

LIFE-BECKON

Boosting Energy Communities massive deployment by equipping local authorities with comprehensive technical assistance cookBoOk, integrated services and capacity building



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Description of Legal and Regulatory situation in Denmark

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This document will describe the legal and regulatory situation of Energy Communities in Denmark. To be developed.

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1. Introduction

This deliverable describes the legal and regulatory framework applicable to Energy Communities (hereinafter, “ECs”) in Denmark, and more specifically, on the implementation and development of Renewable Energy Communities (“REC”) and Citizen Energy Communities (“CEC”).

2. Content

2.1. Transposition of REC and CEC

Both REC and CEC have been recognized as subjects/agents of the electricity system.¹ Moreover, both entities have been further defined in Danish law.

According to the available information, Denmark has only made a minimum transposition of REC and CEC, including the essential content of those communities in national law as it appears in European Law. Thus, national regulation has only detailed some specific aspects of the legal regime of REC and CEC, while others remain undeveloped.

More information on the transposition of REC and CEC in Danish law can be obtained from RESCOOP’s [Transposition Tracker - Denmark](#).

2.1.1. Requirements and limitations

2.1.1.1. REC

With regard to the requirements of REC under Danish law, they are basically the same as under Directive 2018/2001. Article 3 of Bekendtgørelse om VE-fællesskaber og borgerenergifællesskaber og forholdet mellem VE-fællesskaber og borgerenergifællesskaber og elhandelsvirksomheder og kollektive elforsyningsvirksomheder, BEK nr 1069 af 30/05/2021 (hereinafter, “BEK nr 1069 af 30/05/2021”) defines REC practically in the same terms as Article 2.16 Directive 2018/2001:

“In this executive order, renewable energy community means a legal entity that is based on open and voluntary participation, and is independent and actually controlled by capital owners

¹ The recognition of both entities as agents/subject of the electricity system was included in Bekendtgørelse af lov om elforsyning, LBK nr 984 af 12/05/2021.

or participants that are located in the vicinity of the renewable energy projects that are owned and is developed by this legal entity whose capital owners or participants are natural persons, SMEs or local authorities, including municipalities, and whose main purpose is to provide its capital owners or participants or the local areas in which it operates with environmental, economic or social community benefits rather than financial profit.”

Thus, under Danish law RECs are required to be open and voluntary, effectively controlled by its partners or members that have to be situated in the proximity of the renewable energy projects of the REC. With regard to proximity, there is no specific criteria to determine whether a partner or member is situated in the proximity of a renewable energy project. Thus, it remains unclear how far consumers in the REC can be from its installations.

Moreover, likewise in Directive 2018/2001, participation in RECs is limited to natural persons, SMEs or local authorities, including municipalities. The exact local authorities that can participate in RECs is not detailed under Danish law.

Similarly, like European law, Danish law requires that the purpose of the REC is to provide environmental, economic or social benefits to the partners or members or the local area where the REC operates, and does not include any additional purpose besides those in Directive 2018/2001.

With regard to the ownership requirement of the renewable energy projects, under Danish law this requirement is understood broadly. Thus, it is possible for the REC to enter into partnerships with external suppliers, contractors or energy companies to design, build and operate its installations. Equally, RECs can have direct ownership of the installations, but it is also possible for the installations are owned by private companies or third parties, as long as they remain under the REC's control.

2.1.1.2. CEC

With regard to the requirements of CEC under Danish law, they are equivalent to those already established under European law in Directive 2019/944. Article 4 BEK nr 1069 af 30/05/2021 defines CEC in terms practically identical to those in letters a) and b) of Article 2.11 of Directive 2019/944:

“In this executive order, citizens' energy community means a legal person that is based on voluntary and open participation and is effectively controlled by participants or capital owners who are natural persons, local authorities, including municipalities, or small businesses whose primary purpose is to provide environmental, economic or social community benefits to its participants or capital owners or the local areas in which it operates rather than providing economic gain.”

It is relevant to mention that letter c) in the definition of CEC in Article 2.11 of Directive 2019/944, which details the activities in which CEC can engage in, has not been included in the definition of CEC in Article 4 BEK nr 1069 af 30/05/2021, but it is included later in Article 8 of the same executive order.

Similarly to the regulation of REC, the requirements of CEC are basically the same as under European Law, and does not detail them further.

