

## 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 Spain

**Author: Asier Larretxea Barja (WEG)**

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

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## 1. Introduction

This deliverable describes the legal and regulatory framework applicable to Energy Communities (hereinafter, “ECs”) in Spain, 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 are recognized subjects/agents within the Spanish electric sector. The REC and CER were included in article 6, point j and point k, respectively, of Spanish *Ley 24/2013, de 26 de diciembre, del Sector Eléctrico* (Law 24/2013, of December 26, of the Electric Sector) (hereinafter, “Law 24/2013”). Furthermore, since June 30 2023, the Law 24/2013 includes 2 articles, 12bis and 12ter, where the general regulatory framework and the basic principles of the REC and the CER are regulated.<sup>1</sup>

However, it must be noted that all the mentioned articles consist basically in a practically literal transcription of the relevant sections on REC and CEC of Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources (hereinafter, Directive 2018/2001), and Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity and amending Directive 2012/27/EU (hereinafter, Directive 2019/944). It is relevant to note that the dispositions of the mentioned directives that may be implemented at the discretion of Member States, such as the permission of cross-border participation of REC and CER, were not implemented through the mentioned articles of the Law 24/2013.

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<sup>1</sup> These articles were included to Law 24/2013 by article 183 of *Real Decreto-ley 5/2023, de 28 de junio, por el que se adoptan y prorrogan determinadas medidas de respuesta a las consecuencias económicas y sociales de la Guerra de Ucrania, de apoyo a la reconstrucción de la isla de La Palma y a otras situaciones de vulnerabilidad; de transposición de Directivas de la Unión Europea en materia de modificaciones estructurales de sociedades mercantiles y conciliación de la vida familiar y la vida profesional de los progenitores y los cuidadores; y de ejecución y cumplimiento del Derecho de la Unión Europea* (Royal Decree-Law 5/2023, of June 28, adopting and extending certain measures in response to the economic and social consequences of the war in Ukraine, supporting the reconstruction of the island of La Palma and other situations of vulnerability; transposing European Union Directives on structural modifications of commercial companies and reconciliation of family and professional life of parents and caregivers; and implementing and enforcing European Union law).

Even though they are recognized as subjects of the electric system, the legal framework applicable to REC and CEC still has not been developed in the Spanish legal framework. Thus, although there is a proposal of Royal Decree that aims to partially develop this legal framework, it has not been approved yet. This project, the *Proyecto de real decreto por el que se desarrollan las figuras de las comunidades de energías renovables y las comunidades ciudadanas de energía* (Project for Royal Decree with which the Figures of Renewable Energy Communities and Citizen Energy Communities are developed) (hereinafter, Project for RD), was published in April 20th 2023.

More information on the transposition of RECs and CECs in Spanish law can be obtained from RESCOOP's [Transposition Tracker - Spain](#).

### **2.1.1. Requirements**

#### **REC:**

Article 6.j of Law 24/2013, displays the general characteristics that REC must comply with. These characteristics are the same as those presented in the relevant disposition of Directive 2018/2001. Based on this article, REC must be legal entities, based on open and voluntary participation, autonomous, and effectively controlled by shareholders and members that are located in the proximity of the renewable energy projects that are owned and developed by that legal entity (REC). Membership in a REC is restricted to natural persons, SMEs and local authorities, including municipalities, and the primary purpose of REC is to provide environmental, economic or social community benefits to its shareholders or members or for the local areas where it operates, rather than financial profit.

The aforementioned article 12bis of Law 24/2013 does not clarify or extend these conditions. Therefore, without the final approval of the Royal Decree that develops the legal framework of the REC, it is still unclear exactly how these characteristics are to be applied. For instance, it is unclear what is the threshold to consider that the shareholders or members are located in the proximity of the renewable energy project, or how to determine that the legal entity is working more towards providing environmental, economic or social community benefits than making financial profit.

#### **CEC:**

Article 6.k of Law 24/2013, displays the primal features that CEC must comply with. These features are the same as those presented in Directive 2019/944. CEC must be legal entities based on voluntary and open participation, effectively controlled by members or shareholders that are natural persons, local authorities, including municipalities, or small enterprises. The primary purpose of CEC must be to provide environmental, economic or social community benefits to its members or shareholders or to the local areas where it operates rather than to generate financial profits. It is necessary to point, however, that article 6.k does not transpose article 2.11.c of Directive 2019/944, where as part of the definition of CEC displays that *“may engage in generation, including from renewable sources, distribution, supply, consumption, aggregation, energy storage, energy efficiency services or charging services for electric vehicles or provide other energy services to its members or shareholders”*.

