act contains a specific electricity-related regulatory sandboxing scheme. The scheme was further implemented in the Decentralised Sustainable Electricity Experiments Order.[42] To be considered for a regulatory sandbox the candidate project has to prove that it contributes to developments in the area of production, transport, delivery of decentral produced electricity or electricity produced in an installation for heat cogeneration. These sandboxes are restricted to 10.000 connections for projects which (i) aim to optimise the supply and demand of electricity when supplying decentrally generated renewable electricity, or (ii) envisage the construction or maintenance of part of a network s well as the supply of decentrally generated renewable electricity; and to 500 connections for projects related to the construction and maintenance of so-called "project networks"[43] as well as the supply of decentraly generated renewable electricity.

The regulatory sandboxing scheme was opened annually between 2015 and 2018. A total of 15 regulatory sandboxes were granted.[44] No sandboxes have been granted after 2018 due to the expiry of the Decentralised Sustainable Electricity Experiments Order. A new scheme was envisaged, but ultimately never implemented due to concerns raised by the Council of State.[45] In addition, the draft Energy Act no longer contains references to regulatory sandboxes. To date, however, experiments would in principle remain possible under Article 2.4 of the Crisis and Recovery Act.[46]

[42] Order of 28 February 2015, allowing for the experimental derogation from the Electricity Act 1998 for decentralised generation of sustainable electricity, available through https://wetten.overheid.nl/BWBR0036385/2015-04-01.

[43] I.e. a network, other than the national high-voltage grid, (i) that is connected with a single connection to a grid that is operated by a distribution system operator; (ii) which lies within a geographically defined location or location with shared services; (iii) to which a maximum of 500 customers are connected and; (iv) which predominantly supplies electricity to consumers.

[44] For an overview, see https://www.rvo.nl/subsidie-en-financieringswijzer/experimenten-elektriciteitswet-2015-2018/besluiten-ontheffingen.

[45] See the parliamentary briefing by the Minister for Economic Affairs and Climate on 20 December 2020, available through https://www.rijksoverheid.nl/documenten/kamerstukken/2020/12/10/kamerbrief-over-ontwerpbesluit-experimenten-elektriciteitswet-1998-en-gaswet.

[46] Act of 18 March 2010, containing rules on the accelerated development and realisation of spatial and infrastructural projects (Crisis and Recovery Act), available through https://wetten.overheid.nl/BWBR0027431/2021-07-01.

An official evaluation of the regulatory sandboxing scheme was offered to the parliament on 16 June 2021.[47]

> Extract from the report on the evaluation of the regulatory sandboxing scheme:
> The evaluation of the experiments showed that the energy community can have positive results and contribute to the objective of generating more sustainable energy. However, the energy community faces a number of challenges that must be overcome before it can provide different types of energy services to its customers. These include challenges related to developing a viable business case. The evaluated experiments have shown that some cooperatives participating in these experiments, due to their size and nature as 'voluntary organizations', have difficulties with the co-responsibility for grid management tasks, in particular managing peaks in demand and supply. The position given to energy cooperatives and the responsibilities that go with it will have to match the nature of those organisations. Financial support may lead to further professionalization of these organisations, which may lead to more responsibilities being assigned to them. Conversely, it is questionable whether it is necessary for energy communities to be able to carry out management tasks. A number of interviewees indicated that they would rather not take on these tasks, such as reducing congestion and preventing loss of voltage, and the associated responsibilities for grid reliability. The study also found insufficient evidence that the exempted parties are sufficiently aware of the risks associated with these responsibilities, such as guaranteeing security of supply, and have taken sufficient measures to cover these risks. The exact responsibilities of the energy communities should be in proportion to what these local organisations can reasonably bear.

Financial support schemes

The Netherlands encourages renewable self-consumption a.o. via a VAT reimbursement on the purchase of solar photovoltaic panels (applicable for small businesses with an annual turnover not exceeding EUR 20.000)[48], and a net-metering scheme for owners of solar panels with a small-scale connection (less than 3x80A). The net metering scheme, referred to as *salderingsregeling* in Dutch, is laid down in the Electricity Act[49] and the Environmental Taxes Act[50] and was introduced already in 2004. Under the net-metering scheme, the electricity from renewable energy generation fed back into the grid is deducted from the electricity purchased from the grid. Supply costs, energy tax, the surcharge for sustainable energy ("*Opslag Duurzame Energie*" or "ODE") and VAT are only applied to this reduced quantity. Furthermore, if the volume of injected electricity exceeded the volume of purchased electricity in the

[47] See https://www.rijksoverheid.nl/documenten/rapporten/2021/06/16/bijlage-1-rapport-tussentijdse-evaluatie-experimenten-electriciteitsopwekking.

[48] I.e. the 'Small Business Scheme' ("Kleineondernemersregeling" or "KOR"), see Article of the Act of 28 June 1968, replacing the existing turnover tax with a turnover tax according to the value added tax system (Turnover Tax Act 1968), available through https://wetten.overheid.nl/BWBR0002629/2021-07-01. Note that individual consumers may also be considered as 'entrepreneur' under the scheme when they sell part of their production to an energy company. See also https://www.belastingdienst.nl/wps/wcm/connect/bldcontentnl/belastingdienst/zakelijk/btw/hoe_werkt_de_btw/voor_wie_geldt_de_btw/eigenaren-van-zonnepanelen/eigenaren_van_zonnepanelen.

[49] Article 31c Electricity Act.

[50] Article 50, al. 2 Act of 23 December 1994, laying down the Environmental Tax Act (Environmental Tax Act), available through https://wetten.overheid.nl/BWBR0007168/2021-04-01.

evaluation period of one year, the surplus is remunerated with a feed-in tariff ("*terugleververgoeding*") determined by the supplier. Net metering will be slowly phased out in stages between 2023 and 2031.[51] The percentage of injected electricity that can be netted will gradually decrease to zero in the period 2023-2031. The volume that can no longer be netted will, however, be eligible for a feed-in tariff. The feed-in tariffs are determined by each energy supplier, but they have to be "reasonable" (see Article 31.c, al. 3 Electricity Act). For larger consumers (above 3x80A connection), net-metering is not applicable. Larger consumers have to make individual arrangements with their supplier.

Other subsidies for companies and non-profit organisations (with a connection of more than 3x80A) are currently (2021) provided in subsidy rounds by the SDE++ scheme, which aims to stimulate investments in renewable energy generation or reduction of CO_2.[52] This subsidy compensates for the difference between the market price and the cost of the produced renewable energy, in order to render the business cases profitable. The SDE++ subsidy is awarded over three possible periods, namely 12 or 15 years, depending on the technology used. The amount of the subsidy equals the 'basic amount' which corresponds to the average investment cost of an installation (in EUR/kWh) (to be annually determined by the government per technology) minus the 'correction amount' which corresponds to the average electricity price received by renewable electricity producers each year. The scheme works with various subsidy rounds within a year. In the first phase, a low 'basic amount' will be made available. Later in the year, subsidy rounds are opened for projects that are less profitable. As a result, the first-come-first-served principle favours the most cost-efficient projects. For the 2021 SDE++ rounds, a maximum total amount of EUR 5.000.000.000 is available. To avoid overstimulation, this subsidy is generally not combinable with other financial support.

Specifically for energy cooperatives, a 'reduced tariff' scheme was available until April 2021 ("*Regeling Verlaagd Tarief*" or "*Postcoderoosregeling*"[53]).. Under this scheme, small consumers residing in the same four-digit postcode area (or in one of the four-digit postcode areas around it) could set up an energy cooperative which operates a renewable energy production installation. The members would then get a reduction on the energy taxes of their energy bill for a period of 15 years. For 2020, the reduction amounted to 9,77 cent per kWh (excl. VAT). Revenues from selling the generated electricity to a supplier with an agreed feed-in tariff could be used by the cooperative to finance operating costs, maintenance, etc.

The 'reduced tariff' scheme was replaced as from 1 April 2021 by the 'Cooperative Energy Generation Subsidy Scheme' ("*Subsidieregeling Coöperatieve Energieopwekking*" or "SCE").[54] A cooperative or a property owners association can benefit from this scheme. Its members also need to be small consumers that are located in neighbouring four-digit postcode area. Also companies and associations with a

[51] See the draft act amending the Electricity Act and the Environmental Taxes Act to implement the phasing out of the net-metering scheme for small-scale consumers, available through https://zoek.officielebekendmakingen.nl/dossier/35594.

[52] See Decision of 16 October 2007, laying down rules concerning the granting of subsidies for the production of renewable electricity, renewable gas and electricity generated by means of cogeneration (Decree on the promotion of sustainable energy production), available through https://wetten.overheid.nl/BWBR0022735/2020-11-01.