2.2. Types of legal entity

The regulation of RECs and CECs under European Law details several requirements that these entities need to meet, but does not establish that RECs or CECs have to be organised as specific kinds of legal entities.

However, Danish law. under Article 6 BEK nr 1069 af 30/05/2021, establishes that RECs and CECs can only be established and run as association, partnership, cooperative or as capital company. In principle, associations with limited liability and cooperatives with limited liability are the most popular legal entities for setting Energy Communities.

2.3. Implementation of the legal entity

The implementation of the legal entity upon which a REC or a CEC are based requires following the legal and administrative procedures applicable to the specific selected legal entity according to the law. Typically, this requires drafting the articles of association and registering the entity before the relevant authorities.

General information on the different types of legal entity is available in the [Danish Business Guide](#). It provides information on the characteristics of the different types of entity and also on their registration.

2.4. Implementation of the energy Community

In order to implement a REC or a CEC it is not necessary to follow a specific procedure or have an entity registered in a specific registry. Meeting the legal requirements of REC or CEC results in a legal person becoming automatically a REC or a CEC.

2.5. Activities that can be undertaken by the Energy Communities

Article 8 1069 af 30/05/2021 establishes explicitly the activities in which REC and CEC can engage in. Those activities are production, supply, consumption, aggregation, energy storage, energy efficiency services, and EV-charging services. Moreover, this article allows REC and CEC to provide other commercial energy services to their participants. Those other commercial energy services are not specified in the legislation, but they may include the settlement of energy produced from a solar cell plant, the purchase of renewable energy or promoting the development and scope of local renewable energy production and the storage of renewable energy, limited to the proximities of the REC or CEC.

Moreover, Article 13 subsection 2 of BEK nr 1069 af 30/05/2021 establishes that, if the electricity produced by the installations of a REC or a CEC is not enough to cover the electricity consumption of these members, the entity can and has to acquire electricity produced outside the REC or the CEC in order to complete the supply of the members. In the same line, it is possible for REC to supply and sell surplus energy to non-members, if some criteria are fulfilled. This is known as net energy scheme/net metering (origina: “nettoafregning”).

Moreover, in principle, REC can legally participate in self-consumption. However, according to Article 3.3 BEK nr. 857 of 20. June 2023, self-consumption in Denmark is only available if the energy production elements are connected to the place of consumption via an internal electricity connection. The place of consumption is defined in Article 5.16 of LBK nr 984 of 12. May 2021 as the point from which electricity is taken for one total register number or for connected buildings distributed over several register numbers with only one consumer of electricity. Thus, it is difficult for RECs to participate in self-consumption.

Additionally, it should be taken into account that the law allows RECs to develop renewable energy projects, not limited to electricity. Thus, according to Article 2.2 of LBK nr. 1791 of 2. September 2021, which defines renewable energy, the projects could involve any of the following energy sources: renewable non-fossil sources in the form of wind power, solar energy, geothermal energy, ambient energy, tidal and wave energy and other forms of ocean energy, hydropower, biomass, landfill gas, gas from waste water plants and biogas.

Finally, article 7 of BEK nr 1069 af 30/05/2021 expressly establishes that RECs and CECs cannot own, establish, buy or rent distribution networks. Thus, those entities cannot act as distribution system operators.

3. Conclusion

The implementation of REC and CEC in Denmark has mostly been limited to the minimum necessary and several concepts that EU law left undetermined have not been detailed in Danish law. Thus, the current regulation of those entities is still vague in some aspects. For example, it is not clear what are the limits of proximity between consumers and generation installations or what authorities can participate in a REC or a CEC.

On the other hand, other aspects of the regulation of RECs and CECs have been detailed in the process of transposition of Directives. Generally, those details have limited the potential of those entities, but have provided legal certainty. For example, the law expressly determines the kind of legal entities upon which a REC and a CEC can be created, and the activities that those entities can engage in are explicitly listed. It is also necessary to mention that RECs and CECs are expressly prevented from acting as Distribution System Operators.

Finally, it is also relevant that both REC and CEC have been implemented together in the same piece of legislation, which does not distinguish between both entities. This results in the regulation of REC and CEC being practically equivalent, which contrasts with the regulation at the European level, which is contained in two different Directives.