

LIFE-BECKON

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Summary of potential activities of ECs

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This document focuses on determining the activities that Renewable Energy Communities and Citizen Energy Communities are supposed to be entitled to do. It provides some reflection on how these activities fit in the current regulatory context. **May 2024**

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1. Introduction

The aim of this document is to determine the activities that Renewable Energy Communities (“RECs”) and Citizen Energy Communities (“CECs”) are supposed to be entitled to do according to the regulatory framework available.

After this introduction, the second chapter outlines the distinction between RECs and CECs, and how it is necessary for Energy Communities which kind of legal entity they are.

The third chapter details the existing regulatory framework applicable to RECs and CECs, and how it determines which activities are available to each kind of energy community.

The fourth chapter details, on the basis of the regulation previously described, the activities that Renewable Energy Communities (“RECs”) may carry out. This chapter is divided into two subsections that classify the different activities available to RECs: first, the activities related to sharing energy within the REC; second, the other activities available to RECs according to EU law.

The fifth chapter is equivalent to the fourth chapter, but focusing on CEC. It is also derived in the same subsections: the activities explicitly recognized in the regulation in relation to energy sharing within the CEC and the other activities available to CECs according to EU law.

The sixth chapter details how RECs and CEC can engage in other activities that are not explicitly recognized under EU law.

The seventh chapter aims at providing a solution to allow RECs and CECs to engage in those activities that are not expressly recognized in the applicable law or that, despite being expressly available to those communities in the applicable legislation, have not been completely regulated and are still unavailable to RECs and CECs.

The document closes with a final conclusion on the potential activities available to RECs and CECs.

2. Distinction between REC and CEC

The European legal framework recognizes two different figures for structuring an Energy Community, the Renewable Energy Communities (REC) and the Citizen Energy Communities

(CEC). As it is explained further below, REC and CEC are regulated in two different directives, which results in them being able to undertake different activities. Moreover, it shall be borne in mind that, under EU law, the establishment of REC and CEC are subject to similar requirements, but some distinctions do exist. For example, while RECs are open to both small and medium sized enterprises, participation of enterprises in CECs is limited to small enterprises. Thus, when choosing whether to structure an Energy Community as a REC or as a CEC, attention shall be paid both at the requirements applicable to both entities and to which of the activities available to each of the entities is more beneficial in the specific case.

It must also be noted that, in principle, Energy Communities will need to specify whether they are a REC or a CEC, since each of these entities has its own legal regime with its differentiated scope of responsibilities and rights. Moreover, since they are different kinds of entity or subject participating in the electricity market, they will most likely be required to be registered in separate registries. Thus, apart from complying with the requirements of the different activities they engage in, which do overlap in some cases, it is necessary to specify what kind of entity an Energy Community is.

However, it is necessary to note that there is potential for an Energy Community able to label itself, register and function as a REC and a CEC at the same time to exist. Under EU law, the requirements of both REC and CEC overlap significantly and, most importantly, where they differ, they are not necessarily conflicting. Thus, even though this may not be the case for every Energy Community, it is possible that one entity complies with the requirements of both RECs and CECs at the same time. Since being a REC and a CEC at the same time is not explicitly prohibited, at least under EU law, it is our understanding that this entity which would comply with the requirements of both kinds of energy community should be able to register and act as both subjects. Finally, it shall be taken into account that this analysis is based on the applicable EU law under the directives that outline the requirements and the activities available to RECs and CECs. Thus, the analysis of the compatibility of both subjectivities in a specific Energy Community shall also take into account the transposition of the European regulation on RECs and CECs under the national law of the relevant Member State.

3. Legal framework of REC and CEC

The legal framework applicable to REC and to CEC, both at the European and at the Member State level, determines which activities are available to each of those entities.

With regard to Renewable Energy Communities, their regulation at the European level is included in 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).

Article 22 of Directive (EU) 2018/2001, details the regulation of RECs at the European level. This article establishes several activities RECs can engage in. Moreover, RECs can carry out other activities, since those listed in article 22 should be considered a *numerus apertus*, an open list that can be extended.