[53] Article 59a Environmental Taxes Act.

[54] Regulation of the Minister of Economic Affairs and Climate Change of 27 February 2021, no. WJZ/20120093, establishing a scheme for the provision of subsidies for the local and joint generation of renewable electricity (Subsidy Scheme for Cooperative Energy Generation), available through https://zoek.officielebekendmakingen.nl/stcrt-2021-11080.html.

small-scale connection located in the same area can be part of the cooperative. The principles of this scheme are very similar to the SDE++ (see above). The subsidy is an operating subsidy with a guaranteed duration of 15 years, adjusted per year, and is allocated directly to the cooperative, which can freely use or distribute it. For 2021, a total amount of EUR 92.000.000 was made available for the scheme. Solar, wind and hydropower are covered by this subsidy, ranging from 15 kWp up to 150 kWp for hydro, 15 kWp up to 500 kWp for solar and 15 kWp up to 1000 kWp for wind. The subsidy cannot be combined with previous national renewable energy aid schemes, but additional financial support from the province or municipality is allowed.

Regional support initiatives

The Dutch Climate Agreement[55] ("*Klimaatakoord*") allows for regions to develop their own regional programs and projects, in agreement with the national targets, via the so-called Regional Energy Strategies ("*Regionale Energiestrategie*" or "RES").[56] The National Program for RES supports the development of the RES for the 30 so-called 'energy regions' within the Netherlands. RES are developed by a collaboration of the local governments, social partners, network operators, the private sector and where possible local residents as well as representatives from energy cooperatives. First versions of these RES were due on the 1st of March 2021. RES will allow citizens to push for more ambitious policies also in terms of energy communities and cooperatives within their region.

A comprehensive overview of local and regional support measures for energy cooperatives is provided on the website of the *HIER opgewekt* initiative.[57] A general overview will be given below.

Subsidies

Some form of subsidy for energy cooperatives, energy collectives and/or local energy initiatives is available (as of June 2021) in the provinces of Limburg, Zuid-Holland, Noord-Holland, Gelderland, Overijssel, Drenthe, Groningen and Friesland. The conditions, targeted technologies as well as the size of the subsidy may differ between the provinces, but may cover among others the setting-up of a cooperative, or a specific project.

Energy funds

Almost all provinces in the Netherlands have a regional energy fund for renewable energy projects.[58] Depending on the conditions of each fund, energy cooperatives may be eligible to use it or not. Common forms of funds include loans, guarantees and participation in the project.

Low-interest loans to support projects with a social objective such as energy cooperatives may be available (see e.g. the sustainability fund of the municipality of Amsterdam and the energy fund of the province of Utrecht).

Some funds act as guarantors for loans from the bank in order to facilitate access to external financing. Such funds are currently available in Utrecht, Overijssel and Friesland.

[55] Available through https://www.rijksoverheid.nl/documenten/rapporten/2019/06/28/klimaatakkoord.
[56] See https://www.regionale-energiestrategie.nl/default.aspx.
[57] See https://www.hieropgewekt.nl/kennisdossiers/ondersteuning-energiecooperaties-per-provincie.
[58] See https://www.refs.nu/.

Another way of funding energy cooperatives is by participating in it. The fund then takes a share of usually up to 50% in the project, hence assuming a large part of the risk involved with it. An example is the BOM in Noord-Brabant.[59]

The Development Fund for Energy Cooperatives supports the start-up of energy cooperatives and already four provinces are contributing to it (South Holland, Utrecht, Drenthe and Limburg).[60]

Another source of funding at national and regional scale is the non-profit independent foundation Stimuleringsfonds Volkshuisvesting Nederlandse gemeenten (SVn). They offer different funds for energy cooperatives, among other sustainable energy projects, in the form of loans, co-financing or advice.[61]

Other support

Provinces also provide non-financial support to energy cooperatives, in the form of guidance for the set-up of the organisation or for the execution of a project. Organisations that support the provinces in knowledge sharing and guidance for energy cooperatives include Ús Koöperaasje, GrEK, Drentse Kei, VECG and REScoop Limburg.

[59] See https://www.bom.nl/renewable-energy/product/grootschalige-energieopwekkings-projecten.
[60] See https://www.energiesamen.nu/pagina/77/ontwikkelfonds-voor-energiecooperaties.
[61] See https://www.hieropgewekt.nl/kennisdossiers/stimuleringsfonds-volkshuisvesting-nederlandse-gemeenten-financiele-regelingen-en.

United Kingdom

Introduction

Already in 2014, the UK Government published its first 'Community Energy Strategy', setting out the role that communities can play in helping to meet the UK's energy and climate change challenges, including supporting a sustainable and secure energy system and lowering consumer bills.[62] An update was published in March 2015.[63]

Until 2016, there was steady growth in the UK community energy sector, largely driven by the UK Government's Feed-in Tariff (FiT) scheme[64] providing financial support to small- and medium-sized renewable electricity generators (up to 5 MW). However, the scheme limited funding from 2016 and was closed to new applications as from 1 April 2019. The formation of new energy communities dropped by 81% from 2016 to 2018.

In 2019, 300 community energy organisations were identified throughout England (252), Wales (47) and Northern Ireland (1).[65] In total, community energy represents 278MW of renewable energy and heat production. Whilst communities still focused primarily on energy generation (268), organisations were increasingly found to be developing low carbon transport (47), energy storage (39) and energy efficiency (102) projects in 2019. Community Benefit Societies (BenComs) (47%) and Community Interest Companies (CIC) (11%) structures continued to dominate organisations formed since 2015.

Brexit

Following the Brexit referendum on 23 June 2016 (resulting in a majority of the electorate wanting to leave the EU) and the formal invocation of Article 50 of the Treaty of the European Union on 29 March 2017, the Withdrawal Agreement was concluded between the EU and UK on 17 October 2019.[66] The Withdrawal Agreement, establishing the terms of the UK's orderly withdrawal from the EU, was ratified by the UK Parliament by passing the Withdrawal Agreement Act on 23 January 2020 and approved by the EU Parliament on 29 January 2020.

The UK left the EU on 1 February 2020. After the transition period as from 1 February 2020 until 31 December 2020 (Article 126 of the Withdrawal Agreement), the EU acquis on the internal energy market no longer applies to and in the UK.

The relationship between the UK and the EU is henceforth governed by the EU-UK Trade and Cooperation Agreement, which includes a Chapter 2 on 'electricity and gas' covering wholesale market

[62] Available via https://www.gov.uk/government/publications/community-energy-strategy.
[63] Available via https://www.gov.uk/government/publications/community-energy-strategy-update.
[64] See the Feed-in Tariffs Order 2012, available via https://www.legislation.gov.uk/uksi/2012/2782/contents.
[65] See Community Energy England and Community Energy Wales, "Community energy - State of the Sector 2020", June 2020, available via https://communityenergyengland.org/files/document/385/1592215769_CommunityEnergy-StateoftheSector2020Report.pdf. Note that Scotland will be included in the 2021 State of the Sector report.
[66] Available via https://ec.europa.eu/info/relations-united-kingdom/eu-uk-withdrawal-agreement_en.

requirements, third-party access, unbundling, trading over interconnectors, network development and security of supply, renewable energy etc. Retail markets arrangements are, however, not included (except for price regulation in Article 326). No provisions on energy communities are included.

In Northern Ireland, EU energy legislation remains applicable (see Article 9 and Annex 4 of the Protocol on Ireland/Northern Ireland to the Withdrawal Agreement). In particular, EU regulations and directives which are listed in Annex 4 (e.g. the Third Electricity Directive 2009/72/EC and the Electricity Regulation (EC) No. 714/2009) will continue to apply in Northern Ireland. The Clean Energy Package is deemed included in this list, since Article 13(3) of the Protocol on Ireland/Northern Ireland to the Withdrawal Agreement provides that references to an EU act must be read "*as referring to that Union Act as amended or replaced*". The instruments listed, however, apply in Northern Ireland only *"insofar as they apply to the generation, transmission, distribution, and supply of electricity, trading in wholesale electricity or cross-border exchanges in electricity"*. Provisions relating to retail markets and consumer protection are specifically excluded.

The (non-)existing legal framework for energy communities in the UK

As already indicated, the Electricity Market Directive (EU) 2019/944 and the Renewable Energy Directive (EU) 2018/2001 do not need to be implemented in the UK post-Brexit.

Energy communities are not explicitly recognized as separate market actors under UK energy law. Therefore, there is no legislation conferring specific rights or obligations on energy communities.