It must be noted that the Project for RD requires REC and CEC to be formed by at least 5 members. As mentioned, at the moment this is only a project, and the content of the definitive Royal Decree that will regulate REC and CEC can vary substantially.

## 2.1.2. Limitations

### **REC:**

Based on the mentioned requirements of the REC, it is appropriate to point out certain aspects regarding its limitations. Proximity to the renewable energy project will limitate who can become a member or shareholder of the REC. However, as mentioned, it is not clear yet what is going to be considered as proximity. As an overview, the Project for RD defines the proximity criterion on the basis of the municipalities and their amount of inhabitants. Thus, REC situated in larger municipalities would be limited to that municipality, while REC based on less populated localities may also extend to those municipalities adjacent to the seat of the REC.

Further, the shareholdership and membership of REC are limited to natural persons, SME or local authorities, including municipalities. However, it is also unclear, without a development rule, what is to be considered exactly as local authority in Spain.

### **CEC:**

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The relevant limitation to point out is related to the establishment of who can become a shareholder or member of a CER. In this case, as for REC, it is unclear what exactly is to be considered as local authority.

In comparison to REC, CEC does not limitate the participation of the CEC to those who are in the proximity of a renewable energy project.

### **2.1.3. Development in national law**

As indicated, both for REC and CEC, by now, the development in national law is limited to articles 6.j, 6.k, 12bis, and 12ter of Law 24/2013, and these consist in a near exact transcription of the relevant provisions of the presented EU Directives. However, articles 12bis and 12ter of Law 24/2013, introduce mandates to a further development of the legal framework of REC and CEC in Spain.

### **2.2. Types of legal entity**

The mentioned articles of Law 24/2013, nor any other developing regulation in Spain establishes or limitates what kind of legal entities can be adopted by REC or CEC.

The Project for RD establishes that both REC and CEC can adopt the form of any existing type of legal entity, as long as it does not contravene any requirement or limitation of REC and CEC.

### **2.3. Implementation of the legal entity**

The mentioned articles of Law 24/2013, nor any other developing regulation in Spain, establishes a specific procedure for the implementation of the legal entity to be considered REC and CEC. Therefore, the general rules for the establishment of the chosen type of legal entity must be taken into account.

A guideline for the implementation of a Spanish cooperative is included in section 3 of the deliverable Selection of Legal Entity.

## 2.4. Implementation of the Energy Community

The mentioned articles of Law 24/2013, nor any other disposition in Spain establish any specific procedure for the implementation of the REC and CEC, apart from the fact that they must comply with the requirements and limitations set in section 2.1 of this report.

Furthermore, articles 12bis and 12ter transcribes the points of article 16 of Directive 2019/944, and article 22 of Directive 2018/2001, related to REC and CEC's right to be treated in a non-discriminatory and proportionate manner in their operation.

## 2.5. Activities that can be undertaken by the Energy Communities

### REC:

Based on article 12bis.3 of Law 21/2013, which has the exact same content as article 22.2 of Directive (EU) 2018/2001, REC can produce, consume, store and sell renewable energy, including through renewables power purchase agreements; share, within the renewable energy community, renewable energy that is produced by the production units owned by that REC, subject to the other requirements laid down in this Article and to maintaining the rights and obligations of the renewable energy community members as customers; access all suitable energy markets both directly or through aggregation in a non-discriminatory manner.

### CEC:

As mentioned, Law 24/2013 does not implement article 2.11.c of Directive (EU) Directive 2019/944, in which the activities that can be carried out by CEC are displayed. However, the activities that CEC can undertake can be understood to be presented in article 12ter.1.e of Law 24/2013: *"Are guaranteed non-discriminatory and proportionate treatment in relation to the exercise of their activities, rights and obligations as final customers, generators, suppliers, or market participants providing aggregation services."* and article 12ter.1.g of Law 24/2013 *"May act as representatives of consumers for the realisation of collective self-consumption, provided that they grant the corresponding authorizations"*. However, developing specific regulation is necessary, in order for participants of CEC to be able to know what exact activities they can carry out, or at least to give the participants enough tools to determine what activities they can carry out.

### 3. Conclusion

At the moment, the regulation of REC and CEC in the Spanish context is limited to a practically literal transposition of the relevant sections of the European directives establishing REC and CEC, without any specific regulatory development. However, it must be noted that recently, as mentioned, the scope of this transposition was expanded through the inclusion of articles 12bis and 12ter of Law 24/2013. Moreover, the aforementioned articles mandate the development of more specific regulations. Furthermore,

This development of specific regulation is fundamental since, as mentioned, there are certain aspects, such as the requirement of proximity in REC, that must be clarified and clearly delimited. This is necessary in order to increase legal certainty, which in turn, is paramount for the development of REC and CEC.