With regard to Citizen Energy Communities, their regulation at the European level is included in 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).

Article 16 in Directive 2019/944 details the regulation of CECs at the European level. Within this regulation, the article recognizes several activities in which CECs can or may take part. In the same way as with RECs, the activities listed in this article should not be considered a closed list, and CEC may engage in other enterprises insofar it is possible under the law.

It should be borne in mind that, even though EU law recognizes that RECs and CECs can or may engage in different activities in the electricity sector, it is necessary for the Member States to transpose and detail the regulation for RECs and CECs to be able to engage in those enterprises. However, a specific regulation for RECs and CECs is not always a requirement for those entities to engage in some specific activities, since the general legal framework of an activity may already allow RECs and CECs to participate.

For example, although RECs and CECs are recognized as subjects of the electricity market in Spain, their legal regime is still in the process of being developed. However, they can rely on some aspects of the existing regulation in order to start developing their renewable energy projects and to share their electricity between their members. For example, currently, since a

specific regulation has still not been passed, the main tool available to RECs and CECs to share electric energy is collective self-consumption, even outside apartment blocks.

The following two sections detail the activities that can be carried out by RECs and CECs, respectively, both on the basis of EU law. The sections also consider the impact of national legislation in those activities. A schema of the activities listed hereinafter is attached as ANNEX I.

4. Activities available to REC

4.1. Sharing of energy produced by the REC's installations

One of the activities that RECs are entitled to carry out under EU law is to share, within the renewable energy community, the energy produced by the renewable energy generation installations owned by the REC. This sharing activity is subject to one principal requirement: that the members of the community keep their status as consumers, with the rights and obligations that it entails.

The sharing of electricity within the REC may be regulated as a special kind of electricity supply which establishes a specific sharing regime for REC. However, it is also possible for RECs to use other general activities existing in the electricity market regulation to share their electricity between their members. The exact manner how this energy is to be shared is to be determined by national law. However, under Article 22.4.d) of Directive 2018/2001, it is essential that the savings caused to the electricity system resulting from sharing energy within the REC are transferred into the community.

One of the activities that may be used to organise the distribution of electricity between the members of a REC is self-consumption of renewable energies. This activity has its legal basis in Article 21 of Directive 2018/2001. Specifically, the sharing of the energy can be structured through collective self-consumption.

Under collective self-consumption, a group of renewable self-consumers are entitled to generate renewable energy and to consume, store and sell it. Although Article 21 of Directive 2018/2001 only requires Member States to allow collective self-consumption within the same

building, national regulation may extend the scope of this activity in order to allow larger self-consumption communities. For example, under Spanish law, it is always possible to engage in self-consumption if the generation installation is situated up to half a kilometre from the consumption installation. Moreover, if some specific circumstances exist, it is possible to extend self-consumption up to 2 kilometres or even beyond.

On the other hand, it is necessary to mention that under Article 22.4.d) of Directive 2018/2001, Member States have to provide a framework that ensures that REC are subject to network charges, other charges, levies and taxes in a way that ensures that they contribute in an adequate, fair and balanced way to the overall cost sharing of the electricity system. In summary, Member States are obliged to ensure that the contribution of REC to the system costs is fair and that the savings to the electricity system that result from sharing energy within the REC are transferred to the community.

Moreover, it should be taken into account that, unlike CECs, RECs are not limited to operate with electricity, but they may operate with any renewable source of energy in any form. Thus, the legal regime of REC will apply to any form of renewable energy used by a REC. However, some of the benefits of this legal regime require the existence of a network established to share the relevant kind of energy. For example, it is possible to produce heat from renewable sources, which can technically be transferred. However, not all countries in the EU have developed heat-transferring networks. Thus, although a REC based on renewable heat may be established, these will only be able to take full potential of their legal regime in countries and places that have heat distribution networks.