In the UK government's energy white paper of 14 December 2020, which explains the policies and commitments that will enable the UK to achieve net zero emissions by 2050, there is surprisingly little or no attention for community energy. Consequently, no such legal framework is expected in the near future either.

The Environmental Audit Committee of the House of Commons in the UK Parliament, however, recently called for more attention to community energy in a letter to the Secretary of State for Energy and in particular for the removal of several major regulatory barriers that energy communities are currently facing.[67] The letter was the result of a call for evidence on community energy organised by the Environmental Audit Committee in February 2021 (as part of an overarching inquiry looking at technological innovations which could contribute to tackling climate change).[68]

It is to be seen if community energy can get a more prominent role in the UK's upcoming cross-government Net Zero Strategy, which will be published ahead of COP26 (1 November 2021).

[67] Letter of 29 April 2021 by the Environmental Audit Committee of the House of Commons to Rt Hon Kwasi Kwarteng MP, Secretary of State (ref. Technological Innovations and Climate Change inquiry: Removing the barriers to the development of community energy), available via https://committees.parliament.uk/publications/5718/documents/56323/default/.

[68] See for the call for evidence: https://committees.parliament.uk/call-for-evidence/406/technological-innovations-and-climate-change-community-energy/. The submitted evidence is available via https://committees.parliament.uk/work/1047/technological-innovations-and-climate-change-community-energy/publications.

Regulatory sandboxing scheme

In December 2016, Ofgem's Innovation Link launched a regulatory sandbox initiative.

It enables innovators to trial new products, services and business models while enjoying time-limited derogations (relief) from specific rules. These can be rules that Ofgem controls (usually in licences) or, in some circumstances, rules from rulebooks (codes) (e.g. the Balancing and Settlement Code administered by Elexon[69] and the Distribution Connection and Use of System Agreement administered by the DCUSA Panel), which underpin the day-to-day operations of the energy system. The rules from which derogations could be requested are not predefined. In other words, specific derogations are offered more 'à la carte.'

So far, Ofgem has run two application rounds ('windows') for the sandbox. These took place in 2017. Out of a total of 68 applications for the two calls, seven sandboxes – three during the first window[70] and four in the second[71] – were allowed to carry out trials. Across both sandbox windows, local energy featured particularly strongly with innovators developing models that share the benefits of community-owned generation and deliver other energy services for local consumers, oftentimes more vulnerable consumers.[72]

The initiative was renewed in 2020.[73] Applications can now be submitted at any time (without having to respect 'window' deadlines).

Financial support schemes

In 2010, a **Feed-in Tariff scheme** was introduced to support small to medium scale renewable energy production capacity up to 5 MW (or 2kW for CHP).[74] The scheme requires participating licensed suppliers to make quarterly payments on both generation and export (injection) from eligible production installations during the 'eligibility period' (i.e. usually 20 years[75]). The number of new

[69] See https://www.elexon.co.uk/bsc-and-codes/bsc-related-documents/bsc-sandbox-procedure/.
[70] See https://www.ofgem.gov.uk/publications-and-updates/innovation-link-outcome-sandbox-window-1.
[71] See https://www.ofgem.gov.uk/publications-and-updates/innovation-link-enabling-trials-through-regulatory-sandbox.
[72] See Ofgem, Insights from running the regulatory sandbox, October 2018, available via https://www.ofgem.gov.uk/system/files/docs/2018/10/insights_from_running_the_regulatory_sandbox.pdf.
[73] See Ofgem, Energy Regulation Sandbox: Guidance for Innovators, 20 July 2020, available via https://www.ofgem.gov.uk/publications-and-updates/energy-regulation-sandbox-guidance-innovators. At the moment, two new sandboxes were created (see https://www.ofgem.gov.uk/publications-and-updates/regulatory-sandbox-repository).
[74] Feed-in Tariffs Order 2012, available via https://www.legislation.gov.uk/uksi/2012/2782/contents. For production capacities of more than 5 MW, there is a 'Contracts for Difference' support scheme available (see the Contracts for Difference (Allocation) Regulations 2014, available via https://www.legislation.gov.uk/ukdsi/2014/9780111116777/contents). While there are no special provisions for community projects in the CfD scheme, community projects are able to bid into the allocation round where, on the basis of value for money, they will compete against other projects above 5MW for a share of the capacity and budget available.
[75] See Clause 3 and Annex I to Schedule A of the Standard conditions of electricity supply licence, available via https://www.ofgem.gov.uk/licences-industry-codes-and-standards/licences/licence-conditions.

installations allowed to enter the FiT scheme each month is capped ('deployment caps'). Therefore, applications may have to queue for entry into the FiT scheme.

After application (and subsequent accreditation), a FiT tariff will be assigned to the production installation concerned based on a number of factors, e.g. technology, total installed capacity, position in the deployment caps etc.[76] Assigned FiT tariffs are adjusted every year based on the Retail Price Index.

Specific benefits were available for 'community organisations'. The Feed-in Tariff Order 2012 defines such 'community organisations' as[77]:

> "*(a) any of the following which has 50 or fewer employees—*
> *(i) a charity;*
> *(ii) a community benefit or co-operative society; or*
> *(iii) a community interest company; or*
> *(b) a subsidiary (as defined in section 1159 of the Companies Act 2006), wholly owned by a charity, where the subsidiary has 50 or fewer employees and the parent charity has 50 or fewer employees;*"

Community organisations were allowed to apply for prolonged 'preliminary accreditation', i.e. the ability to lock into a tariff with a tariff guarantee ahead of commissioning (in order to hedge against the risk of always decreasing FiT rates due to the 'contingent degression' mechanism[78]).[79] In particular, the validity period of the preliminary accreditation (i.e. the period starting from the preliminary accreditation application during which commissioning must be reached) for community organisations was extended with six months (e.g. 12 months instead of 6 months for solar PV).

Total community capacity under the FiT scheme reached just under 300MW out of a total 6 GW (i.e. 4%).[80]

Furthermore, community organisations also enjoyed relaxation of the energy efficiency requirement for solar PV (50 kW or less).[81] In order to receive the higher FiT tariff rate, solar PV installations may demonstrate that the building to which the solar PV is wired has achieved an Energy Performance Certificate (EPC) rating of level D or above. For community organisations, level G would suffice.

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[76] FiT rates are set by the Department for Business, Energy and Industrial Strategy (BEIS) in accordance with the Feed-in Tariffs Order 2012. See https://www.ofgem.gov.uk/environmental-programmes/fit/fit-tariff-rates.

[77] Aritcle 11(6) of the Feed-in Tariffs Order 2012. See also Ofgem, Feed-in Tariffs: Guidance for community energy and school installations (Version 3), 18 April 2016, available via https://www.ofgem.gov.uk/ofgem-publications/100090.

[78] 'Contingent degression' means that the FiT tariff rates will be reduced by 10% when the deployment in any technology band hits the deployment cap set by the government. Due to this mechanism, you could never be sure when FiT tariff rates would go down. See Clause 15 of Annex 4A to Schedule A of the Standard conditions of electricity supply licence.

[79] Article 9(8A) of the Feed-in Tariffs Order 2012.

[80] See Written evidence from the Department for Business, Energy and Industrial Strategy (BEIS), March 2021, available via https://committees.parliament.uk/writtenevidence/23835/html/.

[81] See Clause 6 of Annex 5 to Schedule A of the Standard conditions of electricity supply licence.

With the Feed-In Tariffs (Closure, etc) Order 2018, however, the FiT-scheme was closed to new applicants as from 1 April 2019 (subject to some exceptions granted due to the COVID-19 pandemic).[82]

The FiT-scheme was replaced by the so-called '**Smart Export Guarantee**'.[83]

Also to support small to medium scale renewable energy production capacity up to 5 MW (or 50kW for CHP), the Smart Export Guarantee ('SEG') ensures producers receive payment for any electricity they export to the grid. Note that payment is therefore only provided for excess electricity which was not consumed on-site, while the FiT scheme provided financial support for all electricity produced.

Licensed electricity suppliers are required to offer at least one SEG compliant export tariff to any generator with an eligible installation. The suppliers themselves determine the characteristics of their SEG export tariff in terms of tariff, type and duration. However, the tariff must at all times be greater than zero pence per kilowatt hour. As with regular electricity supply prices, there could be a variety of different SEG export tariffs available on the market. Suppliers may compete with each other to offer attractive terms and, if the tariff becomes uncompetitive, switching to another supplier could be considered.

The community energy sector, however, has suggested that the Smart Export Guarantee is flawed because it provides no minimum export price, and no long-term certainty beyond 12-month periods.[84]

Finally, there is the **Social Investment Tax Relief**.[85] Since it is not always easy for social enterprises to access commercial lending, the UK government introduced the Social Investment Tax Relief in 2014.

The main tax benefit of the Social Investment Tax Relief is relief from Income Tax. In particular, individuals making an eligible investment are allowed to deduct 30% of their investment cost from their Income Tax liability, either for the tax year in which the investment is made or the previous tax year.

Investments in community energy projects were initially covered by the tax relief measure, but were ultimately excluded from its scope[86] as of 2017.

Regional support initiatives

England, Scotland and Wales each have specific regional government programmes in place to support the development of energy communities.

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[82] See Ofgem, Feed-in Tariffs: Essential Guide to Closure of the Scheme (v3), September 2020, available via https://www.ofgem.gov.uk/system/files/docs/2020/09/guide_to_closure_062020.pdf.

[83] See the Smart Export Guarantee Order 2019 (available via https://www.legislation.gov.uk/uksi/2019/1005/contents/made) and Conditions 57 and 58 of the Standard conditions of electricity supply licence.

[84] Letter of 29 April 2021 by the Environmental Audit Committee of the House of Commons to Rt Hon Kwasi Kwarteng MP, Secretary of State (ref. Technological Innovations and Climate Change inquiry: Removing the barriers to the development of community energy), available via https://committees.parliament.uk/publications/5718/documents/56323/default/.

[85] Part 5B of the Income Tax Act 2007, available via https://www.legislation.gov.uk/ukpga/2007/3/contents.

[86] Section 192 of the Income Tax Act 2007.

In **England**, there is the **Rural Community Energy Fund** ('RCEF').[87] The RCEF provides non-capital grant funding to rural communities. The fund aims to help such communities with their up-front costs, e.g. consultancy and professional costs for project development to bring the project to an investable state. Under Stage 1 grant funding, up to £40,000 is available for producing an initial feasibility report. For projects that have proven feasibility, up to £100,000 is available for further project development costs such as gaining planning permission, legal contracting, engineering design, etc. The RCEF is being run by 5 regional Local Energy Hubs. The Local Energy Hubs also provide practical support and expertise to energy communities (during the development phase). One-to-one support from dedicated RCEF officers is available.

Under the current iteration of RCEF, 89 projects across England have been awarded £3.2m of grant funding.[88]

The community energy sector is concerned that RCEF will end in April 2022 with no replacement announced.[89]

A similar Urban Community Energy Fund did exist, but was closed to new applications on 5 July 2016.[90]

Scotland has the **Community and Renewable Energy Scheme** ('CARES').[91]

The CARES scheme is administered by Local Energy Scotland, who have a network of development officers based throughout Scotland. CARES acts as a 'one-stop-shop' providing advice and support, including financial support to community groups, third sector, public sector and rural SMEs seeking to develop renewable and low carbon projects.

The scheme is delivered on our behalf by Local Energy Scotland, who have a network of development officers based throughout Scotland to provide assistance and guidance to energy communities.

Four types of financial support are available for eligible applicants[92]:

- Enablement grants up to £25.000 which help to fund work that will further develop and firm-up ideas or support activity around community benefit and shared ownership;
- Development loans / grants up to £150.000 for development activities such as feasibility, design and consenting of new renewable or innovation projects;
- Capital funding (loans / grants) for the installation of renewable energy, local energy, energy storage or energy system projects;

[87] See https://www.gov.uk/guidance/rural-community-energy-fund.
[88] See Written evidence from the Department for Business, Energy and Industrial Strategy (BEIS), March 2021, available via https://committees.parliament.uk/writtenevidence/23835/html/.
[89] Letter of 29 April 2021 by the Environmental Audit Committee of the House of Commons to Rt Hon Kwasi Kwarteng MP, Secretary of State (ref. Technological Innovations and Climate Change inquiry: Removing the barriers to the development of community energy), available via https://committees.parliament.uk/publications/5718/documents/56323/default/.
[90] See https://www.gov.uk/guidance/urban-community-energy-fund.
[91] See https://www.localenergy.scot/.
[92] See https://www.localenergy.scot/media/110996/cares-funding-information-and-guidance-pack.pdf.

- Urban community buildings fund with grants up to £50.000 for e.g. the installation of solar PV on rooftops of community hubs, religious buildings, public halls etc.

Wales ran a government programme, called **Ynni'r Fro**, from January 2010 to December 2015.[93] It aimed to support community social enterprises across Wales to develop their own renewable energy projects.

The support provided included project advice and organisational capacity-building, as well as grant and loan funding.

Energy sharing

Energy sharing is only allowed 'behind the meter'. Energy sharing therefore presupposes the presence of a microgrid / private wires (direct lines).

The Electricity (Class Exemptions from the Requirement for a Licence) Order 2001 sets out the conditions under which operators of such microgrid / private wires could be exempted from the requirement to obtain a distribution licence.

In particular, Article 3(1)(b) and Schedule 3 of the Electricity (Class Exemptions from the Requirement for a Licence) Order 2001 provide the following exemption for 'on-site distribution':

> "*Persons (other than licensed distributors) who do not at any time distribute from any distribution system more electrical power than one megawatt for the purpose of giving a supply to domestic consumers or enabling a supply to be so given with that electrical power provided that each domestic consumer receives the electrical power, disregarding stand-by electrical power, from a generating station embedded in the same distribution system as himself.*"

Not only the distribution, but also the supply of electricity in such 'behind-the-meter' solutions may be exempted from licencing requirements under Article 3(1)(c) and Schedule 4 of the Electricity (Class Exemptions from the Requirement for a Licence) Order 2001, e.g. in case of
Supply of self-generated electricity to "*one or more consumers who—*

> *(i) each occupy premises which are—*
>
> *(aa) on the same site as the premises where the generating station is situated;or*
> *(bb) not on the same site but which receive the electricity supply from that generating station over private wires; and*
>
> *(ii) each of whom consumes all the electricity provided to him by the supplier in question at those premises other than any of that electricity supplied by that consumer in circumstances such that he falls within Class B in this Schedule;*

(each in this Class referred to as an "additional group consumer")

[93] See 'Final Evaluation of the Ynni'r Fro Renewable Energy Support Scheme - Final Report', available via https://gov.wales/renewable-energy-support-ynnir-fro-final-evaluation.

where the total maximum amount of electrical power supplied to those additional group consumers at any time is 100 megawatts of which not more than one megawatt is supplied to domestic consumers;"

It should be noted that there is no application process for such class exemptions. In other words, the person concerned must satisfy himself that he fulfils the relevant conditions for exemption.

Various MP's are now supporting the idea to allow energy sharing 'in front of the meter' within energy communities through the so-called 'Local Electricity Bill' (on the initiative of the community energy organisation Power for People).[94] The Local Electricity Bill would introduce a 'right to local supply' and therefore require Ofgem to establish new market rules that would ensure that the setup and running costs of local energy sharing are proportionate to the size of the business (e.g. energy community).

Ireland

Sustainable Energy Community Programme

Ireland has a longer tradition of supporting community energy projects. In 2015, the Sustainable Energy Authority of Ireland (SEAI) has developed a 'Sustainable Energy Community Programme' which resulted in over 400 energy community projects ('Sustainable Energy Communities' or 'SECs') all across Ireland.[95]

The SEC Programme primarily seeks to support communities to develop energy management skills and knowledge. Three levels of support can be applied for[96]:

- Learn: the community joins the SEC network in order to become familiar with community energy and think about specific projects by getting in touch with and learning from other communities;
- Plan: By entering into a three-year SEC Partnership Agreement with the SEAI, the community gets access to mentoring and SEAI technical supports in order to establish a baseline Energy Master Plan.
- Do: The community can then apply for funding from SEAI to realise and pursue its Energy Master Plan.

Dedicated funding is provided to SECs through the 'Communties Energy Grant' (previously known as the 'Better Energy Communities' scheme, established in 2012).[97] Up to 50% of the project costs may be funded (max. EUR 1.500.000). If a SEC applies for the first time and the requested grant is less than EUR 200.000, additional augmented support may be provided. Projects are eligible if they are "*community oriented, include a cross-sectoral approach and demonstrate an ability to sustainably finance the proposed project*". Furthermore, a 'partnership approach' is essential: candidates should seek partnership within

[94] See https://bills.parliament.uk/bills/2747 and https://powerforpeople.org.uk/blog/local-electricity-bill-briefing-for-mps.
[95] https://www.seai.ie/community-energy/sustainable-energy-communities/sec-map/.
[96] SEAI, Sustainable Energy Communities Programme - Handbook 2018, p. 4-18 (available via https://www.seai.ie/publications/Sustainable%20Energy%20Communities%20Handbook.pdf).
[97] SEAI, Communities Energy Grant 2020 - Application Guidelines (available via https://www.seai.ie/grants/community-grants/project-criteria-and-funding/Community-Grant-Guidelines.pdf).

various sectors (e.g. public / private, residential / non-residential, commercial / not-for-profit etc.). Projects are judged on three criteria:

- Value for Money (40 marks; minimum score requirement of 20 marks);
- Community and Partnership Approach (35 marks); and
- Quality & Delivery (25 marks; minimum score requirement of 12 marks).