4.2. Other activities in Article 22 of Directive 2018/2001

Apart from sharing their energy within the community, Article 22 of Directive 2018/2001 establishes that REC are entitled to carry out other activities: They should be able to produce, consume, store and sell their renewable energy and they should also be able to access all suitable energy markets, both directly or through aggregation.

Moreover, the European regulation recognizes the possibility that RECs carry out other activities, although it does not expressly establish that RECs are entitled to engage in them.

Those activities are: the supply of electricity, the provision of aggregation services, the provision of other commercial energy services, being final consumers and distribution system operators.

5. Activities available to CEC

5.1. Sharing of energy produced by the CECs Installations

The definition of Citizen Energy Communities in Article 2.11 of Directive 2019/944 lists several activities that, under EU law, can be carried out by CEC. Among those activities, that provision recognizes CECs the capacity to engage in the activities necessary to generate its own electricity and to share it to its members. Specifically, Article 2.11.c) of Directive 2019/944 establishes that, among many other activities, CECs may generate, supply and consume electricity, which can be renewable or not. Moreover, article 16.3.e) of Directive 2019/944 establishes an obligation on Member States to ensure that CECs can share the electricity produced by their installations, subject to the requirements established in that same article and to the CECs members keeping their rights and obligations as final consumers.

Similarly to RECs, EU law establishes in Article 16.3.b of Directive 2019/944 that CECs cannot be discriminated against with regard to the activities they engage in. Moreover, just like RECs, they can also organise the sharing of the energy produced in their installations by means of self-consumption, insofar they comply with the relevant European and Member State applicable law.

On the other hand, however, unlike RECs, the regulation of CECs does not foresee explicitly that those communities shall contribute in an adequate, fair and balanced way to network charges, other charges, levies and taxes. Thus, although CECs cannot be discriminated against in their activities in comparison to other participants in the electricity market, Member States are not obliged by EU law to ensure that their contribution to energy charges, taxes and similar is fair in relation to the overall cost sharing of the system. Thus, sharing of energy within a CEC may be less advantageous than within a REC.

5.2. Other activities available to CECs

Apart from generating and supplying energy to its members, Article 2.11.c) of Directive 2019/944 recognizes that CEC can take part in several other activities: distribution of energy; supply, in general and not limited to the members of the CEC; consumption; aggregation; energy storage; energy efficiency services and charging services for electric vehicles. Moreover, the article finishes with an open general clause, establishing that CECs can provide other energy services to its members or shareholders.

Article 16 further details the activities available to CECs, detailing that CECs should be able to access all electricity markets, directly or through aggregation, in a non-discriminatory way. Moreover, article 16.3.b

establishes an obligation to Member States to ensure that CECs are not discriminated against with regard to their activities, rights and obligations as final consumers, producers, suppliers, distribution system operators or market participants engaged in aggregation.

Finally, Article 16, in sections 2.b) and 4, allows Member States to enable CECs to own, establish, purchase or lease distribution networks and to autonomously manage them, or even to have a right in favour of CECs to manage the distribution networks in their area of operation. In consequence, CECs may be able to act as distribution system operators, but only in case the Member State in which they are situated chooses to allow them when implementing Article 16 of Directive 2019/944.

This is relevant because, as explained before, EU law does not require Member States to ensure that the contribution of CECs to the electricity system costs is fair, but only to avoid CECs being discriminated against. In consequence, under our opinion, at least managing the distribution network would be necessary in order to be able to offer fairer and more advantageous conditions to the sharing of electricity within the CEC, in comparison to other suppliers and distributors.

6. Other activities not expressly mentioned in EU law

Although Directive 2018/2001 and Directive 2019/944 recognize the right or allow RECs and CECs to carry out different activities in the electricity market, it is also possible for those entities to engage in activities not listed in these directives.

National law may specify that RECs and CECs can engage in other activities, but it is also possible for those entities to participate in other activities not explicitly directed to them, if they comply with the general requirements established by the law. For example, insofar RECs are also final consumers of electricity, they are able to engage in EV-Charging activities under Spanish Law, since this activity is expressly reserved to Final Consumers.