In 2019, SEAI supported 57 projects under the Communities scheme with total Government funding of €25.3 million offered.[98]

It can be noted that both the SEC Programme and the 'Communities Energy Grant' are very broad in scope. No limitations are imposed in terms of organisational form, participation criteria, geographical requirements etc. Furthermore, these initiatives are primarily intended to improve energy efficiency in the communities concerned.

Where SECs would also seek to engage in renewable energy generation, supply or other related activities, they would need to fulfill all regulatory requirements as applicable to all incumbent energy undertakings (e.g. obtain generation and supply licenses, connection agreements etc.). Virtual energy sharing or peer-to-peer trading are not possible under the current legal and regulatory framework.

Renewable Electricity Support Scheme

The Renewable Electricity Support Scheme ('RESS') is the new Irish auctioning based support mechanism for renewable electricity production using two-way feed-in premiums.[99] Under RESS, each applicant is required to offer a price for its renewable electricity project. If selected, this price shall be the 'strike price' (applicable during the whole support period). The 'reference price', on the other hand, corresponds to the day-ahead market price. If, during a given hour of production, the reference price is below the strike price (but not below zero), the selected renewable electricity producer is entitled to a sum amounting to the difference between the reference price and the strike price. However, if the reference price exceed the strike price, the selected renewable electricity producer must pay back the difference.

In order to ensure a minimum contribution from 'Community-Led Projects', a preference category was created with a (ring-fenced) capacity up to 30 GWh (i.e. +/- 1% of the auction volume). During the first auction held in 2020 ('RESS-1'), the minimum eligible volume for individual community projects is 1 MW and the maximum volume is 5 MW.

Additionally, 'Community-Led Projects' do not have to comply with the requirements to post bid bonds (cash security to be lodged by a candidate during the qualification phase) and to submit performance security (the on-demand bond to be procured by a selected candidate in favour of the Minister) if successful in the auctions.

'Community-Led Projects' must fulfill the following requirements at all relevant times:

[98] https://www.seai.ie/grants/community-grants/.

[99] See Terms and Conditions for the First Competition under the RESS - RESS 1: 2020, Government of Ireland, February 2020 (available via https://www.gov.ie/en/publication/36d8d2-renewable-electricity-support-scheme/).

a) be at least 51% owned by a 'Renewable Energy Community', either by way of (i) a direct ownership of the RESS-1 project's assets, or (ii) a direct ownership of the shares of the Community-Led Project; and
b) at least 51% of all profits, dividends and surpluses derived from the RESS-1 project are returned to the 'Renewable Energy Community'.

The Minister for the Environment, Climate and Communications announced that for future RESS-auctions, the ownership-requirement will be increased to 100%.[100]

The notion 'renewable energy community' is, largely in conformity with Article 2(16) of the Renewable Energy Directive (EU) 2018/2001, defined as a "*legal entity:*

a) which, in accordance with applicable law, is based on open and voluntary participation, is autonomous, and is effectively controlled by shareholders or members that are located (in the case of SMEs or local authorities) or resident (in the case of natural persons) in the proximity of the RESS 1 Project that is owned and developed (or proposed to be owned and developed) by that legal entity;
b) the shareholders or members of which are natural persons, SMEs, local authorities (including municipalities), not-for-profit organisations or local community organisations;
c) for any shareholder or member (with the exception of "Sustainable Energy Communities" as registered with SEAI), that shareholder or member's participation does not constitute their primary commercial or professional activity;
d) the primary purpose of which is to provide environmental, economic, societal or social community benefits for its shareholders or members or for the local areas where it operates, rather than financial profits;
e) in respect of which, each shareholder or member is entitled to one vote, regardless of shareholding or membership interest; and
f) which is, or which has at least one shareholder or member that is, registered as a "Sustainable Energy Community" with SEAI,

and all of the above criteria must be evidenced to the satisfaction of the Minister."

In RESS-1, five solar energy and two onshore wind community projects were successful[101]:

[100] See the Minister's answer to question No. 145 by Deputy Éamon Ó Cuív, Dáil Éireann Debate 11 May 2021 (available via https://www.oireachtas.ie/en/debates/question/2021-05-11/145/).
[101] Press release of the Department of the Environment, Climate and Communications, "Solar, wind and community energy projects set to deliver €1.4 billion in investment and 1,000 jobs after Government approves renewable energy auction results", 11 September 2020 (available via https://www.gov.ie/en/press-release/08388-solar-wind-and-community-energy-projects-set-to-deliver-14bn-in-investment-and-1000-jobs-after-government-approves-renewable-energy-auction-results/).

Project	Name	Company Name	Technology Output	County
Ballytobin Solar PV	Ballytobin Solar Limited (Tom Bruton)	Solar	4	Kilkenny
Barnderg Solar Farm	Templederry Energy Resources Ltd (John Fogarty)	Solar	4	Galway / Mayo
Clooncon East Single WTG	Clooncon East Single WTG Limited (Sean Molloy)	Onshore Wind	0.9	Galway
Davidstown Solar	Davidstown Renewables Ltd (Joseph Hennessy)	Solar	4.95	Wexford
Dooleeg More Windfarm	CEARTH LTD (Declan Collins)	Onshore Wind	2.5	Mayo
Lisduff Solar Park	TEMPLEDERRY ENERGY RESOURCES LTD (JP Prendergast)	Solar	4	Clare
Lurrig Solar Farm	I.Q Solar Limited (Michael Quirk)	Solar	4	Cork

The weighted average strike price for the 'Community-Led Projects' preference category resulting from the first auction (RESS-1) was EUR 104,15/MWh.[102]

The RESS was formally approved by the Commission on 20 July 2020.[103] The creation of a 'preference category' for renewable energy communities was considered to be in conformity with §126 of the EEAG[104], since Ireland "*has explained that renewable energy communities have longer term potential, and has proposed controls to limit the size of benefitting projects, evaluate the costs and benefits of these features and the preference category, and limit their size and cost unless sufficient benefits can be*

[102] Renewable Electricity Support Scheme 1 - RESS 1 Final Auction Results, EirGrid, 10 September 2020 (available via http://www.eirgridgroup.com/site-files/library/EirGrid/RESS-1-Final-Auction-Results-(R1FAR).pdf)

[103] European Commission, State Aid case No. SA.54683 (2020/N) of 20 July 2020 – Ireland – Renewable Electricity Support Scheme (RESS).

[104] Communication from the Commission — Guidelines on State aid for environmental protection and energy 2014-2020 (2014/C 200/01), Official Journal 28 June 2014, §126: "*[…] If such competitive bidding processes are open to all generators producing electricity from renewable energy sources on a non-discriminatory basis, the Commission will presume that the aid is proportionate and does not distort competition to an extent contrary to the internal market. The bidding process can be limited to specific technologies where a process open to all generators would lead to a suboptimal result which cannot be addressed in the process design in view of, in particular:*

(a) the longer-term potential of a given new and innovative technology; or
(b) the need to achieve diversification; or
(c) network constraints and grid stability; or
(d) system (integration) costs; or
(e) *the need to avoid distortions on the raw material markets from biomass support.*"

quantified".[105] Ireland also emphasized "*that support for renewable energy communities is expected to increase public acceptance of renewable energy and thereby build support among the population for achieving increasingly ambitious renewable targets.*"[106]

The RESS is a good example of how Article 22(7) Renewable Energy Directive (EU) 2018/2001 can be implemented: "*Without prejudice to Articles 107 and 108 TFEU, Member States shall take into account specificities of renewable energy communities when designing support schemes in order to allow them to compete for support on an equal footing with other market participants.*"

Other interesting features of the RESS are the Community Benefit Funds and the Renewable Electricity Participation Scheme ('REPS'):

- With a view of setting up a Community Benefit Fund for each project, a surcharge of EUR 2/MWh is applied to all beneficiaries of the RESS. The RESS beneficiary then has to invest these funds directly into the neighborhood of his project: a minimum of 40% 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 education, energy efficiency, sustainable energy and climate action initiatives and, in respect of onshore wind projects, a minimum of EUR 1.000 (up to a max. of 50% of the funds) to each household located within a 1 km radius from the RESS project. Under RESS-1, the Community Benefit Funds will deliver approximately EUR 4.500.000/year. On 30 March 2021, a set of 'Good Practice Principles' regarding the operation of Community Benefit Funds was published for consultation by the DCCAE[107];

- Under the REPS, RESS beneficiaries would be obliged to offer a certain percentage of the CAPEX or equity as an investment opportunity to local citizens and not-for-profit communities or clubs. RESS-1 did not yet include a REPS.[108]

Upcoming new Micro-generation Support Scheme

On 14 January 2021, a public consultation was launched on a Micro-generation Support Scheme (MSS) in Ireland.[109] The main objective of this scheme is to provide a 'route to market' for citizens and communities to generate their own renewable energy (on a micro-scale, e.g. rooftop solar[110]) and receive a fair and efficient price for exporting excess electricity (which was not self-consumed) to the public grid.