Also, RECs and CECs could also provide services related to smart applications. These can have projection both in the building and in electrical networks. In addition, the relationship between RECs and CECs, on the one hand, and the Energy Services Companies (ESCO),¹ on the other hand, could be interesting, since the first could require the services of the second.

¹ An Energy Services Company (ESCO) can be defined as a natural or legal person who provides a set of services including intangible investments, works or supplies necessary to optimise quality and reduce energy costs. This may include, in addition to the construction, installation or transformation of works, equipment and systems, their maintenance, updating or renewal, their operation or management derived from the incorporation of efficient technologies. The energy service thus defined must be provided on the basis of a contract which must be accompanied by verifiable, measurable or estimable energy savings' (Royal Decree-Law 6/2010 of 9 April). In Spain, it is possible to consult a list of ESCOs created by the IDAE, available at [Empresas Servicios Energéticos | Idae](#).

7. Solution to lack of regulation: acting as other agents

Although European law establishes that RECs and CECs are entitled to carry out several activities and recognizes the possibility that those entities engage in other extra activities, national transposition of EU law is often necessary for RECs and CECs to be able to act as agents of the electricity market and to take part in those activities. Thus, unless European law is properly transposed and developed, it may not be possible for those Entities to develop their full potential.

However, other agents of the electricity system, such as Suppliers, can already perform some of the activities that, under European law, shall be available to RECs and CECs. Thus, it is our view that, insofar national law allows it, it may be possible to establish the legal person upon which a REC or a CEC is based as another kind of market participant, such as a Supplier, in order to start carrying out the activities that EU law recognizes pending the full implementation of RECs and CECs. Later on, once those entities are properly introduced in the law of the relevant Member State, the legal person could be modified in order to adapt it to the legal regime of either a REC or a CEC. This would allow starting operating before the complete implementation of the entities and, in due time, getting rid of some of the superfluous legal obligations of other market subjects, such as Suppliers, in the electricity sector.

8. Conclusion

Directive 2018/2001 and Directive 2019/944 establish that REC and CEC are entitled to carry out several activities, while recognizing the possibility that they can engage in some other activities in the electricity sector. However, this list is not limitative, and Member States can allow those entities to participate in other activities that are not explicitly listed in EU law.

Nevertheless, for REC and CEC to adequately participate in the electricity market it is necessary for European law to be properly transposed and developed in the Member States, which is not always the case. In case of lack of legal development, it may be possible for those entities to act as other agents of the electricity system, at least temporarily until RECs and CECs are fully developed under national law.

Finally, although there is substantial overlap between the activities that RECs and CECs can undertake, it is necessary to explicitly highlight the main differences between one subject and the other.

First of all, it shall be noted that, while CEC are only limited to the electricity sector, the regulation of RECs refers to renewable energy, not limiting it to electricity. Thus, if other sources of renewable energy can be transferred in a Member State, such as heat generated using renewable sources, a REC could participate in those activities. On the other hand, while energy in RECs always has to originate from

renewable sources, it is not specified that the electricity shared within a CEC needs to be renewable. Thus, under EU law, the CEC can share electricity generated from non-renewable sources.

Second, it needs to be noted that, under Article 22.4.d) of Directive 2018/2001, the Member States are obliged to make sure that RECs contribute, in an adequate, fair and balanced way, to the overall cost sharing of the system taking into account a transparent cost-benefit analysis of the distributed energy sources. In our opinion, this entails that the benefits that RECs provide to the electricity system under the distributed energy system they constitute must translate in them bearing lower system costs. In comparison, the same provision does not exist in the regulation of CECs. Thus, even though CECs provide benefits for the electricity system, the Member States are not obliged to make sure that those benefits translate into lower system costs.

Finally, it needs to be taken into account that the regulation of CECs recognizes explicitly the possibility of CECs to own, establish, lease and purchase distribution lines, if the relevant Member State allows it. Thus, while EU law foresees that CECs may act as distribution system operators in some Member States, this possibility is not explicitly recognized in relation to RECs.

Annex I: Schema of Activities