[105] European Commission, State Aid case No. SA.54683 (2020/N) of 20 July 2020 – Ireland – Renewable Electricity Support Scheme (RESS), §129.
[106] European Commission, State Aid case No. SA.54683 (2020/N) of 20 July 2020 – Ireland – Renewable Electricity Support Scheme (RESS), §126.
[107] Available via https://www.gov.ie/en/consultation/995be-public-consultation-on-good-practice-principles-for-community-benefit-funds-under-the-renewable-electricity-support-scheme/.
[108] See §7.2.6 of the Terms and Conditions for the First Competition under the RESS - RESS 1: 2020, Government of Ireland, February 2020; §51-60 of European Commission, State Aid case No. SA.54683 (2020/N) of 20 July 2020 – Ireland – Renewable Electricity Support Scheme (RESS) and Terms and Conditions for the First Competition under the RESS: Supplementary Note in Relation to Citizen Investment, Government of Ireland, February 2020.
[109] Available via https://www.gov.ie/en/consultation/0ada2-public-consultation-on-a-micro-generation-support-scheme-mss-in-ireland/.
[110] The high level design proposes the following eligible maximum capacities: 50kWe for micro-hydro; 50 kWe for micro-wind; 50 kWe for Solar Photovoltaic (PV) and 30 kWe for renewable micro-CHP.

Under the MSS, exported excess electricity will be supported via:

- a Clean Export Guarantee ('CEG') tariff which reflects the fair market value of the electricity in line with Article 21(2)(d) of the Renewable Energy Directive (EU) 2018/2001. A minimum rate, proposed to be set by the CRU, will be made available based on the average Day Ahead Market (DAM) wholesale electricity price and will be the same across all technologies. Suppliers will recover the costs through balancing their portfolio and/or the sale of the electricity in the wholesale market, and are free to offer higher rates to attract or retain renewables self-consumers. When available (cf. the pending implementation of smart meters), the arrangements for this tariff will be revised to incorporate time-of use tariffs that incentivise optimum export of electricity for system benefit.

- a Clean Export Premium ('CEP') tariff: Since the CEG is deemed to be insufficient in order to close the viability gap for the lowest cost technologies in any sector until technology costs reduce further, the CEG will be supplemented by a Clean Export Premium (CEP) in the first years to support deployment of new renewable micro-generation (installed after 30 June 2021). In line with the CEG, a minimum tariff by sector based on the viability gap of the lowest cost technology is being proposed. The CEP will be established at a rate that is below the retail prices paid by the prosumers in order to encourage self-consumption. The duration of support will be 15 years for all technologies. The production output eligible for a CEP is capped at 30% of the total production in order to prevent over-remuneration. Suppliers will be allowed to recover the costs related to the CEP through the Public Service Obligation Levy (PSO).

Renewable Energy Communities will be eligible to participate in the MSS if they fulfil the same criteria as stipulated for the RESS-1 auction (see above). Renewable Energy Communities who own existing micro-generation capacity installed prior to the implementation of the MSS will be eligible for the CEG. As already mentioned, new capacities (installed after 30 June 2021) will also entitled to a CEP for 15 years.

Enduring Connection Policy Stage 2

Before 2018, grid connection policy was characterised by a deluge of applications, leaving various viable projects unable to secure connection (within a reasonable time). Therefore, the Commission for Regulation of Utilities ('CRU') introduced a new 'Enduring Connection Policy Stage 1' ('ECP-1') in order to eliminate speculative grid connection applications. Under ECP-1, an applicant must possess a planning permission (i.e. be 'shovel-ready') to be eligible for connection.

The latter rule also applies under ECP-2, which was presented by the CRU in June 2020.[111] Under ECP-2, the system operators have to target the issuance of 115 connection offers for each year of the ECP-2 period (2020-2023). The vast majority of these offers (85) are reserved for projects with a connection capacity of over 500 kW ('batch'), which will be prioritized by largest renewable energy generation (first 25) and then by planning permission grant date (last 60). Connection applications for 'batch projects'

[111] CRI Decision No.. CRU/20/060 of 10 June 2020 - Enduring Connection Policy Stage 2 (ECP-2) (available via https://www.cru.ie/wp-content/uploads/2020/06/CRU20060-ECP-2-Decision.pdf).

can be submitted during specific one-month windows only, i.e. September 2020, September 2021 and September 2022.[112]

ECP-2 also includes a specific privileged connection pathway for 'community-led renewable energy projects'[113]:

- Applications can be submitted at any time;
- Possession of planning permission not required in order to apply for connection;
- Reduced initial application fee deposit;
- Possibility to rely upon the connection capacity, as indicated in the DSO's 'connection assessment' (detailing also the connection method + cost), for two years in order to be able to obtain a planning permission;
- The DSO will then decide if it is feasible to have the connection assessment processed on a 'non-batch' basis (i.e. in parallel to the batch ongoing if the community project is not interacting with an existing batch project being processed under ECP-2 at the same node or folded into the ongoing batch if the timing for studying the application coincides with the studying of the batch applications) and issued before the next batch application window closes.
- 15 connection offers are reserved each year for community projects that were not processed on a non-batch basis in the preceding batch period (prioritisation by 'application received complete' date);

For the purpose of ECP-2 connection offers, 'community-led renewable energy projects' are defined as projects with a connection capacity of at least 0,5 MW up to 5 MW which utilise one or more of the following renewable energy generation technologies (and not in combination with non-renewable generation technologies): wind turbines (wind), solar photovoltaic panels (solar), hydraulic turbines (hydro) excluding pumped storage, waste to energy projects, biomass projects and biogas projects. Furthermore, such projects must

a) be at least 51% owned by a 'Renewable Energy Community', either by way of (i) a direct ownership of the project's assets, or (ii) a direct ownership of the shares of the project; and
b) at least 51% of all profits, dividends and surpluses derived from the project are returned to the 'Renewable Energy Community'.

The notion 'Renewable Energy Community' is defined in exactly the same way as under RESS-1 (see above).

Transposition of the Clean Energy Package

At the time of writing, the transposition of both the Renewable Energy Directive (EU) 2018/2001 (due by 31 December 2020) and the Electricity Market Directive (EU) 2019/944 (due by 30 June 2021) into Statutory Instruments is not yet completed. To date, transposition has been progressed by way of Statutory Instruments S.I. No. 704/2020[114] and S.I. No. 365/2020[115] as regards several new obligations within Chapters 5 and 7 of the Electricity Market Directive (EU) 2019/944 (regulatory authority matters)

[112] Selecting the eligible projects, prioritising them and issuing of connection offers then runs from October to December of the following year.
[113] §2.4.1 of CRI Decision No. CRU/20/060 of 10 June 2020 - Enduring Connection Policy Stage 2 (ECP-2).
[114] Available via http://www.irishstatutebook.ie/eli/2020/si/704/made/en/print.
[115] Available via http://www.irishstatutebook.ie/eli/2020/si/365/made/en/print.

and Articles 4 and 6 of the Renewable Energy Directive (EU) 2018/2001 (design of future renewable energy support schemes) respectively.

In March 2021, the Minister for the Environment, Climate and Communications stated that "*[t]he remaining elements of these Directives will be addressed in the coming months by way of Statutory Instrument under section 3 of the European Communities Act 1972 and by administrative provisions.*"[116]

Reportedly, the COVID-19 outbreak is hindering a timely transposition of the Electricity Market Directive (EU) 2019/944.

The Department of Communications, Climate Action and Environment ('DCCAE') is in charge of the transposition process. With regard to the transposition of the Electricity Market Directive (EU) 2019/944, the preparatory work is carried out by the CRU, which is reviewing the existing legal framework in Ireland.[117] To this end, the CRU identified various 'Workstreams' where, for each associated topic, the CRU aims to engage with the DCCAE during the legal transposition process. The transposition of the provisions related to 'Citizen Energy Communities' are considered under the 'Prosumer Development' Workstream. In view of their interrelationship, 'Renewable Energy Communities' are also included.

Since it is not yet considered clear by the DCCAE how the two concepts of 'Renewable Energy Communities' (art. 22 Renewable Energy Directive (EU) 2018/2001) and 'Citizen Energy Communities' (Electricity Market Directive (EU) 2019/944) would relate to each other, the separate implementation timelines for both directives are perceived a significant issue.

By the end of August 2020, the CRU launched a consultation ('Call for Evidence') in order to gather stakeholder input related to 'Renewable Energy Communities' and 'Citizen Energy Communities'.[118] On 5 March 2021, the CRU published a new consultation paper raising several proposals and questions for feedback.[119]

One of the topics considered was how to fill in the proximity requirement of Article 2(16)(a) Renewable Energy Directive (EU) 2018/2001. The CRU proposes that:

> "*the geographic scope of an REC should be limited by a physical asset on the distribution system, such as a 38kV substation. Also, the CRU proposes that CECs can be broader in scope and are not limited by geographic or technical limits and may be comprised of one or more RECs. This proposal*

[116] See the Minister's answer to question No. 210 by Deputy Jennifer Whitmore, Dáil Éireann Debate 24 March 2021 (available via https://www.oireachtas.ie/en/debates/question/2021-03-24/210/).
[117] CRU Information Paper No. CRU/20043 of 25 March 2020 - Roadmap for the Clean Energy Package's Electricity and Renewables Directives (available via https://www.cru.ie/wp-content/uploads/2020/03/CRU20043-Roadmap-for-the-Clean-Energy-Packages-Electricity-and-Renewables-Directives.pdf).
[118] CRU Call for Evidence on Energy Communities under the Clean Energy Package No. CRU/20099 of 26 August 2020 (available via https://www.cru.ie/wp-content/uploads/2020/08/CRU20099-Call-for-Evidence-on-Energy-Communities-under-the-Clean-Energy-Package-002.pdf). In parallel, a consultation was also launched with regard to active customers: CRU Call for Evidence on Active Consumers & Jointly Acting Consumers under the Clean Energy Package No. CRU/20098 of 26 August 2020 (available via https://www.cru.ie/wp-content/uploads/2020/08/CRU20098-Call-for-Evidence-on-Active-Consumers-and-Jointly-Acting-Active-Consumers-under-the-Clean-Energy-Package-.pdf).
[119] CRU Consultation No. CRU/21028 of 5 March 2021 on Energy Communities and Active Consumers, available via https://www.cru.ie/wp-content/uploads/2021/03/CRU_21028_Consultation-on-Energy-Communities-and-Active-Consumers.pdf.

would mean that Active Consumers could be part of a REC and a CEC, but other members of the CEC may not be able to be a member of the same REC if they are physically located outside the scope of the physical network asset."

The CRU is of the opinion that this proposal might limit consumers from participating, but that it is the benefit of being more technically feasible.

France

Introduction

The 2015 Law on the Energy Transition for Green Growth already allowed the direct participation of all the nation's actors, citizens, communities, companies, public authorities, for the development of Renewable Energy projects[120]. Though, with the publication on 4 March of three ordinances as listed below transposing the directives of the Clean Energy Package, France now has a consolidated framework, in particular to accelerate participatory renewable energy projects led by local actors.

The "loi Energie-Climat[121]" provides for the use of "ordinances[122]" to complete this technical transposition, which began in July 2020. These three ordinances have been the subject of broad consultation with stakeholders, which is continuing in order to finalise the application texts, according to the ministry. And two of them were submitted for public consultation in November 2020 (Ordinance No. 2021-235) and last January (Ordinance No. 2021-236).

- **Ordinance No. 2020-866[123]** on various provisions for adapting to European Union law in the field of energy;
- **Ordinance 2021-236[124]** completes the transposition of RED II including among others the concepts of Renewable Energy Directives, and part of electricity market directive with regards to the concept of citizen energy communities (CECs);
- **Ordinance No. 2021-237[125]** on the internal market in electricity, which also incorporates measures adapting the Regulation (EU) 2019/943.

The legal framework for energy communities

Ordinance 2021-236 presents the concepts of renewable and citizen energy communities and participatory investments. Important is the electricity-only approach, energy communities are not considered to play an important role in the transition to more efficient and sustainable heating and cooling networks.

- **Renewable energy community** is an autonomous legal entity that meets all of the following criteria: (i)it is based on open and voluntary participation; (ii) the shareholders or members are natural persons, small and medium-sized enterprises, local authorities or a combination; (iii) participating private companies do not have this participation as their main commercial or

[120] https://occitanie.ademe.fr/expertises/territoires-en-transition/energies-renouvelables-cooperatives-et-citoyennes
[121] https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000039355955?r=ssmlFO8fj1
[122] French legislation includes among others laws (Lois), orders (ordinances) and others including regulations (règlements). Laws passed by Parliament are subordinate to the Constitution. In accordance with Article 38 of the Constitution, the Government may request Parliament's authorization within a limited period of time to adopt measures falling within the sphere of legislation for the purpose of implementing its program. . These decrees have formal regulatory value until they are ratified by the legislature and can therefore be challenged before the administrative courts until they are ratified.
[123] https://www.legifrance.gouv.fr/dossierlegislatif/JORFDOLE000042120501/
[124] https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000043210210
[125] https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000043210238

professional activity; (iv) it is effectively controlled by shareholders or members located near the renewable energy projects to which it has subscribed and which it has developed; (v) its primary objective is to provide environmental, economic or social benefits to its shareholders or members or to the local territories where it operates, rather than generating financial profits.
The activities renewable energy communities can perform are well in line with the European directive:

- Produce, store, consume and sell renewable energy, including through renewable energy power purchase contracts;
- Share within it the renewable energy produced by the production units it owns, subject to the maintenance of the rights and obligations of its members as end-customers;
- Access all relevant energy markets either directly or by aggregation, in a non-discriminatory manner.

- **Citizen energy communities:** a legal entity meeting the following cumulative criteria: (i) it is based on voluntary participation open to any type of member or shareholder; (ii) it is effectively controlled by members or shareholders who are natural persons, local authorities or their groups, or small companies; (iii) its main objective is to provide environmental, economic or social benefits to its members or shareholders or to the local territories where it operates, rather than to generate financial profits.
  With regards to activities, a citizen energy community can:
  - Take part in the production, including from renewable sources, in the supply, consumption, aggregation, storage and sale of electricity ;
  - Provide services related to energy efficiency, recharging services for electric vehicles or other energy services to its members or shareholders;
  - Share within it the electricity produced by the production units it owns, subject to the maintenance of the rights and obligations of its members as end-customers;
  - Access all the electricity markets, either directly or by aggregation.

  A citizen energy community is financially responsible for the imbalances it causes in the electricity system. In this regard, it performs the function of balance responsible party or delegates its responsibility for balancing.

Actions related to energy consumption and sharing:

- **Individual self-consumption**: Individual self-consumption is seen as self-consumption that does not include any activity on the public grid. In practice, this implies single consumers with a renewable energy generation behind the meter (prosumers). The text modifies the definition of individual self-consumption, so that the operator of a charging infrastructure open to the public for electric vehicles and plug-in hybrids who obtains all or part of his electricity for the needs of his activity from an electricity production facility that he operates located on the same site, is considered a self-consumer of electricity.
- **Collective self-consumption** [126] , [127] : sharing of electricity produced within an energy community (REC or CEC) or on a collective building (e.g. apartment) must be done through collective self-consumption (CSC), and the community may be the legal entity organizing such an operation. For CSC a contract needs to be established between the DSO and the legal

[126] https://www.legifrance.gouv.fr/codes/id/LEGISCTA000032939883/
[127] https://www.legifrance.gouv.fr/codes/id/LEGISCTA000034527834/

entity which identifies the different participants and determines the sharing scheme between the involved consumers. The standard sharing consists of a pro rata attribution according to the consumption of each consumer in a 30 minutes interval. Net metering is not allowed for either scheme, avoiding that more electricity is treated as being self-consumed than the energy consumed instantly[128]. Collective self-consumption is limited to a 2 km radius.

- For **extended collective self-consumption** (radius of 20 km), the points of injection and extraction of projects are no longer limited to the low-voltage network but can be on the public distribution network (low-voltage and medium-voltage network). To be granted the 20km extension a motivated request has to be submitted at the ministery. Then a decision will be made based on the isolation of the project, the spread out nature of the habitat and the low population density.[129]

General principles

- REC or CEC can, under certain conditions, create, manage and own a heating or cooling network.
- Energy communities will not be given the right to own and operate distribution grids (Ordinance 2021-236);
- Ordinance 2021-237 includes provisions with regards to **a maximum time of 24 hours for changing supplier for all customers, including those served by local distribution companies** (LDC).
- Though the mentioned ordinance provides for an obligation to propose an electricity supply offer with **dynamic pricing, it is applicable only for electricity suppliers supplying more than 200,000 customers**. Under these conditions, customers equipped with a smart meter located on the territory of an LDC supplying less than 200,000 customers could therefore not have access to this type of offer.

Registration

The details with regards to registration are yet to be defined. Though the REC and CEC have to be legal entities, hence will be using the new NACE code as currently under development. Additionally, the Ordinance 2021-236 states The energy communities declare their production installations to the managers of the electricity and natural gas networks and the operators of the competent heating or cooling networks before they are put into service.

Regulatory sandboxing scheme

The French energy regulator (CRE) and the French Ministry of Ecological and Solidarity Transition can select market participants on which to test innovative products or services with adapted regulatory

[128] Oriol, L. (2018): Self-consumption framework in France. Presentation. Ministry for the Ecological and Inclusive Transition, May 2018. https://energie-fr-de.eu/fr/manifestations/lecteur/conference-sur-lautoconsommation-photovoltaique-cadres-reglementaires-et-modeles-daffaires-785.html?file=files/ofaenr/02-conferences/2018/180515_conference_pv_autoconsommation/Presentations/02_Louise_Oriol_MTES_OFATE_DFBEW.pdf

[129] https://www.legifrance.gouv.fr/download/pdf?id=JQWiPbjHXzl_ofc8s52y6ROTd0s4u_4t97grYP3zG38=

requirements. The energy-climate law allows the regulator to grant derogations from conditions of access to and use of networks and facilities for the experimental deployment of innovative technologies or services for energy transition and smart grids and infrastructure.

Article 61 of the LAW n ° 2019-1147 of 8 November 2019[130] relating to energy and climate includes the following:

- The administrative authority or the Energy Regulatory Commission may, each in their area of competence, by reasoned decision, grant exemptions from the conditions of access and the use of networks and installations to deploy **innovative technologies or services** on an experimental basis in favour of the energy transition and smart networks and infrastructures. These exemptions are granted for a maximum period of **four years**, **renewable once** at most for the same duration and under the same conditions as the exemption initially granted.
- The experimental deployment must contribute to the achievement of the objectives of the energy policy. These exemptions cannot be granted if they are likely to contravene the proper performance of the public service missions of the network operators or to undermine the safety and security of the networks or the quality of their operation.
- The exemptions are accompanied by obligations relating to the information of end-users concerning the experimental nature of the activity or the service concerned as well as the modalities of compliance, at the end of the experiment, with the obligations from which it was waived. They come with the technical and operational conditions necessary for the development and security of the networks.
- The Energy Regulatory Commission publishes an annual report on the **progress of the experiments** for which an exemption has been granted in application of I of this article and publishes an **evaluation when they are completed.**

CRE opened its first call with deadline September 15, 2020. 41 applications were received, of which 22 were rejected (Decision No. 2020-269). The basis for rejection included lack of innovative character (for example, applications mainly aiming an exemption from socialized costs (contribution to network operating costs or avoidance of taxes)); lack of necessity for an exemption (i.e. they could be carried out in the existing legal and regulatory framework) or because the proposed innovations or test cases were out of scope. Of the 19 that passed the first compliance check, 16 faced additional challenges as they touched aspects that were not (only) to be decided upon by the regulator. Only 3 were both compliant and in the scope of what CRE can evaluate itself. This shows the challenges on the one hand how challenging it is to receive an exemption, though on the other hand also how well CRE takes up the task to ensure tested innovations are relevant.

Financial support schemes

Collective self-consumers can choose between the standard distribution network tariff (TURPE –national Distribution Network Utilization Tariff) and the collective self-consumption TURPE[131]. Aim of the network tariff for collective self-consumption is cost-reflectivity, not incentivisation of self-consumption.

[130] https://www.legifrance.gouv.fr/loda/article_lc/LEGIARTI000039358702/

[131] https://www.compile-project.eu/wp-content/uploads/COMPILE_Collective_self-consumption_EU_review_june_2019_FINAL-1.pdf

There are different tariffs in summer/winter and peak/non-peak. A new tariff for residential consumers is expected to be more accurate and allow consumers to benefit more from a lower tariff for the self-consumption part. So far, the higher levels of self-consumption, the more beneficial the collective self-consumption tariff is for consumers. The French DSO in 2020 launched tenders for local flexibility markets (experimental projects), Energy Communities could participate in these markets. In 2021 a public consultation on a draft ordinance that would define RECs and CECs was launched[132]. Also, the draft ordinance provides for expanding the scope of collective self-consumption. The injection and draw-off points of the projects will no longer be limited tothe low voltage network but may be located on the entire distribution network, the low and medium voltage levels.

General renewable energy support schemes

The Multiannual Energy Program (PPE), published in April 2020, defined the priorities for action and the roadmap for the next ten years in terms of energy policy. The government is planning an unprecedented effort to develop renewable energy. The State's support for renewable energies is reflected in a massive financial commitment and simplification measures for project developers, aimed at achieving the ambitious goal of 33% renewable energy by 2030, compared to 17.2% at the end of 2019. All sectors are concerned: electricity, gas and heat production. In the 2021 Finance Bill, support for renewable energies will be increased by a total of €1.3 billion, an increase of around 25%, to exceed €6 billion, a historic record that corresponds to a doubling compared to 2012.
In terms of electricity production, the objective is to double the production capacity of onshore wind power by 2028, to multiply by almost five that of photovoltaic energy and to launch a call for tenders each year for offshore wind power.
In addition to financial support, the government is planning several measures to simplify and support renewable energies, in order to facilitate and further accelerate their deployment, including the introduction of a new tariff window to support rooftop photovoltaic installations of up to 500 kW of power (instead of 100 kW currently) without the need to go through a call for tenders.

While support to citizen participation in renewable energy projects was already available, supporting citizen projects has been strengthened since January 2018 in the framework of a partnership with the Caisse des Dépôts et Consignations, through the establishment of a support fund for EnRciT citizen projects and a partnership agreement with Énergie Partagée covering leadership and coordination on a national scale[133].

Further support can be expected through the regional **ADEME** working, though no specific details are published at the date of finalising this deliverable.

Energy sharing & joint investments

[132] http://www.consultations-publiques.developpement-durable.gouv.fr/projet-d-ordonnance-portant-transposition-de-a2288.html
[133] https://occitanie.ademe.fr/expertises/territoires-en-transition/energies-renouvelables-cooperatives-et-citoyennes

According to the regulator (CRE), the aim is to design the national Distribution Grid Utilization Tariff (TURPE) in a way that takes into account the public grid costs caused by the different self-consumption schemes[134]. CRE is tasked to elaborate specific grid tariffs for self-consumption. Specific tariffs for "autoproducteurs" were implemented in August 2018. No tariff on self-consumed energy in individual self-consumption applies whereas a tariff applies in the case of collective self-consumption. Collective self-consumers can choose between the standard TURPE and collective self-consumption TURPE[135]. Only in the case of a high share of self-production, the latter is more interesting than the standard TURPE.
In addition, for both, individual and collective self-consumption, a fee component is charged which relates to the specific management of the self-consumption scheme.

The ordinance 2021-237 also harmonizes the framework relating to the financing of renewable energy projects by citizens and communities, "by bringing the framework applicable to biogas production projects into line with Regulation (EU) 2017/1129 of 14 June 2017 on the prospectus to be published in the event of a public offering of securities or with a view to the admission of securities to trading on a regulated market, and by extending these provisions to renewable heat and cooling projects," the accompanying report points out. It explicitly allows the communities, their groupings, as well as the simple local residents, to invest in renewable energies, notably by the participating in companies of the project of development of local renewable energies.

[134] https://www.cre.fr/Transition-energetique-et-innovation-technologique/Autoconsommation
[135] Enedis (2018): TURPE 5 bis HTA/BT Tarifs d'utilisation des réseaux publics de distribution d'électricité. Tarifs en vigueur au 1er août 2018.
https://www.enedis.fr/sites/default/files/TURPE_5bis_plaquette_tarifaire_aout_2018.pdf